

ARTICLE 13

EARTH REMOVAL

Definitions

SECTION 1A. For the purpose of this By-Law, "earth" shall include soil, loam, sand, gravel, borrow, rock, sod, peat, humus, clay, coal or other earth material. (T.M. 4/14/77)

SECTION 1B. For the purpose of this By-Law, "Board" shall mean the Board of Selectmen.

Earth Removal Procedure

SECTION 2A. No earth shall be removed from any parcel of land in the Town without a written permit from the Board, except as hereinafter provided.

SECTION 2B. Any person wishing to remove such material from a property in Town shall file a formal application with the Board, which application shall include the following specific information and supporting documentation:

- a. The location of the proposed excavation.
- b. The legal name and address of the owner of the property involved.
- c. The legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder.
- d. Names and addresses of all abutting property owners, including those across any streets.
- e. A plan of the land, showing general topography within 100 feet of the proposed excavation or to the property line.
- f. A plan of the land showing contours of the site as of the proposed completion of the excavation project.
- g. A proposed form of bond to be used.
- h. A plan of the land showing the maximum annual groundwater elevation as determined by the Board of Health. In every instance, the maximum groundwater elevation shall be measured during the period of January 1 to March 31 in any year for the site.
(T.M. 10/16/89)

SECTION 2C. No permit for the removal of earth shall be issued by the Board until a public hearing has been held by the Board, notice of which shall have been given at least fourteen days in advance in a paper commonly used for such notices in the community, the posting of copies thereof on municipal bulletin boards, and the mailing of copies thereof to the abutters, and a favorable finding has been rendered by said Board.

SECTION 2D. Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued or at such other time as may be specified in said permit, but in no case for a period of more than three years.

SECTION 2E. Approval of the renewal of a permit for a period not in excess of one year may be made by the Board without hearing, if the Board finds that all conditions have been complied with and that the work has been carried on continuously in good faith.

Exemptions

SECTION 3A. No permit shall be required for the following:

- a. Where moving of earth is on an individual parcel.
- b. Where necessary in construction of building being built in accordance with a permit issued by the proper Town Authority and to the installation of walks, driveways and similar appurtenances to said building.
- c. Where necessary as part of the construction of a road pursuant to a permit, or under agreements governing road construction in a subdivision approved by the Planning Board or by governmental authority to the extent as may be necessary to complete the project as planned.
- d. Where necessary in the customary use of an operating farm, nursery, garden, landscaping activities, or cemetery to the extent that such removal is necessary to the operation of the same.
- e. Where the moving and/or removal of earth for any municipal purpose is by, or on behalf of any Department of the Town of Grafton.
- f. Where the removal is from a parcel for which removal was authorized under a legal permit issued prior to adoption of this Section 3A, the same may continue until the expiration date of said permit, provided that all by-laws, permits and conditions applicable prior to the adoption of this Section 3A shall be complied with. Subsequent to the adoption of this Section 3A, full compliance with all requirements of this Earth Removal By-Law must be complied with.
- g. Where such earth removal is permitted under the provisions of the General Laws, Chapter 40, Section 21, Paragraph 17.

The Selectmen may require an agreement containing conditions for moving and/or removing of earth and a performance bond if in their judgment anything they deem excessive is to be done under this exemption clause. (T.M. 4/14/77)

SECTION 3B. Earth removal activities in lawful operation on any parcel of land at the time this By-Law is adopted may continue unless and until abandoned for more than twelve (12) consecutive months. However, unless specifically authorized by a new permit issued hereunder:

- a. The depth of excavation shall not be increased below the grade of the lowest point excavated on the effective date of this By-Law.
- b. The total area of excavation within the parcel shall not be increased by more than fifty (50) percent over its area on said effective date.
- c. The average amount of materials extracted or removed per day shall not be increased by more than fifty (50) percent over such daily averages for the twelve (12) consecutive months preceding said effective date (or for the actual period of operation if less than twelve months).

Specific Limitations

SECTION 4A. No permit for the removal of earth shall be approved by the Board except upon condition that a cover of topsoil of not less than four (4) inches in depth shall be replaced or allowed to remain, except where, due to construction of roads, buildings or other permanent physical features, such provision is impractical.

SECTION 4B. No permit shall be issued for the removal of earth in any location if such removal (1) will endanger the public health or safety or constitute a nuisance; (2) will produce noise, dust or other effects observable at the lot lines in amounts seriously objectionable or detrimental to the normal use of adjacent property; (3) will result in the transportation of materials in such a manner as to cause traffic congestion or hazards, particularly on residential streets; (4) will result in the transportation over ways which will be unduly injured thereby; (5) will result in a change in topography and cover which will be disadvantageous to the most appropriate use of the land.

SECTION 4C. No permit shall be issued if the excavation will occur within five (5) feet of the maximum annual ground water elevation at any single location on the site. (T.M. 10/16/89)

General Limitations

SECTION 5A. No permit for the removal of earth shall be approved by the Board if the work extends within three hundred (300) feet of a way open to public use, whether public or private, or within two hundred and fifty (25) feet of a building or structure unless the Board is satisfied that such removal will not undermine the way or structure.

SECTION 5B. In approving the issuance of a permit, the Board shall impose reasonable conditions which shall accompany and shall constitute part of the permit, including but not limited to:

- a. The finished leveling and grading.
- b. The placing of top soil and planting necessary to restore the area to usable condition.
- c. The duration of the removal operation.
- d. The construction of necessary fencing and other protections against nuisances.
- e. Method of removal.
- f. Temporary structures.
- g. Hours of operation.
- h. Routes of transportation of material.
- i. Control of temporary and permanent drainage.
- j. Disposition of boulders and tree stumps.

SECTION 5C. Soil or loam may be removed from any parcel of land within such parcel determined by the Board to be unsuited to agricultural use, and the Board may issue a permit for such removal; provided, however, that the Board shall in making such decision, obtain the recommendations of the appropriate Soil District Supervisor and the County Extension Director or Agent or their successors, and their recommendations, shall be made part of the records of the Board. In issuing a permit, the Board may impose reasonable conditions as to re-establishment of ground levels and grades.

SECTION 5D. The Board shall require a bond or other security to enforce performance of conditions imposed by this By-Law or under this section.

General Administration

SECTION 6A. The Board may enter upon the premises involved from time to time to inspect and ensure proper conduct of the work.

SECTION 6B. Upon petition of the owner, permit holder or abutters, the Board may hold a new hearing and reissue or modify the permit, subject to any regulations not in conflict with this By-Law.

SECTION 6C. The Board may order the revocation of or suspension of a permit if the conditions established hereunder are not complied with; but the permit holder in such situation shall not be relieved of his obligations hereunder.

Violations

SECTION 7A. The Board, if it concludes that there has been a violation of this By-Law, shall so notify the offender, at the address stated on the initial application, and if applicable shall include a notice ordering cessation of the improper activities.

SECTION 7B. If a permit holder or other offender persists in such violation, the Board shall seek the imposition of the penalties authorized by paragraph 17 of Section 21 of Chapter 40, G.L., through appropriate legal action; and the penalty for removing earth in violation of this By-Law shall be a fine of not more than fifty dollars for the first offense after such warning; not more than one hundred dollars for the second offense; and not more than two hundred dollars for any subsequent offense.

SECTION 7C. If the offender holds a permit issued under the By-Law, such permit may be revoked.

Fees

SECTION 8A. The Board shall establish such fees for the issuance of permits as it shall find are necessary for the administration of this By-Law, including but not limited to the costs of advertising, clerical and policing expenses.

SECTION 8B. Any fees received hereunder shall be transmitted to the Town Treasurer.