

TOWN OF HOPKINTON
GENERAL BYLAW

Chapter 96

EARTH REMOVAL

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[HISTORY: Adopted by the Annual Town Meeting of the Town of Hopkinton 3-5-1951, Art. 23. Amended 9-28-1959 STM, Art. 7; 3-9-1972 ATM, Art. 51; 11-13-1972 STM, Art. 9; 6-18-1978 STM, Arts. 8 and 9; 4-22-1976 ATM, Art. 56; 4-13-1981 ATM, Arts. 42, 43 and 44; 5-4-1998, Art. 40. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Zoning -- See Ch. 210.

~ 96-1. Purpose.

- A. The purpose of this chapter is to provide a comprehensive review procedure of plans for earth removal which may affect traffic, environmental quality, water resources, drainage and community character with the objective that the public health, safety, convenience and general welfare is protected. This chapter shall apply to all earth removal activities in the Town of Hopkinton, except as otherwise set forth herein. It shall apply to all areas regardless of zoning district.
- B. Due to the fact that earth removal activities involve the degradation of a natural resource of value to the Town and that alteration of the natural environment and its resources will impact other resources and the environment as a whole, applicants for earth removal permits must demonstrate that the earth removal activity will not have a material detrimental impact on natural resources, such as groundwater quantity and quality, wildlife habitats, natural drainage patterns, viewsheds and wetlands.¹

~ 96-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

BOARD -- The Planning Board of the Town of Hopkinton.

¹ Editor's Note: Former Subsection C, regarding the effect of this bylaw on Ch. 210, Zoning, which immediately followed this subsection, was repealed 5-6-2002 ATM, Art. 35.

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EARTH -- All forms of soil, including, without limitation, loam, sand, gravel, clay, peat, hardpan or rock.

LOAM -- Soil consisting of a mixture of sand, clay, silt and organic matter.

LOT -- A single piece or parcel of land lying in a solid body, under single, joint or several ownerships and separated from contiguous land by property lines or street lines.

OWNER -- The owner of record of the land with respect to which earth is sought to be removed, or the person lawfully standing in the stead of such owner.

REMOVAL -- Stripping, digging, excavating or blasting earth on a lot and removing or carrying it away from said lot.

SURPLUS -- An amount or quantity in excess of what is needed or required.

~ 96-3. General requirements.

The following requirements shall apply to all earth removal activities, whether or not a permit is required. The Board shall have the authority to waive any of the requirements listed below, on a case-by-case basis:

- A. Grades at the conclusion of the earth removal operation shall not be in excess of one foot in vertical rise for every three feet of horizontal distance (3:1). Grades in excess of 3:1 may be allowed only with a waiver from the Board. When reviewing waiver requests, the Board will consider the final appearance of the lot and surrounding areas with the intent that a natural appearance, natural drainage patterns and sufficient erosion control will be maintained or established.
- B. Proper and reasonable surface drainage of the land affected by earth removal operations shall be assured during and after the removal operations. The applicant shall provide assurance that earth is kept out of streams and drainageways and that accumulated earth shall be removed at periodic intervals during and upon the conclusion of the earth removal operation. If the erosion control system includes any structural devices, these structural devices shall be in place and stabilized before excavation can begin in the affected area. All structures shall be inspected and maintained by the owner in accordance with the approved plan and the capacity of the structural device.
- C. At the conclusion of the earth removal operation, or of such portion thereof as the Board deems appropriate, the whole area where removal has taken place shall be covered with not less than eight inches of loam and seeded with a suitable cover crop, except where ledge rock is exposed, and all large stones and boulders which protrude above the finished grade shall be removed or buried. Alternatives to this method of restoration shall be subject to the prior approval of the Board.
- D. In no event shall any loam be stripped and/or removed from any land in an amount which exceeds the eight inches of loam required by Subsection C of this section.

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- E. The depth of excavation for any earth removal operation shall not be closer than seven feet above the spring high-water table, as determined by observation of soil profiles or test wells.
- F. All earth that is stripped and piled, and that which will be left exposed for a period of greater than 60 days, within 200 feet of a wetland, stream, river or other body of water, shall be stabilized. Such stabilization may consist of temporary seeding, anchored mulch or other method approved by the Board or its Agent.
- G. Provisions for dust control shall be provided for any earth removal operation.
- H. A buffer strip of undisturbed land not less than 100 feet wide shall be maintained at all boundaries of the lot, including at all street lines, on which an earth removal operation occurs. In the event that an earth removal permit is issued for adjoining lots under the same ownership, the Board may waive the buffer strip requirement in such locations as it deems appropriate.
- I. No earth removal permit shall be issued for a period in excess of 24 months. The duration of the permit, including dates of commencement and termination, shall be set forth on the permit.

~ 96-4. Applicability.

Except as otherwise provided in this chapter, no earth shall be removed from any lot in the Town unless a permit shall have first been obtained by the owner from the Board. The requirements of ~ 96-3 shall apply to all earth removal activities, whether or not such activity requires a permit.

- A. No permits are required for removal of earth in the following circumstances:
 - (1) Public land. Earth removal on lands in public use.
 - (2) Intra-lot activities. Earth moving activities confined entirely to the limits of a single lot as herein defined, provided that no earth is removed from the lot.
 - (3) Surplus earth. Removal of surplus earth resulting from a bona-fide construction project being carried on pursuant to the issuance of a building permit or permits which involve the removal of no more than 500 cubic yards of earth, only after presentation and review of appropriate plans and engineering data by the Board.
 - (4) Small quantities. The removal of no more than 100 cubic yards of earth from a lot in one twenty-four-month period.
 - (5) Definitive subdivision plan. Removal of surplus earth resulting from construction of the infrastructure, roadway and utilities shown on a definitive subdivision plan which has been approved by the Planning Board pursuant to the Subdivision Control Law,² only after presentation and review of appropriate plans and engineering data by the Board.

²Editor's Note: See MGL c. 41, ~ 81K et seq.

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- (6) Site plan. Removal of surplus earth resulting from construction of the infrastructure, roadways, driveways, utilities, sewage disposal system, buildings and other facilities shown on a site plan approved by the Planning Board pursuant to Chapter 210, Zoning, Article XX, Site Plan Review, only after presentation and review of appropriate plans and engineering data by the Board.
- (7) Garden apartment. Removal of surplus earth resulting from construction of the infrastructure, driveways, utilities, sewage disposal system, buildings and other facilities shown on a garden apartment site plan approved by the Planning Board pursuant to Chapter 210, Zoning, Art. XIII, Garden Apartments in Residential Districts, only after presentation and review of appropriate plans and engineering data by the Board.

B. Without limiting any provision hereinabove set forth, earth removal permits are required for the following activities:

- (1) Any activity not included in Subsection A above.
- (2) Commercial earth removal activities, such as mining, sand and gravel operations, earth removal and quarrying.
- (3) Removal of earth that is not surplus to an ongoing bona fide construction project, subdivision plan construction, site plan construction or garden apartment site plan construction.

~ 96-5. Permits.

A permit applicant shall file with the Planning Board an application, together with such fees, plans, specifications and additional information as set forth in the Earth Removal Submission Requirements and Procedures Manual adopted by the Planning Board and filed with the Town Clerk. After adoption of this chapter, the Planning Board shall vote to adopt the Earth Removal Submission Requirements and Procedures Manual after holding a public hearing.

A. Permit procedure.

- (1) Within seven days of receipt of an earth removal permit application, the Planning Board shall transmit copies of the application and plan to the Highway Department, Conservation Commission and Board of Health for comment and recommendations. The Planning Board shall not approve any such application until the final reports of such departments shall have been submitted to it or until 35 days shall have elapsed after the transmittal of the plans and additional materials without such report being submitted.
- (2) The Board shall hold a public hearing within 65 days after receipt of a complete application. Notice of such hearing shall be given by publication in a newspaper of general circulation in the Town once in each of two successive weeks, the first publication to be not less than 14 days before the day of the hearing. Notice shall also be sent by mail to the applicant, abutters and abutters to abutters, including those across any street, within 300 feet of the property. Notice of the public hearing shall be posted in the Town Hall not less than 14 days prior to the date of

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the hearing. Such notice shall be at the expense of the applicant. The Board shall file its decision with the Town Clerk within 90 days from the date of submittal. The time limits for a public hearing and Board action may be extended by written agreement between the applicant and the Board.

- (3) The owner of the property subject of any application must be named applicant. An applicant shall submit adequate evidence of ownership or authority to seek the permit.
- (4) An applicant shall submit documentation showing the depth to groundwater in the locations where earth removal will occur. Locations of test holes where such information was obtained shall be shown on a plan in form satisfactory to the Board.
- (5) The Board may forward a copy of the submission package for engineering review by a consultant selected by the town, at the expense of the applicant.
- (6) Applications for permits may be granted, denied, granted in part and denied in part or granted with conditions, at the discretion of the Board. A majority vote of the Board members present and voting shall be required to grant a permit.
- (7) A majority vote of the Board members present and voting shall be required to grant a permit.

B. Permit conditions.

- (1) The Board may require that the earth removal operation occur in phases, whereby one phase shall be completed and seeded prior to the commencement of the next phase.
- (2) The Board may require that periodic status reports, in such form as the Board may require, be submitted by the applicant during the earth removal permit period.
- (3) The Board may establish hours of operation for the earth removal activity.
- (4) The applicant shall post a bond, in such form as the Board may require, with the Town in an amount determined by the Board as sufficient to guarantee conformity with the provisions or conditions of the permit. The applicant shall submit a bond estimate for Board review and approval prior to the commencement of activities authorized by the permit. In lieu of a bond, the Board may allow or require an alternative method of surety to be held by the town. The Town may use the bond or other surety for the stated purpose in the event that the applicant does not comply with all of the terms and conditions of the permit and complete all restoration in a manner satisfactory to the Board and in accordance with the permit; significant public safety hazards exist which will not be addressed by the applicant; or material environmental damage has resulted from the earth removal activity and remediation will not be addressed by the applicant in a manner satisfactory to the Board.

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- (5) The Board may require a deposit of funds to the Town for engineering review and inspection of the premises during the earth removal permit period.

~ 96-6. Criteria for issuance of permits.

- A. The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the permit application will meet the requirements of this chapter.
- B. Earth removal permits may be granted by the Board if it finds each of the following:
- (1) The proposed earth removal conforms to the purpose of the chapter.
 - (2) The earth removal operation on the permitted lot will not:
 - (a) Be injurious or dangerous to the public health or safety.
 - (b) Produce noise, dust or other effects detrimental to the normal use of adjacent property.
 - (c) Have a material adverse effect on the health or safety of persons living in the neighborhood or on the use or amenities of adjacent land.
 - (3) The earth removal activity will not result in traffic conditions on roads in the area of the earth removal activity which will cause unsafe and dangerous conditions.
 - (4) The regulations contained in this chapter will be complied with.

~ 96-7. Permit renewal.

Permits may be renewed for periods of up to one year, only after written application and a public hearing held in accordance with this chapter. Applications for renewal shall be submitted by the applicant at least two months prior to the expiration date of the permit. If the applicant fails to submit a renewal application two months prior to the expiration date of the permit, the Board may determine that the original permit has expired and that a new application must be submitted. Prior to renewal, inspection of the premises shall be made by the Board's Agent to determine that the provisions of this chapter and the existing permit have been complied with.

~ 96-8. Completion of earth removal activities.

After completion of work authorized by an earth removal permit, the owner shall submit an as-built plan, prepared by a registered professional engineer, showing grades at the conclusion of the operation. The Board shall release the bond after the submission of an as-built plan, a determination that all permit conditions have been met and, when sufficient time has lapsed, to ascertain that vegetation planted has successfully been established and that drainage is satisfactory.

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~ 96-9. Enforcement.

- A. The Planning Board shall appoint an Earth Removal Agent in order to carry out the provisions of this chapter. The Agent shall have the authority to issue cease and desist orders in the event of violation of this chapter or a permit. Said cease and desist orders shall remain in effect during such time as negotiations between the Board and the entity to whom the cease and desist order was issued concerning the violation are ongoing or until the violation is corrected. The Planning Board shall have the authority to issue and extend cease and desist orders as it deems appropriate to ensure compliance with this chapter or the permit.
- B. The Board, its agents, officers and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Board deems necessary or appropriate, subject to the Constitutions and the laws of the United States and the commonwealth.
- C. The Board shall have the authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, cease and desist orders and civil and criminal court actions. Any entity which violates any provision of this chapter may be ordered to restore the property to its original condition, to take other action deemed necessary or appropriate to remedy such violation or to pay a fine, or any combination of the foregoing.
- D. Upon request of the Board, the Chief of Police shall take legal action as deemed appropriate for enforcement under criminal law. Upon request of the Board, the Town Counsel shall take legal action as deemed appropriate for enforcement of this chapter under civil law. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Board in enforcement.
- E. As an alternative to criminal prosecution in a specific case, the Board may issue a citation under the noncriminal disposition procedure set forth in MGL c. 40, ~ 21D, if adopted by the Town as a general bylaw.³
- F. The penalty for violating any provision of this chapter shall be as follows: maximum fine, \$50 first offense; \$100, second offense; \$200 for each subsequent offense. Every day that a violation continues shall be considered a separate offense.
- G. In the event the Board determines that there has been a violation of this chapter or of any permit issued thereunder, it may require sufficient replication, restoration, replanting or any other mitigation it determines necessary or appropriate to correct or remedy the violation, in addition to a fine.
- H. A permit may be revoked by the Planning Board after a public hearing with prior notification to the owner and the applicant upon submission of evidence reasonably satisfactory to demonstrate violation of this chapter or an earth removal permit. If a permit is revoked, the earth removal operation shall be discontinued and the area restored in accordance with the requirements of this chapter.

³Editor's Note: See Ch. 1, General Provisions, Art. II.

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~ 96-10. Appeal.

A decision of the Board shall be reviewable in the Superior Court in accordance with MGL c. 249, ~ 4.

~ 96-11. Severability.

The provisions of this chapter are hereby deemed to be severable. The application of any such provision to any individual held to be invalid or unconstitutional or the invalidity of any provision of this chapter shall not invalidate any other section or provision thereof, nor shall it invalidate any permit that previously has been issued or the application of any such provision to persons or circumstances other than those as to which it is held invalid.