

## **ARTICLE 5. EARTH REMOVAL BY-LAW**

### 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: Earth Removal 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 any form of soil, including, without limitation, sod, loam, sand, gravel, clay, peat hardpan, rock, quarried stone, or mineral products
- e. Earth Removal, Commercial Earth Removal Operation: an earth removal not defined as Subdivision; or Miscellaneous, Residential, and Agriculture.
- f. Earth Removal, Miscellaneous, Residential, and Agriculture: That which is entirely incidental to construction that is subject to a building permit for a single family home, or agricultural building; or that which is less then 300 cubic yards.
- g. Earth Removal, Subdivision: That which is entirely incidental to a subdivision, site plan or special permit.
- h. Lot: the area described in an application for an earth removal permit as the area from which earth is sought to be removed.
- i. 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 or tenant or person with written authorization for such removal from the owner.
- j. Person: "Person" shall include but not be limited to an individual, corporation, society, association and partnership.
- k. Removal: stripping, digging, excavating or blasting of earth and carrying it away from the lot.

### **Section 5.2 - Scope**

This By-law shall apply to all earth removal operations in the Town of Sutton except as otherwise provided in this By-law. It shall apply to all areas regardless of zoning district.

Nothing in this By-law, however, shall be deemed to amend, repeal, or supersede the Zoning Bylaws of the Town of Sutton now or hereafter in effect. Nothing in this By-law shall derogate from the intent and purposes of such Zoning By-laws.

In the case of dual application of this By-law and the Zoning Bylaw, the most stringent shall apply.

### **Section 5.3 - Earth Removal Board**

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 appointed by the Board of Selectman for staggered three – year terms so that no more than two vacancies occur in one year. The Board of Selectmen shall appoint the five members based on the following: one member recommended by the Conservation commission, one by the Board of Appeals, one by the Town Moderator, one by the Planning Board and one by the Board of Selectmen. No person employed by or having a direct or indirect beneficial interest in a commercial earth removal business in the Town of Sutton shall be eligible for appointment to the Earth Removal Board.

The 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 Board shall file an Annual Report with the Board of Selectmen summarizing its activities for the year including a complete listing of all permits and consulting engineering. The budget shall be administered by the Board of Selectmen.

### **Section 5.4 - Permit Applications and Site Plan Requirements**

Except as otherwise provided in Section 5.8 of this By-law, no earth shall be removed from any lot in the Town of Sutton 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. a description by metes and bounds of the lot proposed for excavation.
- c. legal name and address of the owner of the property involved.
- d. legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder.

- e. names and addresses of all abutters as appearing on the most recent tax list and certified by the assessors.
- f. a current topographical plan\map of the land showing zoning classification and topography of surrounding areas with 100 feet of the property line.
- g. a certified statement of the quantity of excavation or fill 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 bond proposed to be submitted in accordance with Section 6.1.
- j. the applicant shall also pay Review Fees as set by the Board to cover the costs of the engineering, mailing and advertising expense incurred by the Town, above and beyond those covered by the Application or Renewal Fee as part of the application review process, ongoing permit compliance, and of determining permit compliance at the termination of the permit period.

#### **Section 5.5 - Granting or Denying Permits**

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:

- a. endanger the public health or safety, or existing or potential water supplies;
- b. constitute a nuisance;
- c. result in detriment to the normal use of adjacent property by reason of noise, dust or vibration, or undermining the property;
- d. 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 other structure.

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. 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 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 By-law and the owner of such land has granted written approval of such removal. The buffer zones 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.
- b. 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.
- 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 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 of the crop cover on such areas within two years of seeding.
- d. the lowest excavated point shall be no less than ten (10) feet above the existing groundwater table. To ensure this minimum depth, the property owner shall, at his expense, install observation wells in accordance with the requirements of the Board's agent.
- e. No area shall be excavated so as to allow the accumulation of freestanding water.
- f. the routes proposed for truck traffic shall be reviewed by the Police\Highway Departments to determine safety and road conditions.
- g. 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 Board, but not to exceed five acres. Permits for subsequent phases shall be issued only upon evidence of compliance to the By-law of the previous phase as determined by the Board.
- h. 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.

- i. Prior to commencing earth removal operations, the applicant shall post with the treasurer of the town of Sutton proper bond in such amount and with 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 are available to assure compliance with this By-law and to complete restoration as approved.
- j. The bond shall not be released until 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. The final plans and site will be reviewed by the Town Engineer 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 bond.

### **Section 5.7 - Hearing**

- a. Before issuing a new permit, the Board shall hold a public hearing after giving at least fourteen 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 and to the Conservation Commissions of the Town of Sutton.
- b. The Board shall submit the application and the supporting documents to its review agent and shall not act on the application until review by this agent is completed.
- c. The Conservation Commission or any other Town Board or Commission shall have the right to question the applicant. Within fourteen days of 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. 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 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 renewal has been filed with the Board within twenty-one (21) days of the giving of such notice, the Board shall take such objection into consideration before taking action on the renewal application. Any renewal application shall meet the requirements set forth in Section 5.4.

### **Section 5.8 - Exemptions**

The Board may exempt, in part or in whole, 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 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 of the property involved; the legal name and address of the petitioner, 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 operating standards set for in section 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.
- 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, 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.

### **Section 5.9 - Rules and Regulations**

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 in the Office of the Town Clerk.

### **Section 5.10 - General Provisions**

- a. This By-law shall take effect upon its approval by the Attorney General and its publication and posting as required by Section 32 of Chapter 40 of the General Laws.
- b. 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 to him, or by having it delivered in hand by the Board's agent. If after receipt of such notices such person continues such violation; he shall be subject to penalties as outlined in MGL. Ch.40,S 21,(17). Each day for which any such violation continues after receipt of such notice shall be deemed to be a separate offense.
- c. For the purposes of ensuring compliance with this By-law, the Board shall appoint an agent who shall have such authority as specifically delegated to him by vote of the Board. Said authority shall not exceed that authority granted to the 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 5.11 - Existing Operations**

Existing operations are subject to the provisions of this By-law and shall be in compliance with it at the time their permits are renewed in 1987. Earth removal activities in lawful operation on any parcel of land at the time this By-law is approved 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 the By-law 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 as set forth in Section 5.6-d. 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. Existing operations shall be exempt from the limitation on the number of acres open at one time as set forth in Section 5.6-g. 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 existing excavation which is already within the required buffer as set forth in Section 5.6-a. 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 existing operations into areas of land not presently being mined, will require permits in accordance with the terms of this By-law.

**Section 5.12 - Validity**

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

*Adopted: Feb. 20, 1954*

*Amended: 2/16/57, 4/17/70, 4/19/75, 4/17/76, 4/18/81, 4/17/82, 4/19/86, 9/23/87, 2/1/89, 10/16/95, 6/28/99, 10/15/01, 10/21/02, 10/17/05*