

BYLAW 5. EARTH REMOVAL

Section 5.1 - Definitions

- a. Abutter: the owner of land abutting a lot including land on the directly opposite side of an abutting way or abutting an abutter within 300 feet of the lot property line.
- b. Board: Planning Board
- c. Earth: ~~All~~ forms of soil including, without limitation, sod, loam, sand, gravel, clay, peat, hardpan, rock, quarried stone, or mineral products.
- d. Earth Removal: ~~removing~~ Removing and/or excavating any form of Earth.
- e. Earth Removal Class 1: Commercial and High Volume Earth Removal Operation: ~~Anyan~~ Earth removal not defined as Class 2: Residential, Agriculture, and Low Volume or Class 3: Subdivision/Site Plan, Subdivision, or Miscellaneous, Residential, and Agriculture.
- f. Earth Removal Class 2: Miscellaneous, Residential, and Agriculture, and Low Volume: Earth removal ~~That~~ which is entirely incidental to construction that is subject to an approved building permit for a single family home, or agricultural building; or that which is less than 300 cubic yards.
- g. Earth Removal Class 3: Subdivision/Site Plan: Earth Removal ~~That~~ which is entirely incidental to an approved subdivision, site plan or special permit.
- g-h. Excavation: Dislodging earth from its naturally occurring location through any number of means including but not limited to digging and blasting.
- h-i. Lot: ~~the~~ The area described in an application for an earth removal permit as the area from or on which Earth is sought to be excavated or removed.
- i-j. Owner: The Person who holds the fee interest in the Lot.
- j-k. Person: ~~shall~~ Shall include but not be limited to an individual, corporation, society, association, partnership or other legal entity.
- k-l. Removal: ~~stripping~~ Stripping, digging, excavating or blasting of Earth and carrying it away from the Lot.
- l-m. Surety: a method of securing performance of a permit which shall take the form of -(1) insurance bond, (2) cash deposit, or (3) tri-party agreement with a lender.

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Section 5.2 – Scope

This Bylaw shall be administered by the Board to apply to all Earth Removal operations in the Town of Sutton except as otherwise provided in this Bylaw. It shall apply to all areas regardless of zoning district.

Nothing in this Bylaw shall prevent the application of the Zoning Bylaws.

Section 5.3 – Hearing

Before issuing a new permit, the Board shall hold a public hearing after giving at least fourteen ~~days notice~~days' notice of the 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. Notice costs shall be borne by the applicant.

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The Board shall distribute copies of the application to the Conservation Commission, Police Chief, Highway Superintendent, Fire Chief, Building Commissioner, Select Board and local utilities if proposed work is within their districts. ~~Tax Collector.~~ Such officials may, within ~~fourteen~~twenty-one days, provide such comments as they deem appropriate; provided, however, that failure to provide such comments within said period shall not prevent the Board from thereafter acting on the application.

Section 5.4 - Permit Applications and Site Plan Requirements

Except as otherwise provided in Section 5.9 of this Bylaw, no Earth shall be removed ~~from on~~ any Lot in the Town unless a permit shall first have been obtained by the Owner of such Lot from the Board.

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.

Each application shall include and be accompanied by the following information and supporting documentation:

- a. a filing or renewal fee in an amount established by the Board and contained in the Rules and Regulations.
- b. the legal address of the Lot together with a description by metes and bounds of the Lot proposed for excavation.
- c. legal name, ~~and~~ address, and contact information of the Owner of the Lot
- d. legal name, ~~and~~ address, and contact information of the petitioner, which address shall be used by the Board for all correspondence hereunder.
- e. names and both property and mailing ~~and~~ addresses of all Abutters as appearing on the most recent tax list as certified by the Assessors.

f. a current topographical plan\map of the Lot showing zoning classification and topography of surrounding areas with in 100 feet of the property line.

g. a certified statement made by a registered engineer or land surveyor and plan showing of the location and quantity volume of excavation (cut) and or fill and volumes to be removed from the lot if applicable. involved made by a registered engineer or land surveyor.

h. the plan of the land showing proposed contours of the site at the completion of the ~~excavation~~ project.

i. the form of the Surety proposed to be submitted in accordance with Section 5.7.

j. the applicant shall also pay, in addition to the filing or renewal fees set forth above, such other fees as determined -by the Board to cover the costs of the engineering and/or legal expenses incurred by the Town that are not otherwise covered by the filing or renewal fee.

Section 5.5 - Granting or Denying Permits

A. In granting or denying a permit, in whole or in part, the Board shall take into consideration whether or not the granting of a permit would:

1. endanger the public health or safety, or existing or potential water supplies;
2. constitute a nuisance;
3. result in detriment to the normal use of adjacent property by reason of noise, dust or vibration, or undermining the property;

B. ~~Any p~~Permits issued by the Board shall comply with the following provisions:

1. Class 1: Operations may not occur 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 other structure.

2. Class 1: No removal below the natural grade shall be permitted within 200 feet of a residentially 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 100 feet of a residentially zoned property line unless the abutting land is subject to an Earth Removal permit granted under this Bylaw and the owner of such land has granted written approval of such removal. The buffer zones shall remain undisturbed with regard to

vegetation unless approved by the Board. The applicant must stake the proposed zones for review by the Board or its agent(s) prior to any vegetation removal. At the discretion of the Board, planting or otherwise upgrading of existing vegetation may be required.

3. Class 1-3 : No slope created by Earth Removal operations shall be finished at a grade in excess of 2 (horizontal) to 1 (vertical) unless specifically otherwise authorized in the permit.

4. Class 1: The lowest excavated point shall be no less than ten (10) feet above the existing groundwater table. To ensure this depth, the Owner shall, at its expense, install observation wells in accordance with the requirements of the Board's agent.

5. Class 1-3: The routes proposed for truck traffic shall be reviewed and accepted by the Police\Highway Departments to determine safety and road conditions.

6. Class 1: New permits shall be limited to an area of five acres. Subsequent permits shall be issued only upon reclamation of the original area.

C. Applications for permits may be granted, denied, or granted in part and denied in part.

Section 5.6 - Operating Standards

Each permit issued by the Board shall be subject to the following conditions which shall be set forth on the permit.

- a. No area shall be excavated so as to allow the accumulation of freestanding water.
- b. Such other reasonable requirements consistent with the provisions of this Bylaw 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 dust, debris, drainage and disposition of waste incidental to the removal operations.
- c. 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 cover crop, suitable to the Board, 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 of the crop cover on such areas within two years of seeding.

d. If blasting is proposed notification including at a minimum a project description and mapping and applicant and operator contact information shall be provided to abutting land owners via certified mail at least two weeks prior to commencement of operations. Additionally, the Board has the right to require additional notifications, safeguards, and/or mitigation responsive to the specifics of proposed operations.

Section 5.7 – Surety

- a. Prior to commencing Earth Removal operations, the applicant shall post with the treasurer of the Town of Sutton proper Surety in such form and -amount and with such Sureties as determined by the Board to be sufficient to guarantee compliance with the terms and conditions of the permit and any amendments thereto. The purpose of the Surety is to assure that funds are available to the Town to comply with this Bylaw and to complete restoration.
- b. The Surety shall not be released until (1) the owner's surveyor or engineer has filed with the Board an "as built" plan and has certified that the restoration has been completed in compliance with the permit and the plans, and (2) the final plans and site have been reviewed by the Board's Agent and signed off by the Board. Outstanding fees and or penalties owed to the Town shall be paid in full prior to the release of the Surety.

Section 5.8 – Permit Expiration and Renewals

Expiration - Any permit issued hereunder shall automatically expire upon completion of the Earth Removal project for which it was issued 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.

Renewals - 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 notify the town departments per section 5.3.b. Any renewal application shall meet the same requirements as a new permit.

Section 5.9 – Exemptions

The Board may exempt, in part or in whole, the following Earth Removal operations from the provisions of this Bylaw after the applicant has filed a statement with the Board that the removal falls into one if the following categories and states the amount and type of material to be removed. The applicant shall meet with the Board to discuss the request and present engineering plans to support the request. These plans shall include; a description by metes and bounds of the Lot proposed for excavation; the location of the area to be excavated; the legal name and address of the Owner; the legal name and address

of the applicant, which address shall be used by the Board for all correspondence hereunder.

The Board shall decide on such requests for exemption within forty-five days of receipt of the written request for an exemption. After meeting with the applicant, the Board may require an exempt operation to meet any or all of the standards set forth in section 5.5 and 5.6 as determined to be necessary by the Board.

- a. Earth Removal operations for any municipal purpose by or on behalf of the Town of Sutton or any department or agency thereof.

a-b. Class 2 or Class 3 Earth Removal.

- ~~b. Earth Removal operations which are customarily incidental to farming, agriculture, gardening or nursery operations involving less than 300 cubic yards.~~

- ~~c. Earth Removal defined as Miscellaneous, Residential, and/or Agriculture that is incidental to the construction of a building or other structure and associated facilities that is subject to a building permit and to the installation of walks, driveways, landscaping, and similar appurtenances to said building; or earth removal involving less than 300 cubic yards.~~

- ~~d. Earth Removal operations in connection with the construction or improvement of a private way.~~

- ~~e. Earth Removal operations defined as Earth Removal, Subdivision, and which is entirely incidental to the subdivision, site plan or special permitting process.~~

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Section 5.10 - Rules and Regulations

The Board may adopt and amend reasonable rules and regulations to carry out the purpose of this Bylaw. 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 5.11- General Provisions

- a. If the Board determines that any Person is violating any provision of this Bylaw, 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 mail or by having it delivered in hand by the Board's agent. If after receipt of such notices such Person continues such violation; such Person shall be subject to penalties as outlined in G.L. c.40, §21D. Each

day for which any such violation continues after receipt of such notice shall be deemed to be a separate offense.

- b. For the purposes of ensuring compliance with this Bylaw, the Board shall appoint an agent who shall have such authority as is specifically delegated by vote of the Board. Said authority shall not exceed that authority granted to the Board under this Bylaw. The appointment of said agent shall not take effect until notice thereof is filed with the Town Clerk and the Board of Selectmen.

Section 5.12 – Pre-Existing Operations

Earth Removal activities in lawful operation prior to 1987 may continue subject to the below listed conditions.

- a. Applications for renewal of permits for existing operations shall meet all the plan requirements as set forth in this Bylaw and the application shall include information on all contiguous open areas owned by the applicant.
- b. Any excavation shall be at least 10 feet above the water table. 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 Board.
- c. Operations shall be exempt from the limitation on the number of acres open at one time. 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.
- d. Any area of excavation which is already within the required buffer shall be fenced and screened from abutting residences unless the Board determines that no nuisance or safety problems exist.
- e. New excavations, constituting an expansion of operations into areas of land not presently being mined, will require permits in accordance with the terms of this Bylaw.

Section 5.13 – Validity

The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision hereof.