

ARTICLE. 7.11. Earth Removal [Refer also to ARTICLE 14, EARTH REMOVAL, of the Zoning By-Laws.]

ART. 7.11. SECTION 1. Purpose

This by-law is to ensure that permanent changes in the surface contours of land from earth removal activities will leave the land in a safe and convenient condition for appropriate reuse without requiring excessive and unreasonable maintenance or creating danger of damage to public or private property, and is to provide that earth removal activities shall be conducted in a safe manner, with minimal detrimental effect upon neighboring properties and the district in which the activities occur.

ART. 7.11. SECTION 2. Authority

This by-law is adopted pursuant to the authority granted under General Laws Chapter 40, § 21, clause 17, and Article II, §6 of the Amendments to the Constitution of the Commonwealth of Massachusetts.

ART. 7.11. SECTION 3. Definitions

- A.** Incidental to/Incidental use: a use is incidental to a primary use when it is subordinate to the primary use, is consistent with the character of the existing and intended use, involves no income or profit for purposes other than the primary use, and bears a reasonable relation to it. Earth Removal activities may be an incidental use only when they are a minor use, not a major undertaking.
- B.** Earth: all material normally and naturally composing part of the earth's surface and immediate subsurface, excluding water, including but not limited to, soil, clay, gravel, hard pan, loam, rock, peat and sand.
- C.** Lot: a single parcel of land separated from contiguous land by property lines described in a recorded plan or deed.
- D.** Remove/Removal: The severance of any Earth from its natural location, whether or not such Earth is moved from the lot to another location on the same lot or off the lot, by any means, including but not limited to, stripping, excavating, mining or blasting.

ART. 7.11. SECTION 4. Earth Removal Prohibited Without a Permit

No person, firm or corporation shall remove any Earth from any lot in the Town of Wrentham, unless such activity is a permitted or lawfully nonconforming use in the district under the Town of Wrentham Zoning By-Law, and is authorized by a permit issued by the Planning Board under this By-law.

ART. 7.11. SECTION 5. Conditional Exemptions

The following activities shall not be considered Earth Removal and no permit shall be required under this by-law, provided the activities do not constitute a nuisance or danger to the public, and conform to accepted engineering or agricultural practices:

- A.** The Superintendent of Public Works and his/her agents and employees may perform Earth Removal activities in the performance of their public duties on any public way and on Town property.
- B.** Earth Removal incidental to the construction of the foundation of buildings, walks, driveways, septic systems or swimming pools, and incidental to the installation of utilities, provided that the quantity of Earth subject to Removal does not exceed that displaced by the portions of construction and installation below finished grade.
- C.** Earth Removal incidental to the normal operation of a cemetery.
- D.** Earth Removal incidental to landscaping in which the amount of Earth subject to Removal

does not exceed 200 cubic yards in one calendar year, if the Earth is transported off the lot; and does not exceed 500 cubic yards in one calendar year, if the Earth is transported within the lot.

ART. 7.11. SECTION 6. Earth Removal Permit Requirements

A. Application

An application for an Earth Removal permit shall be submitted to the Planning Board on such forms or in such manner as the Planning Board shall specify. The application shall include:

- i.** the location of the property upon which Earth Removal is proposed, identified by both Assessors Lot Number and Street address, if an address has been assigned to the property, and identified by the Registry of Deeds book and page;
- ii.** the name and address of the petitioner;
- iii.** the name and address of the property owner;
- iv.** the name and address of any mortgagees;
- v.** a certified list of the names and addresses of all abutters; and
- vi.** an estimated number of cubic yards of Earth proposed for Removal and an estimate, based on field data, of the number of cubic yards of loam that will be stripped and stockpiled.

B. Fees

1. Administrative Fee

The Planning Board is authorized to establish a fee schedule imposing fees for permit applications and permit renewal applications. Such application fees must be based on a reasonable estimate of the actual costs incurred by the Planning Board in carrying out its duties under this bylaw.

2. Consultant's Fees

The Planning Board is authorized to require the applicant to pay the reasonable costs and expenses borne by the Planning Board for specific expert engineering and consultant services deemed necessary by the Planning Board to review any permit application, or permit renewal application, up to a maximum of two thousand five hundred dollars (\$2500.00). In cases where the Earth Removal project will exceed 5,000 cubic yards, the maximum consultant fee shall be five thousand dollars (\$5000.00). Such services may include, without limitation, the delineation and survey of wetland resource areas, the delineation and survey of surface contours, analysis of resource area values, hydrogeological and drainage analyses, and legal services. The Planning Board is authorized to charge the applicant for said fee based upon its reasonable finding that the additional information it may acquire through outside consultants will be helpful for the making of an objective decision and the formulation of appropriate conditions. Said fee may be requested of the applicant within thirty (30) days of the filing of the application, or from the last amendment thereto. In its request, the Planning Board shall identify the consultant it has selected, include an estimate of the charges for the proposed services, and state the amount due as an initial deposit. The applicant may appeal from the selection of the consultant to the Board of Selectmen within ten (10) days of receiving notice from the Planning Board of the same. The Selectmen may set aside the selection of the

consultant only if the consultant lacks sufficient qualifications to perform the work or has a conflict of interest. Subject to this right of appeal, all deposits requested by the Planning Board shall be delivered to the Town Treasurer within ten (10) days of the Planning Board's request.

3. Town Exempt

No application or consultant fees shall be due from the Town of Wrentham in connection with any project performed by the Town or on its behalf.

C. Site Plan

A Site Plan shall be submitted as part of an Earth Removal Permit Application. The Site Plan shall be submitted in the quantities and in the form required by the Planning Board. The Site Plan shall be prepared by a registered civil engineer licensed to practice in the Commonwealth of Massachusetts. The Site Plan shall include, without limitation:

- i.** all the property where the earth is to be removed showing boundary lines, easements and rights of way in detail, and the names of abutters;
- ii.** the elevations of abutting land at the lot lines;
- iii.** all adjacent roads and structures, public or private, their elevations and established grades;
- iv.** All waterways and wetlands resource areas (as defined in 310 CMR 10.00), and any land within the Watershed Protection, Aquifer Protection and Flood Plain Districts (as defined by the Wrentham Zoning Bylaw) on the locus and their respective elevations;
- v.** existing and proposed contours at two (2) foot intervals with all profiles drawn to a scale of one (1) inch equals eight (8) feet;
- vi.** a minimum of two (2) vertical control benchmarks (one to be permanent) must be established and maintained on site on the National Geodetic Vertical Datum, U.S. Geological Survey base to the closest hundredth of a foot (0.01 foot) with an additional benchmark similarly provided per each additional four (4) acres or portion thereof on the site;
- vii.** drainage calculations in support of the specification found in Paragraph 7., Sub-paragraph xii.; and,
- viii.** surface water flows, groundwater elevations before and after Removal.

The Planning Board may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of this by-law, waive or modify any of these Site Plan requirements upon the written request of the applicant. The Planning Board may require additional information in the Site Plan if such information will assist it in making the required findings under this by-law.

D. Public Hearing

The Planning Board shall, within 65 days after the filing of a complete application, hold a public hearing on said application. Notification of the public hearing shall be advertised for two consecutive weeks in a newspaper generally circulated in Town beginning at least 14 days before

the hearing date. The applicant shall notify all abutters and other parties in interest by certified mail, return receipt requested, mailed at least 14 days before the hearing date, and shall present copies of the returned receipts to the Planning Board on or before the hearing date. The applicant shall pay the cost of the publishing notice.

The applicant must introduce evidence establishing, and the Planning Board must make specific findings of fact, that each of the following general requirements will be met:

- i. that the earth removal may be accomplished without unreasonable danger to the health, safety and general welfare of the inhabitants of the Town in general nor to that of those in the immediate vicinity;
- ii. that the earth removal will not produce unreasonable noise, dust, or other effects observable as detrimental to the normal use of adjacent land;
- iii. that the earth removal and change in topography may be accomplished without adverse effect to abutting land by reason of surface water drainage nor to the recharge of the water table nor to the pumping rate of any nearby Town well site; and,
- iv. that the earth removal will not 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.

ART. 7.11. SECTION 7. Earth Removal Permit Decision and Required Conditions

The Planning Board may grant, grant with conditions, deny, or grant in part and deny in part, any Earth Removal permit application or application for permit renewal. The Planning Board shall file a copy of its permit decision in the office of the Town Clerk, and mail a copy of its decision to the applicant, within 30 days after the close of the last public hearing or the application. In the event that the Planning Board shall fail to file its decision in the office of the Town Clerk within 100 days of the filing of the application, or by such a later date to which the applicant may agree in writing, the application shall be deemed to be constructively granted subject to the general conditions set forth herein.

All work performed under a permit granted under this by-law shall be done in accordance with the required conditions set forth below, which shall be deemed to be incorporated therein by reference, unless specifically waived or modified by the Planning Board. The Planning Board may waive or modify any of the required conditions if such action is consistent with the purposes and intent of this by-law and will not substantially compromise the protection of the public and the environment.

- A. All trees are to be cut, not bulldozed. All trees and brush are to be chipped on site unless removed for commercial purposes. Stumps may not be buried on the site except in accordance with a site assignment issued under G.L. c. 111, § 150A.
- B. All loam and topsoil must be scraped and stockpiled on the site for use in later landscaping. No loam or topsoil may be removed from the site.
- C. Excavation to the property line is not permitted. The Site Plan shall designate a minimum 50-foot buffer strip along the property lines where the earth and vegetation shall remain undisturbed.
- D. Earth must be removed to contours set forth in the approved Site Plan. Boulders must be buried at a depth which will provide a six (6) foot cover at finished grade. Ledge shall not be left exposed under normal circumstances. If ledge is encountered, the permittee must either

remove it, or submit a revised Site Plan for approval which must be approved before work is continued.

- E.** Slopes shall not exceed a 3:1 ratio and a 4:1 ratio is preferred where practical. A 4:1 slope may be required in areas determined to be sensitive by the Planning Board.
- F.** Earth removal shall be carried out in four (4) acre grids and not over the entire site at one time. After each such grid has been excavated, the land shall be brought to rough finish grade and loam spread to a depth of not less than six (6) inches to bring the land to finished grade before proceeding to the next excavation area. This regrading area must then be seeded with an acceptable perennial grass at the rate of not less than two hundred pounds per acre and the area maintained until the grass heights have reached the two (2) inch minimum. In appropriate cases, the Planning Board may modify this requirement in the light of special requirements of site work to allow regrading at the end of the removal operation upon making specific findings of fact as to why such modification is required.
- G.** The regrading and seeding of each grid or disturbed area shall be completed, according to specification, within 30 days of the completion of excavation of the grid, expiration of the special permit or upon cessation of operations, whichever occurs first.
- H.** Finished grades shall be as indicated on the approved site plan. In general, finished grades may not be designed to be below the level of any abutting public way unless the Planning Board determines, based upon satisfactory engineering data, that a finished grade below the elevation of an abutting way is advantageous to the plan for future use of the property.
- I.** Topsoil must be spread to a depth of not less than six (6) inches over disturbed areas and seeded and maintained as stated previously.
- J.** Fingerling fir, white pine or other approved tree cover shall be planted over the entire disturbed area at five (5) to six (6) feet on center.
- K.** No excavation shall be made at less than ten (10) feet above annual high water table as established from test pits and soil borings. A minimum of three (3) observation wells shall be monitored for one (1) year to establish the high water table ground plane elevation. Additional wells may be necessary on sites exceeding ten (10) acres. This data shall be shown on the site plan submitted to the Planning Board for approval and on a permanent monument placed on the property and shown on the site plan.
- L.** All access roads leading to public ways shall be treated to minimize dust and mud for a distance of not less than two hundred (200) feet back from the public way. Any spillage on public ways shall be cleaned by the applicant on a twice-daily basis, including once following the close of normal working hours.
- M.** Unless the site conditions expressly require alteration of drainage patterns, the land shall be left so that natural storm drainage shall leave the property at the original natural drainage points; and so that the total discharge at peak flow, and the area of drainage to any one point, is not increased; and so that the hydrography of any post-development stream is the same as that of the pre-development stream.
- N.** Any earth removal in the vicinity or within wetland areas governed by M.G.L. Ch.131 or other wetlands related laws, shall also be subject to orders of conditions from the Conservation

Commission. Whether such proposed earth removal projects fall within the jurisdiction of the Conservation Commission shall be determined by the Conservation Commission and the applicable Town, State and Federal laws.

- O.** The applicant shall be responsible for monitoring the amount of earth removed from the site. A bi-weekly report, prepared and certified by a registered civil engineer, licensed to practice in the Commonwealth of Massachusetts, shall be forwarded to the Planning Board for the duration of the earth removal project. The report shall include a daily account of the number of truckloads of earth removed from the site, the number of cubic yards of earth contained in each truckload, daily and weekly totals of the number of cubic yards of earth removed from the site and a cumulative total, from project inception to date, of the number of cubic yards of earth removed from the site.

ART. 7.11. SECTION 8. Special Conditions

The Planning Board shall set forth particular hours of operation for each individual operation as a special condition.

The Planning Board may impose additional special conditions deemed necessary in the light of circumstances. Special conditions may include, without limitation, requirements or limitations relating to the proximity of residential or commercial uses that might be affected by dust, noise and traffic, blasting with respect to ledge removal, drainage matters, lateral support of abutting property and the like.

ART. 7.11. SECTION 9. Bond Requirement

Prior to the start of any work under a permit granted hereunder, a surety company bond or deposit of money (which may take the form of an assignment of a bank account assented to by the depository bank) shall be delivered to the Planning Board to ensure compliance with this by-law and of the conditions of the permit. The bond shall have a term of not less than two (2) years beyond the estimated completion date of the earth removal project. Such bond or other security shall be held by the Town Treasurer until the permit holder submits an "as built" plan, prepared and certified by a registered civil engineer licensed to practice in the Commonwealth of Massachusetts, showing that all excavation has been to grades approved on the Site Plan, and that all restoration work has been completed.

ART. 7.11. SECTION 10. Term of Permit and Permit Renewal

No permit shall be issued for a period in excess of 12 months.

A permit may be renewed annually, upon written request of the applicant to the Planning Board. The Planning Board may impose a renewal application fee under SECTION 6.B.1., and may charge the applicant the reasonable costs of its own consultants under Section 6.B.2.

A permit renewal application shall include a letter prepared by a registered civil engineer licensed to practice in the Commonwealth of Massachusetts, certifying that all work performed under the prior permit was undertaken in substantial compliance with the approved plans and permit requirements and conditions, and setting forth what deviation, if any, exists from those plans and permit requirements. The Planning Board may require submission of further materials, including, without limitation, reports of engineers or consultants.

A renewal request must be received by the Planning Board at least 65 days before the expiration of the prior permit. Within 14 days of its receipt, the Planning Board shall post notice of the request for permit renewal for at least 10 days. A permit may be renewed without public hearing, unless an

abutter or other party in interest requests a public hearing in writing within the first 10 days the notice is posted. If a public hearing is requested, the notice and burden of proof provisions of Section 6.D. shall apply.

The Planning Board shall hold its meeting, or commence the public hearing on the request within 65 days of its receipt. The Planning Board shall notify the applicant of its decision within 21 days after the close of the meeting or the public hearing. If a prior permit has lapsed before a determination on a permit renewal has been made final, no Earth Removal may be performed.

The Planning Board may renew a permit only upon a showing that the activities carried out under the prior permit were performed in accordance with the plans, specifications and conditions of the prior permit, and that the activities proposed under the renewed permit will not entail Earth Removal of a larger quantity or from a larger portion of a lot than allowed on the prior permit.

The Planning Board may impose additional conditions upon a renewed permit, and may renew it for any period of time, not to exceed 12 months.

ART. 7.11. SECTION 11. Earth Removal Operations in Existence

This By-law shall take effect 30 days from the date of its approval by the Attorney General of the Commonwealth. Earth Removal operations in existence on May 1, 1999, may continue through June 30, 2000, provided that an application for any such operation is filed with the Planning Board before March 1, 2000. A Special Permit issued under Article 14 of the Wrentham Zoning by-law (as adopted by the Town on December 21, 1987) between December 21, 1987 and the effective date of this by-law shall be treated as an original permit under this by-law expiring on July 1, 2000, and may be renewed annually pursuant to Section 10 of this by-law, subject to any reasonable conditions imposed by the Planning Board under this by-law.

ART. 7.11. SECTION 12. Earth Removal in Connection with Other Uses

In appropriate circumstances, the Planning Board may combine any hearing required under this Bylaw with the hearing on an application for definitive plan approval under G.L. c. 41, §81U, or an application for a special permit or site plan approval under the Wrentham Zoning By-law, and may accept plans or information submitted in support of such applications in satisfaction of the requirements of this By-law. In such cases, the Board shall ensure that the separate requirements of this By-law are met, and shall issue a separate permit under this By-law.

ART. 7.11. SECTION 13. Enforcement and Penalty

The Building Inspector shall be responsible for enforcing provisions of this by-law and the decisions rendered in accordance with Sections 6.0 and 9.0 herein. Once notified by the Building Inspector, an Earth Removal operator shall immediately cease such activities or begin to correct such conditions determined to be contrary to said provisions or decisions. Failure to do so shall constitute a non-criminal violation subject to a fine in accordance with MGL c. 40, s. 21D, as follows: fifty dollars for the first offense, one hundred dollars for the second offense, and two hundred dollars for each subsequent offense. (amended ATM 4/30/01)

ART. 7.11. SECTION 14. Severability

In the event that any provision of this by-law is ruled to be invalid, the remaining provisions shall be deemed severable and shall remain in effect.