

TOWN OF SWAMPSCOTT-GENERAL BY-LAW'S PERTAINING TO EARTH REMOVAL

ARTICLE XIII EARTH REMOVAL

SECTION 1. DEFINITIONS

- (a) For the purposes of this by-law, "Earth Removal" shall include soil, sod, loam, peat, humus, clay, sand, stone, gravel and rock.
- (b) For the purpose of this by-law, "Board" shall mean Board of Selectmen.

SECTION 2. EXEMPTIONS

- (a) Notwithstanding the provisions hereof, no permit shall be required for the removal of earth from:
1. Any parcel in connection with the lawful construction of a residential building or structure thereon or the lawful construction of a driveway or sidewalk incidental to any such building or structure, provided that the quantity of material removed does not exceed that actually displaced by the portion of building, structure, driveway or sidewalk below finished grade.

SECTION 3. EARTH REMOVAL PROCEDURE

(a) Permit Required - The removal of more than 600 cubic yards of earth from any parcel of land shall, except as hereinafter provided, be allowed only in accordance with a written permit therefore issued by the Board of Selectmen. The Board may grant a permit for such removal and for structures accessory thereto in accordance with the procedure hereinafter set forth. Any permit granted hereunder shall lapse within six (6) months if substantial use has not sooner commenced, except for good cause shown to the Board of Selectmen. No permit for removal shall be granted unless the Board finds that such removal (subject to the conditions imposed by the permit) will not be contrary to the best interests of the Town; and no removal operations subsequently constructed under such permit shall continue if contrary to such interests. For this purpose, removal of earth material shall be considered contrary to the best interest of the Town which:

1. Will be injurious or dangerous to the public health or safety;
2. Will produce noise, vibration, dust or other effects in amounts which are unreasonable, detrimental or otherwise interfere with the normal use of adjacent property or otherwise creates a nuisance;
3. Will have a material adverse effect on the health, safety or overall quality of life for the inhabitants of the Town;

4. Will have an adverse effect on natural resources, including but not limited to the recharge of water table or condition of the surface water;
5. Will cause excessive traffic congestion or damage to roadway services.

(b) Application for Permit - Any person wishing to remove more than 600 cubic yards of earth from a property shall file a formal application with the Board of Selectmen, which application shall include the following specific information and supporting documentation:

1. The location of the proposed excavation;
2. The legal name and address of the owner of the property involved;
3. The legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder;
4. Property lines, names and addresses of all abutting property owners within three hundred (300) feet of the property line, including those across any streets;
5. A detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, at a scale of 1"-20', or as determined appropriate, showing the entire parcel of land based on a perimeter survey and showing existing topography by five (5) contours within one hundred (100) feet of, and including, the site of the proposed excavation or to the property line. This contour plan shall show locations of a sufficient number of test borings made to determine the average depth of top soil before excavation;
6. A detailed plan of the land involved, prepared by a Registered Civil Engineer, or a registered surveyor, and acceptable to the Board, showing five (5) foot contours of the site as of the completion of the excavation project, all drawn to a scale acceptable to the Board. The plan shall further show the maximum depth that the applicant intends to excavate, the type of material the applicant intends to extract from the land, the manner and depth in which he shall replace the top soil, and the type of reseeded and planting he proposed to use;
7. Natural features such as wetlands, the 100 year flood plain, ground cover and surface and ground water. Water-table elevation shall be determined by test pits and soil borings. A log of soil borings shall be included, taken to the depth of the proposed excavation, congruent with the size and geological makeup of the site;
8. A topographical map showing drainage facilities, final grades and proposed vegetation and trees;
9. Erosion and sediment-control plan;
10. The amount and cost of proposed restoration materials;
11. The proposed form of performance security to be used; and
12. Copies of the information outlined in the above articles one (1) through twelve (12) shall be filed with the Town Clerk and the Board of Selectmen.

SECTION 4. GENERAL LIMITATIONS:

(a) In granting a permit hereunder, the Board of Selectmen shall impose reasonable conditions especially designated to safeguard the neighborhood and the town. These conditions shall be written upon and shall constitute part of the written permit, including but not limited to:

1. method of removal;
2. type and location of structures;
3. fencing;
4. hours of operation;
5. routes for transporting the material through the Town;
6. the duration of the removal operations;
7. the area and depth of excavation;
8. the re-establishment of ground levels and grades;
9. the steepness of slopes excavated;
10. provisions for temporary and permanent drainage;
11. disposition of boulders and tree stumps;
12. grading of slopes and replacement of loam over the area of removal;
13. planting of the area to suitable cover, including trees, necessary to restore the area to usable condition;
14. distance from excavation to street and lot lines;
15. the distance, vegetation and other materials and qualities required to provide adequate buffer for noise, dust, aesthetics and safety from excavation and associated structures, machinery and operation thereof;
16. corrective measures to be taken to restore areas of past removal operations in the case of an application for continuation of an existing removal operation; and
17. consideration of pollution insurance.

(b) No permit for the removal of earth shall be approved by the Board if the work extends within two hundred (200) feet, measured horizontally, of a way open to public use, whether public or private, or on an adjacent property line, or within one hundred fifty (150) feet (two thousand five hundred (2,500) feet for the removal of over one thousand (1,000) cubic feet of earth) of a building or structure, unless the Board is satisfied that such removal will not undermine the way or structure.

(c) No excavation not intended for approved building purposes nor other activity or building shall be within 100 feet, measured horizontally, of a stream, pond, wetland as defined under MGL, Chapter 131, Section 40, or the 100-year flood elevation of any water body, nor shall it effect such, except where another town board or committee has specifically ordered such excavation as part of a compensatory-storage plan.

(d) No area shall be excavated so as to cause accumulation of free standing water unless the Board of Selectmen shall, with the approval of the Conservation Commission, permit creation of a pond in an area not used for drinking water. Permanent drainage shall be provided in accordance with good conservation practices. Drainage shall not lead directly into streams or ponds, unless approved by the Board of Conservation Commission and otherwise properly permitted by other regulating governmental agencies.

(e) All top soil and subsoil stripped from operation areas shall be stockpiled and used in restoring the area.

(f) Any temporary shelters or buildings erected on the premise for use by personnel or storage of equipment shall be screened from public view and shall be removed from the premises within 60 days after the permit has expired or been revoked.

(g) Operation hours shall be strictly regulated. No Sunday or holiday hours are permitted. However, the Board of Selectmen may further limit hours of operation if it determines the public good will be served. Trucks may enter and leave the premises only within such hours. All loaded vehicles shall be suitably covered to prevent dust and contents from spilling and blowing from the load.

(h) Trucking and access routes and methods shall be subject to the approval of the Chief of Police.

(i) All access roads leading to public ways shall be treated with suitable material to reduce dust and mud for a distance of 200 feet back from the way. The operator shall clean up any spillage on public ways.

(j) Access roads shall not drain onto public ways.

(k) Permits for the removal of earth material shall be issued for a period of not more than one (1) year.

(l) 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 such permit. A permit issued hereunder is not transferable and no work under any such permit shall be performed except by the holder thereof.

(m) The Board of Selectmen shall require a surety bond, cash or other adequate security to insure compliance with the terms, conditions, limitations, and safeguards of such permit and such regulations and to indemnify the town for any harm to any well, road, wetland or other resource caused by such removal, the removal operations, the equipment used on the premises or by ancillary activities.

(n) All applicants are required to provide the Town of Swampscott with a hold harmless agreement along with a certificate of insurance subject to the minimum of one million dollars (\$1,000,000) single limit.

(o) The bond or cash deposit shall be held by the Treasurer for one (1) year after termination of the project or until all conditions as required by the Board have been completed to the satisfaction of the Selectmen. If after eighteen (18) months from the issuance of the permit all conditions as required by the Selectmen have not been completed, (especially grading and seeding), the Selectmen will use said monies to comply with the originally stated conditions.

(p) No permit issued hereunder shall authorize any activity which is in violation of the Zoning By-Law of the Town.

SECTION 5. SPECIFIC LIMITATIONS

No permit for removal of earth or operations accessory thereto shall be approved by the Board except upon the following conditions:

- a. Regained subsoil and topsoil shall be spread over the disturbed area and treated with appropriate fertilizer or other suitable material and seeded with an appropriate mixture of grass or legume mixture as prescribed by and as determined appropriate by the Board of Selectmen. Trees or shrubs of prescribed species will be planted to provide screening and reduce erosion during the establishment period.
- b. Restoration shall be carried on simultaneously with excavation, so that when any five (5) acres has been cleared and stumped and five (5) acres is in active mining operation, at least five (5) acres shall be restored before work commences (including building haul roads) on the next contiguous five (5) acres. Final restoration work shall be completed within a reasonable time after expiration or withdrawal of a permit or upon cessation of operations.
- c. Only in extreme circumstances and only if additional reasonable safety measures are provided, no slope shall be steeper than 2:1 (two feet horizontal to one foot vertical) (50%); 4:1 (four feet horizontal to one foot vertical) is preferred for erosion control and shall be required in all sensitive areas.
- d. Unless the permit conditions expressly require alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original nature drainage points; and so that the total discharge at peak flow and the area of drainage at any one point, is not increased.
- e. Natural vegetation shall be left and maintained on undisturbed land for screening, safety, noise and dust reduction and erosion control purposes.

SECTION 6. EXISTING OPERATIONS

Earth removal activities in lawful operation at the time this by-law is adopted may continue under the existing terms for a period up to three (3) months only if application is pending under the terms of this by-law. This period may be extended an additional three (3) months by the Board of Selectmen. Additionally, existing quarry operations are exempt from the provisions of Section 5(b) and (c) of this by-law.

SECTION 7. PERMITS FOR PROPOSED SUBDIVISIONS

It is the intention of this by-law that the removal from any parcel of land for which a preliminary or definitive subdivision plan has been prepared shall be allowed only in the same manner as removal from other parcels of land in the Town. Consequently, tentative or final approval of a subdivision plan by the Planning Board shall not be construed as authorizing the removal of earth materials from the premises, except that which is

to be removed in compliance with the requirements of this by-law. For the purposes of this by-law, the original parcel or parcels from which the subdivision is created shall be considered one.

SECTION 8. NOTICE AND HEARING

No permit for the removal of earth material shall be issued by the Board, until a public hearing is held thereon, by the Board of Selectmen, due notice of which shall be given by them, at the expense of the applicant, at least fourteen (14) days in advance, in a newspaper commonly used for such notices in the community, the posting of copies thereof on municipal bulletin boards, and the mailing of copies thereof to property owners within three hundred (300) feet of the property line, including those across any streets.

SECTION 9. GENERAL ADMINISTRATION

- (a) The Board of Selectmen shall exercise the powers and duties hereunder.
- (b) The Board or its designee may enter upon the premises involved from time to time to inspect and ensure proper conduct of the work.
- (c) Upon the petition of the owner, permit holder, abutters, or upon its own initiative, the Board may hold a new hearing and reissue or modify the permit, subject to any conditions not in conflict with the by-law.
- (d) The Board may order revocation of or suspension of the permit if the conditions established hereunder are not complied with, and the permit holder in such situations shall not be relieved of his obligations hereunder.

SECTION 10. FEES

The Board shall establish such fees for the issuance of permits as it shall find necessary for the administration of this by-law, taking into consideration the costs of clerical, civil engineering consultants, legal and inspection expenses.

SECTION 11. VIOLATIONS

- (a) The Board, if it concludes that there has been a violation of this by-law or the conditions of any permit issued hereunder, shall send to the permit holder or other offender, by registered mail to the address stated on the initial application, if an application has been filed, or shall post on the premises if no address can reasonably be ascertained, a notice ordering a cessation of the improper activities.
- (b) If a permit holder, or other offender, persists in such violation, in addition to the imposition of penalties listed below, the Selectmen shall seek an injunction through appropriate legal action.

(c) In the event that the permit holder persists in such violations, the Board may notify the permit holder by mail or posting as above, of a hearing to be held not less than four (4) days thereafter to show cause why said permit should not be revoked, and following said hearing, may in its discretion, revoke or amend the permit.

(d) If a permit holder fails to comply within thirty (30) days of a written notice from the Board of Selectmen of any deviation from the approved operating plan, the Board of Selectmen may take such action as is necessary to correct the deviations. In the event of such an undertaking by the Board of Selectmen, the owner of the land shall reimburse the Town for expenses incurred in connection therewith, and such expenses shall constitute a lien upon the entire tract of land approved in the permitting process.

(e) The Board of Selectmen may bring suit in the name of the Town of Swampscott to restrain any violation of or noncompliance with the provisions of these regulations.

SECTION 12. VALIDITY

The invalidity of any section or provision of the by-law shall not invalidate any other section or provisions thereof.

SECTION 13. COMPLIANCE WITH OTHER RULES AND REGULATIONS

Notwithstanding any of the foregoing rules and regulations, the applicant shall comply with all other applicable local, state and federal laws, regulations, rules and guidelines.

SECTION 14. EARTH REMOVAL ADVISORY COMMITTEE

The Earth Removal Advisory Committee (hereinafter referred to as the "Committee") shall be established as follows and have the following powers and duties.

(a) The Committee shall consist of six (6) members, all residents of the town. One (1) member shall be chosen annually by the Board of Health. One (1) member shall be chosen annually by and from the Planning Board to serve a one-year term. One (1) member shall be chosen from the Conservation Commission to serve a one (1) year term. Three (3) members shall be appointed by the Selectmen initially for one (1), two (2), and three (3) years, respectively, and as their terms expire their successors shall be appointed for terms of three (3) years. The terms of the members appointed by the Selectmen shall begin and end at the Annual Town Meeting nearest to the date of their appointment and third anniversary thereof, respectively. Any member may be appointed to succeed himself. An excavation engineer shall be appointed as a non-voting member. Two (2) alternating voting members shall be appointed by the Board of Selectmen for terms of three (3) years, or take any action related thereto. (5/5/2014 ATM)

(b) The Committee shall file with the Board of Selectmen a written report, with recommendations, at or within twenty-one (21) days of each hearing held pursuant to the provisions of the by-law, and no such permit may be granted until such report has been filed or until such committee has allowed twenty-one (21) days to elapse after such hearing without filing a report.

(c) The Committee shall from time to time file such reports relating to earth removal as the Selectmen may require or as the Committee shall deem necessary or desirable.

SECTION 15. RULES AND REGULATIONS

The Board of Selectmen may adopt rules and regulations not inconsistent with the provisions of this by-law for conducting its business and otherwise carrying out the purposes of this by-law.

SECTION 16. BLASTING

No blasting shall be allowed unless permitted, with conditions imposed, by the Fire Chief and otherwise in conformance with state and federal law. (5/94)

