

CHAPTER 4 - EARTH REMOVAL BY-LAW

Article I - Earth Removal

Section 1 - Definitions:

(A) Interpretation: In Construing this By-Law, the following words shall have meaning herein given, unless a contrary intention clearly appears:

(1) Abutter: The owner of land abutting a lot including land on the direct opposite side of an abutting way or abutting an abutter within 300 feet of the lot property line.

(2) Board: Earth Removal Board.

(3) Earth: All forms of soil including, without limitations, sod, loam, sand, gravel, clay, peat, hardpan, rock, quarried stone, or mineral products.

(4) Earth Removal: Removing any form of soil, including, without limitation, sod, loam, sand, gravel, clay, peat, hardpan, rock, quarried stone, or mineral products.

(5) Earth Removal, General: An earth removal not defined as subdivision or miscellaneous.

(6) Earth Removal, Miscellaneous: That which is entirely incidental to construction for which a building permit has been issued or that which is less than 300 cubic yards.

(7) Earth Removal, Subdivision: That which is entirely incidental to road construction for approved subdivisions.

(8) Lot: The area described in an application for an earth removal permit as the area from which earth is sought to be removed.

(9) Owner: The owner of a lot with respect to which earth is sought to be removed or the person lawfully standing in the stead of such owner, as, for example, a lessee to tenant, or person with written authorization for such

removal from the owner.

(10) Person: "Person" shall include but not be limited to an individual, corporation, society, association, and partnership.

(11) Removal: Stripping, digging excavating or blasting of earth and carrying it away from the lot.

Section 2 - Scope:

(A) Earth Removal Operations: This By-Law shall apply to all earth removal operations in the Town of Millville except as otherwise provided in this By-Law. It shall apply to all areas regardless of zoning district.

(B) Purpose: Nothing in this By-Law, however, shall be deemed to amend, repeal, or supersede the Zoning By-Laws of the Town of Millville now or hereafter in effect. Nothing in this By-Law shall derogate from the intent and purpose of such Zoning By-Laws.

(C) Dual Application: In cases of dual application, the provisions of this By-Law and the Zoning By-Laws must both be met and satisfied.

Section 3 - Earth Removal Board:

(A) Members: There shall be established an Earth Removal Board to administer the provisions of the Earth Removal By-Law. The members of the Earth Removal Board shall be the members of the Board of Selectmen and one member of the Conservation Commission, recommended by and from it, and one member of the Planning Board, recommended by and from it. No person employed by or having a direct or indirect beneficial interest in a commercial earth removal business in the Town of Millville shall be eligible for appointment to the Earth Removal Board.

(B) Meeting Minutes: The Earth Removal Board shall file copies of its meeting minutes and copies of all permits issued and renewed with the Town Clerk and Board of Selectmen. The Earth Removal Board shall file an Annual Report with the Board of Selectmen summarizing its activities for the year including a complete listing of all

permits granted. Such reports will be published in the Millville Annual Report.

(C) Budget: A budget shall be establish for the Earth Removal Board to include funds for part-time clerical services, advertising expenses, recording of permits, and consulting engineering. Said budget shall be administered by the Board of Selectmen.

Section 4 - Permit Application and Site Plan Requirements:

(A) Permit: Except as otherwise provided in Section 8 of this By-Law, no earth shall be removed from any lot in the Town of Millville unless a permit shall first have been obtained by the owner of such lot from the Board.

(B) Applications: Applications for Earth Removal Permits shall be made to the Board by filing an application with the Board on a form to be provided by the Board.

(C) Documentation: Each Application shall include and be accompanied by the following and supporting documentation.

(1) Filing and Renewal Fee: A filing and renewal fee in an amount established by the Board and contained in its Rules and Regulations.

(2) Description: A description in metes and bounds of the lot proposed for excavation.

(3) Legal Name and Address - Owner: Legal name and address on the owner of the property involved.

(4) Legal Name and Address - Petitioner: Legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder.

(5) Names and Address - Abutters: Names and address of all abutters as appearing on the most recent tax list and certified by the assessors.

(6) Land Plan: A topological map/plan of the land showing zoning classification and topography of surrounding areas within 100 feet of the property line.

(7) Quality of Excavation of Fill: A certified statement of the quality of excavation of fill involved made by a registered engineer or land surveyor.

(8) Proposed Contours: The plan of the land showing proposed contours of the site at the completion of the excavation project.

(9) Bond: The form of the Bond proposed to be submitted in accordance with Section 6, A; 1-9.

(10) Review Fee: The applicant shall also pay a Review Fee as set by the Earth Removal Board to cover the costs of the engineering expense incurred by the Town as part of the application review process of the earth removal work and of determining permit compliance at the termination of the permit period shall be borne by the permit holder.

Section 5: Granting or Denying Permits:

(A) Issuing Permits: The Board shall not issue a permit if it appears that such will:

(1) Endangerment: Endanger the public health or safety, or existing or potential water supplies.

(2) Nuisance: Constitute a nuisance.

(3) Use of Adjacent Property: Result in the detriment to the normal use of adjacent property by reason of noise, dust or vibration, or undermining the property.

(4) Operations: Result in operations within 200 feet of a way open to the public use, whether public or private, or within 200 feet of a building or other structure unless the Board is reasonably satisfied that such operations will not undermine such way or building or structure.

(B) Permit Expiration: Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was used or at such other time as may be specified in said permit, provided, however, that no such permit shall be valid for more than one year from the date of issuance.

(C) Applications: Application for permits may be granted, denied or granted in part and denied in part.

Section 6 - Operating Standards:

(A) Permits: Each permit issued by the Board shall be subject to the following conditions which shall be set forth on the permit:

(1) Removal: No removal below the natural grade shall be permitted within 200 feet of a residential zoned property line unless safety and protection from nuisance factors is assured through additional measures such as fencing or sloping as determined by the Board. In no case shall excavation take place within 50 feet of a residentially zoned property line unless the abutting land is subject to an earth removal permit granted under this By-Law and the owner of such land has granted written approval of such removal.

(2) Slopes: No slope created by earth removal operations shall be finished at a grade in excess of 2 (horizontal) to 1 (vertical) unless specifically authorized in the permit.

(3) Operations: Upon the conclusion of earth removal operations, all areas upon which such operations have been conducted shall be covered with not less than four inches of topsoil capable of supporting vegetation brought to the finished grades and seeded with a suitable cover crop except where ledge rock is exposed and all large stones and boulders which protrude above finished grade shall be buried or removed. The Board shall require the applicant to guarantee growth for the crop covering such areas within two years of seeding.

(4) Excavation Point: The lowest excavated point shall not be less than five (5) feet above the existing groundwater table unless a greater distance is recommended by the engineer who reviews this plan. To ensure the minimum depth, the property owner shall, at his/her expense, install observation wells in accordance with the requirements of the Board's agent.

(5) Excavation - Free Standing Water: No area shall be excavated so as to allow the accumulation of free standing water.

(6) Routes Approved for Truck Traffic: The routes approved for truck traffic shall be reviewed by the

Police/ Highway Departments to determine safety and road conditions.

(7) New Permits: New permits shall be limited on size and phased to a certain percentage of the site such that each phase can be completed within two years as determined by the five acres. Permits for subsequent phases shall be issued only upon evidence of compliance to the By-Law of the previous phases determined by the Board.

(8) Other Reasonable Requirements: Such other reasonable requirements consistent with the provisions of this By-Law and such rules and regulations as the Board may adopt hereunder including, but not limited to, grading, constant sloping, seeding, and planting, fencing or screening necessary for public safety and/or visual aesthetics, methods of removal, location and use of buildings and other structures, hours of operation, routes of transportation of earth removal, control of drainage and disposition of waste incidental to the removal operations.

(9) Commencing Earth Removal Operations: Prior to commencing earth removal operations, the applicant shall post with the Treasurer of the Town of Millville proper bond in such amount and such sureties as determined by the Board to be sufficient to guarantee compliance with the terms and conditions of the permit. The purpose of the bond is to assure that funds available assure compliance with this By-Law and to complete restoration as approved.

Section 7 - Hearing:

(A) Public Hearing: Before issuing a permit, the Board shall hold a public hearing after giving at least fourteen days notice of time and place thereof, such notice to be by advertisement in a newspaper of general circulation in the Town and by certified mail, postage prepaid to all abutters as they appear upon the most recent tax list and to the Conservation Commission of the Town of Millville. This hearing shall be held within ninety days following that date the application is filed with the Board.

(B) Review Agent: The Earth Removal Board shall submit the application and the supporting documents to its review agent and shall not act on the application until review by

the agent is completed.

(C) Town Boards: The Conservation Commission or any other Town Board or Commission shall have the right to question the petitioner. Within fourteen days of the receipt of the Earth Removal Application, the Conservation Commission shall file with the Board a report containing its recommendations. If no report is filed within fourteen days, it shall be deemed that the Conservation Commission has no objections to the application.

(D) Application for Renewal of a Permit: Upon application for renewal of a permit, the Board may, in its discretion, grant renewals for periods of up to one (1) additional year without a public hearing. The Board shall give such notice of such application by advertisement in a newspaper of general circulation in the Town and by certified mail, postage prepaid, to all abutters as they appear upon the most recent tax list as certified by the assessors. If written notice of objection to such notice, the Board shall take such objection into renewal has been filed with the Board within twenty-one (21) days of giving of such consideration before taking action on the renewal application. Any renewal application shall meet the requirements set forth in Section 4-(A), (B), (C) 1-10.

Section 8 - Exemptions:

(A) Earth Removal Operation Provisions: The Earth Removal Board may exempt the following earth removal operations from the provisions of this By-Law after the applicant has filed a statement with the Board that the removal falls into one of the following categories and giving the amount to be removed. The Board shall decide on such requests for exemption within thirty days.

(1) Earth Removal Operations for Municipal Purpose: Earth removal operations for any municipal purpose by or on behalf of the Town of Millville or any department or agency thereof.

(2) Incidental Earth Operations: Earth removal operations which are customarily incidental to farming, agriculture, gardening or nursery operations.

(3) Earth Removal - Construction: Earth removal incidental to the construction of a building or other

structure and associated facilities for which a building permit has been duly issued and to the installation of walks, driveways, landscaping and similar appurtenances to said building or structure.

(4) Earth Removal - Private Way: Earth removal operations in connection with the construction or improvement of a private way.

(5) Earth Removal: Earth removal operations involving less than 300 cubic yards.

Section 9 - Rules and Regulations:

(A) Adoption and Amendments: The Board may adopt and amend reasonable rules and regulations to carry out the purpose of this By-Law. Said rule making authority includes, but is not limited to, regulations regarding applications, site plan detail, engineering detail, criteria to be met to protect aquifers or wetlands, criteria for site restoration notices and enforcement. Said rules and regulations shall not be effective until reviewed and authorized by the Board of Selectmen and filed in the office of the Town Clerk.

Section 10 - Enforcement:

(A) Violations: If the Board determines that any person is violating any provision of this By-Law, the Board may order such person to cease and desist from such violation. The Board shall cause notice of the order to be served on such person by mailing a copy thereof by certified mail, return receipt requested, or by delivery in hand. If a permit for earth removal has been issued for the parcel of land on which that violation is occurring, delivery shall be to the address listed on the permit, and to the person named on the permit. If no permit has been issued for the parcel of land on which the violation is occurring delivery shall be to the address to which the property tax bill is sent and to the person named as owner according to the records of file in the office of the board of assessors.

(B) Receipt of Notice: If, after receipt of such notice, such person continues such violation the Board may seek to enforce its order by any of the following procedures.

(1) Penalties: Where in its judgment the situation so requires, it may cause a criminal complaint to issue from

the Oxbridge District Court, subject to the penalties provided in Massachusetts General Laws, Chapter 40, Section 21, cl.(17). Each day for which any such violation continues after receipt of such notice shall be deemed to be a separate offense, or,

(2) Proceedings: Where in its judgment the situation so requires, it may institute proceedings in the Superior Court of Worcester County, or in the Land Court if applicable, to enjoin the use of any premises in any way which would be in violation of this by-law; or,

(3) Disposition: Where in its judgment the situation so requires, it may pursue a violation of any of the provisions of this by-law by the non-criminal method of disposition as provided in Section 21D of Chapter 40 of the Massachusetts General Laws. In any case where a disposition is so sought, the penalty shall be fifty dollars (\$50.00) for the first offense, one hundred dollars (\$100.00) for the second offense, and two hundred dollars (\$200.00) for the third and each subsequent offense. Each day on which a violation exists shall be deemed to be a separate offense.

(C) Appointment of an Agent: For the purpose of ensuring compliance with this By-law, the Earth Removal Board shall appoint an agent who shall have such authority as is specifically delegated to him by vote of the Board. Said authority will not exceed that authority granted to the Earth Removal Board under this By-law. The appointment of said agent shall not take effect until notice thereof is filed with the Town Clerk and the Board of Selectmen.

Section 11 - Existing Operations:

(A) Provisions: All existing earth removal operations in the Town of Millville shall be subject to the provisions of this by-law. A permit pursuant to the provisions of this by-law shall be required for all earth removal operations, or under a permit issued by the Board of Selectmen pursuant to the provisions of Section 6 (A) 1-9 as appearing before the approval of this section replacing it, or otherwise, for any operation to continue on or after July 1, 1990.

(1) Applications: Applications for renewal of permits for existing operations shall meet all the plan requirements set forth in the By-law and the application shall include

information on all contiguous open areas owned by the applicant.

(2) Excavation: Any excavation shall be at least 5 feet above the water table as set forth in Section 6.5. If excavation is already below that level, the area shall be filled to a level sufficient to protect the water supply as determined by the Earth Removal Board.

(3) Exemptions: Existing operations shall be exempt from the limitation on the number of acres open at one time as set forth in Section 6.7. The owner shall submit a reclamation plan acceptable to the Board on the recommendation of its engineering agent. This plan shall include the location and number of acres to be reclaimed within one year. A long-range plan may also be required at the discretion of the Board.

(4) Buffers: Any area of existing excavation which is already within the required buffer as set forth in Section 6.1 shall be fenced and screened from abutting residences unless the Board determines that no nuisance or safety problem exists.

(5) New Excavations: New excavations constituting an expansion of existing operations into areas of land not presently being mined, will require permits in accordance with the terms of this By-law.

Section 12: Validity/Severability:

(A) Provisions: The invalidity of any section or provision of this By-law shall not invalidate any other section or provisions thereof.