

ADOPTED AT ADJOURNED ANNUAL TOWN MEETING HELD ON
NORTH BROOKFIELD EARTH REMOVAL & REGULATORY BY LAWS . MAY 12, 1990
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SCOPE:

With the adoption of these By-Laws by the Town of North Brookfield, under Section 21, paragraph 17, Chapter 40 of the Mass. General Laws, the Conservation Commission shall become the regulatory body overseeing earth removal from any land not in public use, and requiring written permission of the Board. Nothing in these By-Laws shall negate any other Town regulations already in force at the time of the adoption of these By-Laws.

DEFINITIONS:

OPERATOR.

Any person or company engaged in earth removal for commercial purposes.

BOARD.

The North Brookfield Conservation Commission

WETLAND.

A watershed, wetland, marsh, stream, river, pond or lake or such other as defined in MGL Ch. 131, Section 40.

EARTH REMOVAL.

Digging, stripping, excavating, blasting of (without limitation) gravel, sand, sod, loam, topsoil, clay, peat, hardpan, rocks or ledge, and carrying it away from a lot, described in an application for a permit, as the area from which such removal is sought. The act of earth removal is also referred to as excavation.

LOT.

An area of land on which an Operator is currently performing Earth Removal activities or on which proposed activities will take place.

ARTICLES:

I. APPLICATION FOR A PERMIT.

Except as specified under ARTICLE IV - Exemptions, no earth shall be removed from a lot unless a permit shall have been obtained first by the Operator from the Board. Application for such permit shall be made to the Board by an operator who must provide the following material:

A. An enlargement of a current, official Geodetic topographic map showing any existing and/or proposed earth removal areas, contours, boundaries, wetlands, public ways, abutter lots, and the location of any on site roads or buildings.

B. A description of any existing and/or proposed excavation sites, including location of adjacent or on-site wetlands, on-site vegetation or forested acreage to be stripped and excavated, a plan for storage or disposition of rocks, trees, topsoil, or loam, and a copy of a signed, registered surveyor's map showing lot boundaries.

C. The legal names and addresses of the applicant, lot owner and/or operator for purposes of correspondence.

D. The names and addresses of all current owners and abutters to the earth removal lot, listed by the tax assessor's office.

E. An estimate of the quantity (in cubic yards) of earth removal to be accomplished during the permit period, and a map with topographic contours including proposed grading and restoration of any part of or the whole excavation site during the permit period.

F. The submission of any permit fee and/or performance bond required by the Board as set forth in its regulations.

II. GRANTING OR DENYING A PERMIT.

Upon receipt of the application, the Board shall hold a public hearing at the next regular Board meeting following publication for two weeks of a notice of such hearing in a newspaper of general local circulation. The applicant and all abutters must receive notice by hand or by certified letter, written notice to attend such hearing.

Following the close of the hearing, the Board shall either grant or deny the permit within 30 days. If granted, the permit shall be in force for two years. Subsequent two-year permits shall be issued by the Board to the Operator without a public hearing provided that;

1. The operator submits current status information about the earth removal operation, any plans or revisions different from the previous permit application, any new earth removal plans or forecasts, and any filing fees and/or bonds required by the Board.

2. The Board or its representative be allowed to visit the operator's lot from time to time for purposes of inspection and a written report of observations, complaints, violations or comments be put on the record as part of the minutes of the Board. Any violations or complaints must be made known in writing to the operator at least 30 days prior to a permit renewal date, to allow the operator to correct such violations prior to a permit renewal or public hearing if required by the Board.

3. There are no complaints in writing by any Town resident or other Town Board or Committee against the Operator during the current permit period.

4. There have been no uncorrected violations of the Massachusetts Wetland's Protection Act during the permit period.

5. The Operator has been performing Earth Removal operations during the permit period.

A permit shall be denied if the Board determines that:

1. There is a danger to public health or safety.
2. Noise, dust, vibration or undermining of adjacent property results in a continuing nuisance or is detrimental to the normal use of adjacent property.
3. Earth removal may cause excessive erosion of earth or may contaminate the ground water, aquifer, wetland or wells on the lot or within a reasonable distance from the lot.
4. The Operator's earth removal is in violation of any Conditions set forth in Article III of this By-Law.

III. OPERATING CONDITIONS

Each permit issued by the Board is subject to the following conditions set forth on the permit:

1. No earth removal is permitted within 50 feet of an abutter's property line, unless the Board is satisfied that such excavation will not damage tree root systems, other vegetation, create a safety hazard or undermine existing structures or damage septic system leaching fields.

2. No earth removal is permitted within 50 feet of a public way unless authorized by the Board particularly with regard to elevations below grade. If earth removal adjacent to a public way subsequently causes erosion or undermining of a Town road bed or affects the driving safety on a public way, the Board shall investigate and require correction by the Operator of any such occurrence.

3. Signs shall be posted at the entrance to an Earth Removal Operation warning of "Danger" and "No Trespassing". When the Operation is closed, a suitable gateway approved by the Board shall be placed across the entrance to prevent entrance by vehicular traffic.

4. Hours of operation shall normally sunrise to sunset Monday-Saturday unless the Board stipulates otherwise on the basis of specific complaints by Town residents.

5. No slope created by Earth removal shall be finished at a grade in excess of 2:1 (horizontal to vertical). The operator shall be required to grade such excavations within a time frame specified by the Board.

6. No earth removal is permitted within 100 feet of any wetland within or abutting the lot being excavated. A separate new permit to excavate within 100 feet of a wetland must be obtained from both the Massachusetts Department of Environmental Protection and the Town Board. Upon written approval and/or stipulations and limitations set by the DEP and Town Board, a DEP sign and case number must be posted by the Operator at the entrance to the Operation prior to any such earth removal. Forms for the permitting such earth removal must be obtained from the Board.

7. No earth removal shall be allowed below 4 feet above ground water, unless the Operator can satisfy the Board that such excavation will not damage or cause contamination of any aquifer or ground water at the site or in the immediate vicinity. The Operator shall dig one or more observation wells at locations specified by the Board within each earth removal lot, so as to be able to observe and maintain the proper excavation height above what is commonly identified as normal Spring high water table specified by the Board.

8. No area shall be excavated so as to allow the accumulation of free-standing water. Such area must be filled or leveled with on-site soil or fill approved under Section 15 of this Article, within a time period specified by the Board.

9. Prior to commencing earth removal operations, the Operator applicant must post a bond in an amount adequate to assure compliance with requirements of the provisions of the permit. Such bonding shall guarantee proper closure and any required restoration of an earth removal lot when excavation operations cease for a period of one year.

10. Restoration of an earth removal lot may require the stockpiling of existing topsoil on the lot. Within one year of completion of excavation of a lot or upon the closure and ceasing of earth removal operation by the operator, restoration shall begin by using only clean and nontoxic topsoil or fill from within a thirty mile radius of the earth removal lot, capable of sustaining natural cover growth to provide assurance of reasonable restoration of the lot.

11. Such other reasonable requirements consistent with the provisions of this By-Law and such rules and regulations adopted by the Board, including but not limited to, grading, sloping, fencing or screening, location and use of buildings or structures, control of drainage or disposition of waste or rocks incidental to the earth removal operations.

12. If an existing Operation ceases excavation and earth removal for a period of one year, the Operator may not resume earth removal without application for a new permit under these By-Laws.

13. If an Operator sells, leases, rents or the earth removal property is inherited, the new Operator performing any earth removal must appear before the Board and abide by all applicable rules and regulations of this By-Law.

14. No existing or permitted earth removal operation or Operator or other party may be allowed to bring onto the earth removal lot any material commonly described as fill without approval of the Board of Health and this Board. Materials specifically excluded are those that may normally be discarded into a land-fill, sludge, toxic wastes, and any non-biodegradable materials, including but not limited to rubber, metals, plastics, glass, petroleum or chemicals. Such dumping on an earth removal lot constitutes a new and non-permitted use by the Operator and is subject to all applicable State and Town regulations.

15. The Board and/or its agent shall be allowed to enter upon privately owned property for the purpose of performing their duties under this section.

IV. EXEMPTIONS

The Board shall exempt earth removal operations from the provisions of Section I of this By-Law, after the Operator files a written statement and the Board determines that the Earth Removal meets the provisions set forth below. The Board must decide on requests for exemption and issue an earth removal exemption certificate to the operator within 30 days after receipt of the required information. A two year exemption certificate shall be granted under the following conditions:

1. Earth removal operations active for one year prior to these By-Laws are exempt only for those portions of a lot under preparation for or being used for earth removal at the time of adoption of these By-laws. Any new preparation for or earth removal from other portions of the same lot or any new lot require permitting as stipulated under Section 1 of these By-Laws. Preparation is defined in these By-Laws as removal of trees, vegetation and topsoil.

2. The Operator must submit to the Board materials described in Section I. A, C and D. No exemption certificate fees or bonding are required for existing operations as defined in this Section.

Earth removal operations are also exempt for purposes incidental to farming, agriculture, gardening or nursery operations, incidental to construction of a building or other structures on a lot for which a building permit has been duly issued, installation of walkways, driveways, landscaping and similar activities connected with said buildings or structures, or earth removal operations in construction of a private way.

V. PROVISIONS

1. The Board may adopt and amend reasonable rules and regulations to carry out the purpose of this By-Law. They may include but are not limited to applications, fees, bonding requirements, site plan detail, engineering detail, criteria for protection of aquifers and wetlands, and criteria for restoration notice and enforcement. Such rules and regulations shall not be effective until after proper public notice and a hearing by the Board and until reviewed and approved by the Board of Selectmen and filed with the Town Clerk.

2. If, under an issued Permit, an Operator violates provisions of this By-Law, the Board may order the Operator to cease and desist from such violation, by certified written notice or by hand. If, upon receipt of such notice, the Operator continues such violation, he shall be subject to penalties specified in Massachusetts General Law Chapter 40, Section 20 (17).

3. To assure compliance with this By-Law, the Board may request authority to retain individuals as agents of the Board to investigate violations or to present expert technical and/or legal opinion as necessary to the implementation of this By-Law. Such authority must be approved by the Board of Selectmen.

VI. VALIDITY

The invalidity of any section or provision of this By-Law shall not invalidate any other section or provisions thereof.

Scope

Amend Conservation Committee to read Conservation Commission.

Board Definition

Amend Conservation Committee to read Conservation Commission.

Lot Definition

Delete the word "Acreage" and insert instead the words "An area of land".

Section III (10): Operating Conditions

Amend second sentence to read: "Within one year of completion of excavation of a lot or upon the closure and ceasing of earth removal operation by the operator, restoration shall begin by using only clean and nontoxic topsoil or fill from within a thirty mile radius of the earth removal lot, capable of sustaining natural cover growth to provide assurance of reasonable restoration of the lot."

Section IV: Exemptions

Amend first sentence to read: "The Board shall exempt earth removal operations from the provisions of Section I of this by-law, after the operator files a written statement and the Board determines that the Earth Removal meets the provisions set forth below."