



Earth Removal Permit
Kataisto Family Trust
26 Worcester Road, Hubbardston, MA
Assessor's Map 8, Parcel 88

DECISION
EARTH REMOVAL PERMIT (RESTORATION)
26 Worcester Road
Kataisto Family Trust

August 21, 2019

1. Petition

This document is the DECISION of the Planning Board (hereinafter, the Board) on the Petition of Ann Smith, Trustee for the Kataisto Family Trust. (hereinafter, the Petitioner) for property located at 26 Worcester Road (State Route 68). Said property is shown on Hubbardston Property Map Sheet 8 as Parcel 88 (hereinafter, the site). This decision is in response to a Petition filed for Earth Removal Permit on July 16, 2019, with additional information provided as noted below. This application is filed pursuant to the provisions of the Town of Hubbardston's, General Bylaws, Chapter XXI Earth Removal and the Earth Removal Rules & Regulations, Planning Board, Town of Hubbardston, as last amended.

The Petitioner seeks permission to conduct the restoration of a previously permitted Large Scale Earth Removal Operation, as originally permitted by the Hubbardston Board of Selectmen. Commercial removal of soils or other earthen materials is not part of this application.

2. Petitioner

Ann Smith, Trustee
Kataisto Family Trust
26 Worcester Road
Hubbardston, MA 01542

Owner

Ann Smith, Trustee
Kataisto Family Trust
26 Worcester Road
Hubbardston, MA 01542

Agent/Representative:

James Talvy,
Casella Organics
137 North Main Street
West Brookfield, MA 01585

3. Location

26 Worcester Road

Hubbardston, MA 01452

Hubbardston Assessor's Map 8, Parcel 88

Worcester County Registry of Deeds: Bk 38508, Pages 1 to 10 and Bk 38508, Pages 13 to 15

4. Board Action

After due consideration of the Petition, the record of proceedings, testimony of abutters and other concerned parties and based upon the findings set forth below, the Board, on August 7, 2019, by a vote of 4 members, at said public hearing, voted to **GRANT the petition for Gravel Removal Permit Approval**, subject to the following findings and conditions.

5. Proceedings

The Board held duly-noticed public hearing on:

August 7, 2019;

Members present: Alice Livdahl, Francois Steiger, William Homans, Craig Boissoneau.

Missing: John De-+Malia.

Members eligible to vote: Alice Livdahl, Francis Steiger, William Homans, Craig Boissoneau.

The record of proceeding and submission upon which this decision is based may be referred to in the Offices of the Planning Board and Town Clerk.

6. Exhibits

1. Application from Casella Organics to DEP for Biosolids Land Application dated June 2, 2016 (80 pages)
2. Letter from DEP to Casella Organics approval of land application, dated Dec 18, 2018 (5 page letter, 2 attached criteria pages).
3. Letter to Planning Board from Kataisto dated June 10, 2019 (1 page)
4. Letter to Kataisto from Planning Board advising permitting required, dated June 21, 2019, (1 page).
5. Letter from SWCA Environmental Consultants, dated July 9, 2019 (2 page letter, 16 attached pages: report of testing).
6. Earth Removal Permit Application, dated July 16, 2019, (9 pages).
7. Certified List of Abutters obtained by Planning Board Administrator on July 17, 2019.
8. Notice of Public Hearing was sent to: Owner, Applicant, 12 abutters, Hubbardston Board of Health, Board of Selectmen and Conservation Commission on July 18, 2019.
9. Advertised in the Gardener News newspaper on July 23, and July 30, 2019.
10. Email Correspondence from SWCA regarding potential groundwater impacts, dated July 26, 2019, (1 page).

11. Email Correspondence from Fire Chief Robert Hayes, dated Aug 5, 2019– (1 page) minimal fire concerns.
12. Project Peer Review letter dated August 5, 2019 from Places Associates Inc. to the Planning Board.
13. Figure 1, Restoration Plan, Prepared by SWCA Environmental Consultants, dated 08-06-2019, Project NO. 57004, scale: 1"=50ft, depicting an aerial photo of the current site with two-foot contour overlay and indicating area of restoration and area of Extraction of top soils for mixing and application. Received by the Board at the Public Hearing on August 7, 2019.
14. DRAFT Decision, Site Plan and Special Permit Approval, 26 Worcester Road, Kataisto Family Trust, Earth Removal Permit (Restoration), prepared by Places Associates, Inc. as consultant to the Hubbardston Planning Board, dated August 14, 2019.

7. Findings, Conclusions, Waivers and Conditions

Based upon its review of the exhibits and the record of proceedings, the Board finds and concludes that:

- 7.1 **Finding** – The approval hereby granted is based on, and specifically applies to a parcel of land located at 26 Worcester Road, shown on Assessors Map Sheet 8 as Parcel 88.
- 7.2 **Finding** - The Site is located in a Residential/Agricultural (R/A) Zoning District.
- 7.3 **Finding** – The site is comprised of 31.9± Acres with 1015 feet, more or less, of frontage on Worcester Road.
- 7.4 **Finding** – The restoration of the pit is allowed under the Town of Hubbardston Zoning Bylaws pursuant to Article 4, Use Regulation, 4.1 d. Conservation or open space area
- 7.5 **Finding** - The proposed use, restoration activities for a previously permitted soil removal operation is reviewable under the provisions of Town of Hubbardston, General Bylaws, Chapter XXI Earth Removal and the adopted Earth Removal Regulations, Planning Board. No portion of this project is subject to Section 4, Exemptions
- 7.6 **Finding** – The project as proposed is for the restoration of a previously-permitted Earth Removal Operation. No commercial earth removal is proposed as part of the restoration project. As such, the Board finds that the following regulations do not apply to this application and need not be addressed in this application or by this permit:
 - a. **Section 5 –Permit Application, A. Application Contents:**
 - i. 5.A.5 0 Copies of plans and volumetric estimates.
 - ii. 5.A.6-9; Application Contents for Large Scale Earth Removal Operations.
 - b. **Section 5 –Permit Application, B. Plan Requirements:**
 - i. 5.B 1. (a) to (p); Plan Requirements.
 - ii. 5.B 2. (a) to (l); Operation Plan
 - c. **Section 7. Design Requirements and Standard Conditions:**
 - i. 7.A. 4. Excavation below estimated seasonal high water table.
 - ii. 7.A. 6. Transfer of Permit.
 - iii. 7.B. 2, (a) to (h) Site Maintenance requirements for earth excavations

- iv. 7.B. 3, a), b), c)¹, e), g) Items relative to screening and access.
- v. 7.B.5, a) to d) Mechanical Crushing and Screening.
- vi. 7.B.6. a) to c), d).3. Restoration Criteria.

7.7 **Finding** – Given the Findings noted above, items 7.4 ,7.5 and 7.6, the Board determines that the application as submitted, is complete and reviewable under the Bylaw and Regulations.

7.8 **Finding** –The Development describes that approximately 6.8 acres of the total 31.9 acres will be restored as part of this project and the site will be accessed by a partially paved and gravel drive off of the existing residential driveway from Worcester Road.

7.9 **Finding** – The Board finds, after review and submission of supplementary documentation by the Applicant and their licensed professionals and review by the Hubbardston Fire Chief, that the introduction of the proposed material (Biomix) does:

- a. Does not qualify as a “Hazardous Material” as defined in the General Bylaws, Chapter XXVII – Importation of Materials, prohibited materials.
- b. Biomix consists of short paper fiber from dewatered pulp and paper mill residuals, base soil (sand) and amendments including fertilizer.
- c. The proposed application of Biomix meets the Massachusetts Department of Environmental Protection’s requirements for BRP WP 30, Land Application and meets requirements for an Approval of Suitability for land application of residual for beneficial purposes. Special criteria apply to the placement and post use of the site after the installation of the mix
- d. The proposed Biomix is reported by the Applicant’s Licensed Site Professional (LSP) to, “The SPF has been demonstrated to not have contaminant levels that would pose a concern to the environment by virtue that the SPF material meets the strict RCS-1 reportable concentration for soils....the leachability and creation of potential groundwater pathway to any nearby private water wells is not a concern.”
- e. In a letter to the DEP, the Hubbardston Board of Health has approved the use of this material and operation as proposed.
- f. The Hubbardston Fire Chief has reviewed the material and states, “there is not much of a fire hazard with this product. If it did catch fire, I believe we would treat it as would any other brush fire..”

7.10 **Finding** - The Petition, as conditioned herein, satisfies the mandatory findings by Planning Board pursuant to Section 2 of the Regulations and Section 2 of the Bylaws.

7.11 **Finding** - This approval shall not be deemed an approval by the Board of Health, the Conservation Commission, Highway Department, Fire Department, Building Department or other authority having its separate jurisdiction and inspection requirements.

7.12 **Conditions:**

Administrative

¹ C) The regulations contain two items labelled as “c)”. The second cited “c)” relative to areas within 150’ of a public way does not apply as the existing driveway to the site is currently paved. The first cited “c)” is a requirement and will be made a condition of the permit; gated access.

1. The Earth Removal Permit granted by this decision shall not take effect until a copy of the decision has been recorded, at the owner's expense, in the proper Registry of Deeds and duly indexed or noted on the owner's Certificate of Title. A copy of the recorded decision, certified by the Registry, or notification by the Owner of the recording, including recording information, shall be furnished to the Town Clerk and the Planning Board.
2. A copy of this decision shall be maintained at the site at all times until a final inspection and approval of the site, via a "Certificate of Completion" is issued by the Board.
3. By making this application and by grant of the permit for the same, the applicant agrees and grants to the Town of Hubbardston (or its agent) to enter the property for the purposes of conducting inspections of the project status, compliance with the conditions of this permit, to review final stabilization pursuant to any request for a Certificate of Completion and any request for release of bonding.
4. This Permit shall lapse two years from the issuance date if a substantial restoration effort has not commenced, except for good cause. Both conditions are as determined by the Board.
5. This permit does not authorize the removal from the site of any earthen materials (including loam) subject to the Town's General Bylaws, Chapter XIX, and its subsequent regulations adopted by the Hubbardston Planning Board.
6. The Hubbardston Police, Fire and Planning Board shall be provided the contact names and numbers of the following:
 - a. Owner
 - b. Contractor conducting site operations
 - c. Emergency contact available 24hrs/day, 7 days/week until Certificate of Completion is issued.The Planning Board shall be informed, in writing within ninety (90) days of such a change.
7. Construction or Field Changes to the project shall be reviewed by the Board's Agent to determine if such changes are significant or of a minor nature. Significant changes shall require public notification and hearing, at the applicant's cost, to allow the Board, abutters and others the opportunity to review such changes at a public hearing. Should the Board determine changes proposed or made are not significant, they shall be determined to be minor engineering changes and shall be noted as such on any as-built plan/ certification with no further action required by the Board.
8. On the one year anniversary of the issuance date of this permit and each year thereafter (annually), the permit holder shall provide the Board a written report of the status of the project including site-related maintenance that has occurred, photographs of the site and access areas and a narrative of pending operational and maintenance activities planned for the coming year. This condition shall remain effective until a Certificate of Completion is issued by the Board.

9. The Board hereby reserves the power to modify or amend the terms and conditions of this approval on the petition of the owner or upon its own motion for cause. All provisions of this paragraph applicable to approval shall, where appropriate, be applicable to such modification or amendment. Such power is hereby reserved.

10. Violations of Permits issued by other agencies of the Town of Hubbardston are hereby incorporated into the permit criteria, as permissible by-law, as part of this permit. Should a violation or non-compliance of any such other agency permit take place, it may be considered a violation of this condition and therefore this permit. The Board herewith reserves the rights identified in Condition 9, above.

11. This project shall not be deemed to be complete and eligible for release of bond (after mandatory waiting period) until a Certificate of Completion is issued by the Board. The "Certificate of Completion" shall be recorded as a release of the permit requirements on the deed and shall be recorded in the Worcester registry of Deeds. Proof of recording shall be provided to the Building Commissioner and Board.

12. A copy of the Order of Conditions from the Hubbardston Conservation Commission shall be provided to the Board as a condition of this approval. Compliance with all issued permits by other agencies is a requirement of this permit, see Condition No. 10, above.

13. The provisions of Section 10 of the Earth Removal Regulations, Enforcement and Penalties, shall not be waived as part of this permit, and shall remain in full force and effect throughout the duration of the project.

14. Special Condition for Sale or Transfer of the Project:

The sale or transfer of rights or the property may affect the Earth Removal Permit as issued for this project. Accordingly, if the property is to be sold, leased or rights transferred prior to the or release of the Bond, the Board requires the following actions be undertaken by the Applicant and/or Owner thirty (30) days prior to change or transfer of rights or responsibilities the Applicant and/or Owner shall:

a. Notify the Board by certified mail of the intent to transfer rights or responsibilities such notification shall include:

1. Current Owner
2. Proposed Owner
3. Details of transfer (e.g rights, title, or other)
4. Proposed closing or transfer dates
5. Point of contact for the Board if not the Owner (e.g. Attorney, Agent, Contractor).
6. A copy of the latest project status report as filed with the Board per issued permit
7. Verification of the buyer's receipt of notice of limitations of future land use restrictions per the DEP Permit requirements.
8. A copy of the notification items 1. to 6. as forwarded to the Hubbardston Assessor's office.

b. The Applicant or Owner shall perform the following and provide proof of same to the Board prior to the date of closing or transfer:

1. Applicant/Owner shall arrange for the transfer of the required Bond from one owner to the other, for the benefit of the Town of Hubbardston. The terms and conditions of the Bond shall remain the same as originally issued and shall only be modified after a public hearing by the Board and only for cause. Proof of transfer shall be provided by the Town Treasurer's office.
2. All taxes, liens or municipal fees shall be paid current to the date of closing.

3. There shall be no release of funds without the prior approval of the Board

c This condition (no 14.) shall remain as required by Section 9, Earth Removal Rules and Regulations.

Failure to perform the above-listed items shall be grounds for the Board to find the Applicant/Owner in violation of the Permit. The Board reserves the right to rescind the permit if violations of the permit are determined to be sufficient, pursuant to item 9 above.

Prior to the commencement of any Site Work:

15. Prior to the commencement of any site work, importation of material or staging of equipment, the Applicant shall take photographs of the conditions of Worcester Road (full width) for 200' to the north and south of the entrance drive. The purpose of these photos is to document the pre-construction condition of the public way prior to construction. A copy of these photos in digital or printed format shall be provided to the Board, as part of the commencement of the project.

16. Prior to commencement of site work, the contractor shall provide a copy of the NPDES permit and the accompanying Storm Water Pollution Prevention Plan (SWPPP) to the Board and quarterly (4 times/year) provide copies of the inspection reports to the Board, during construction.

17. Prior to the commencement of any site work,

a. The Applicant/Owner shall pay all outstanding fees incurred for the Board's consultants including Town Counsel and other professional services required by the Board to review and approve the project.

b. The Applicant shall fund an account to cover the cost of regular construction and project close-out inspections by the Board or its consultant. The costs of such services shall be provided by the consultant to the Board and Applicant for review. It shall meet the criteria for selection of consultants pursuant to M.G.L. c.44, Section 35G and Local Bylaws. Such inspections shall include at a minimum:

1. Limit of Clearing, barrier locations and erosion controls
2. Regular construction inspections as determined by the Board, especially after intense rainfall or weather conditions
3. Any inspection requesting:
 - a. A Certificate of Completion
 - b. A release or reduction of bonding requirements

18. Prior to commencement of any site work, the Applicant /Owner shall provide information to the Board and Police Chief regarding the number of construction and delivery vehicles, likely construction routes and timelines for construction. The Police Department reserves the right to require a police detail, paid at the expense of the Applicant/Owner; if it is determined that construction traffic is impacting local roadways or public.

19. Prior to commencement of any site work, the contractor shall address what chemicals/hazardous or toxic materials will be on site, their intended use and anticipated

quantities. All chemicals stored on site shall be in a locked container with a minimum of 110% secondary containment volume. Spill kits, of a sufficient number, volume and material composition for the listed chemicals and equipment fuel tanks shall be provided on site and shall be accessible for the duration of construction.

General Conditions:

20. The hours of construction shall be between the hours of 6:30 a.m. and 4:00 p.m. or unless specific approval is granted by the Building Commissioner to operate outside of these hours. Saturday work shall specifically prohibit trucking to/from the site. No work allowed on Sundays or State and Federal holidays. Note: this does not prohibit site activities related to erosion control/storm water management during a rainfall event.

21. No trucking or importation of Short Paper Fiber materials into the site shall take place after October 31 or before April 30 of any year. This does not preclude site preparation between these dates.

22. Signage with emergency contact information (during construction) shall be posted at the access gate.

23. The access road shall be gated and locked. It shall be left open only during active operations. A copy of the gate lock shall be provided to the Police Chief and Fire Chief during all periods where earth restoration activities are active.

24. A stop sign shall be installed on the southern-most side of the existing driveway, indicating to all departing vehicle that a stop is required prior to entering onto Worcester Road.

25. The contractor shall maintain a stone construction entrance and is responsible for keeping sediment from this site from collecting onto the abutting roadway, a state highway. During construction operations site access shall be maintained to a level acceptable to the Fire Chief, Police Chief and Director of Emergency Medical Services.

26. Contractor shall supply sanitary facilities appropriate for the number of workers on site and/or as ordered by the Hubbardston Board of Health or authority having jurisdiction.

27. To control the potential for nuisance odors, the Contractor shall not allow Short Paper Fiber materials to collect or be stockpiled on the site for more than two consecutive days, without such materials being mixed with native or other materials.

28. All organic fill materials must meet the Massachusetts Department of Environmental Protection for a beneficial use. Further, as presented by the Applicant, only organic fill materials/residuals from the Erving Massachusetts Treatment Plan shall be utilized on this site. Any modification of the source may be determined by the Board as a substantial change to the project.

29. During construction, Town Officials or their designated agent shall have the right to enter the subject property to conduct inspections. Inspections shall not be limited to one topic, but shall be to determine compliance with the issued permit and related conditions.

The inspecting official shall notify the contractor of the inspection and shall be subject to the applicable safety standards.

30. All stumps, slash and wood waste not stockpiled on the site for later use shall be disposed of in accordance with the Massachusetts Wood Waste Policy. No stumps shall be buried on site.

31. No debris, junk, rubbish or other non-biodegradable waste materials shall be buried or burned on portion of the land within the limits of work, and removal of same shall be required prior to a Certificate of Completion.

32. Any fill material imported to the site shall be clean fill and shall not contain any hazardous materials or building demolition debris.

33. Blasting or explosive use is expressly prohibited by this permit.

34. Mechanical crushing of on-site boulders, ledge or rock is expressly prohibited by this permit.

35. All erosion control measures, including temporary settling basins, shall be maintained until the site is fully stabilized.

36. The minimum depth of planting material on any disturbed surfaces being re-vegetated shall be four (4") inches. Soil shall be tested in an agricultural lab and shall be adjusted for the crop specified. Fertilizer use and application shall comply with 330 CMR 31.00 for non-agricultural application of nitrogen fertilizers.

Upon Completion of the Restoration, but prior to release of Bond

37. The Petitioner and any subsequent owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to: erosion control, slope stability and access way maintenance. Site access shall be maintained to a level acceptable to the Fire Chief, Police Chief and Director of Emergency Medical Services.

38. The release of any retained bond shall be subject to the provisions of Section 9 of the Earth Removal Rules and Regulations in effect at the time of the grant of this permit.

39. Town of Hubbardston, General Bylaws, Chapter XVII Storing of Unused Motor Vehicles prohibits the storage of more than one unused or unregistered motor vehicle. This site has more than one un-used vehicle in proximity to the pit. These vehicles appear to not be registered. The property does not have a junk a license as granted by the Board of Selectmen. Prior to completion of the project, compliance with this General Bylaw must be achieved.

8. APPEALS

Appeals, if any, shall be made to a court of competent jurisdiction and shall be filed within twenty (20) days after the date of filing this decision with the Hubbardston Town Clerk. Notification of any appeal must be provided to the Owner, Applicant and Hubbardston Planning Board.

9. BOARD ENDORSEMENT

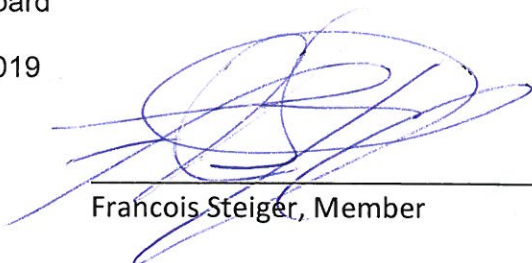
After due consideration of the Petition, the record of proceedings, testimony of applicant, abutters and other concerned parties, and based upon the findings set forth above, the Board, by a vote of 4 members, at said public hearing, voted to **GRANT the petition for Earth Removal Permit**, subject to the above findings and conditions.

Endorsed: Town of Hubbardston Planning Board

Witness our hands this 21st day of August, 2019



Alice Lindahl, Chair



Francois Steiger, Member




William Homans, Member

Craig Boissoneau, Member



John DeMalia, Member

Filed with Town Clerk:



Laurie J. Reed, Town Clerk

August 22, 2019

Date

This is to certify that the twenty (20) day appeal period on this decision has passed and there have been no appeals made to this office.



Laurie J. Reed, Town Clerk

September 11, 2019

Date