



PLANNING BOARD
EARTH EXCAVATION REGULATION

AUGUST 1990

REGULATIONS GOVERNING EARTH EXCAVATIONS

SECTION I: AUTHORITY

Chapter 155-E of the New Hampshire Revised Statutes Annotated stipulates that, with some exceptions, all earth excavations in the State are subject to regulation from the local municipality in which the operation occurs. Pursuant to the authority vested in the Town Planning Board by RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in the Town of Marlborough.

SECTION II: PURPOSE AND SCOPE

The goals of this regulation are: to provide for reasonable opportunities for excavation; to minimize safety hazards which can be created by open excavations; to ensure that the public health and welfare will be safeguarded; to protect natural resources and the environment; and to maintain the aesthetic features of the Town. For the purpose of achieving these goals, no earth materials in the Town shall be removed except in conformance with these regulations.

SECTION III: DEFINITIONS

- A. ABUTTER shall mean any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. For the purposes of receiving testimony only, and not for purposes of notification, the term "abutter" shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. In the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356-B:3, XXIII.
- B. APPLICANT shall mean the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.
- C. DIMENSION STONE shall mean rock that is cut, shaped or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and is used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined below.

- B. Those that have lawfully operated prior to August 24, 1979 and wish to expand beyond the limits of the Town and the area which, on August 24, 1979, and at all times subsequent thereto had been contiguous to and in common ownership with the excavation and has been appraised and inventoried for property tax purposes as part of the same tract.
- C. Those excavations from an area which, as of August 4, 1989, was contiguous to or is contiguous land in common ownership with stationary manufacturing and processing plants which were in operation as of August 24, 1979, and wish to expand to any contiguous lands which are in common ownership with the site of the plant on August 4, 1989.

SECTION V: EXCAVATIONS EXEMPT FROM A PERMIT

- A. The following projects do not require a permit, but are nevertheless subject to the operational and reclamation standards of Sections IX, X and XI of these regulations. The Planning Board may require the owner/operator to come before the Board at a fully-noticed public hearing to demonstrate compliance with these standards.
 - 1) Excavations which lawfully existed on or before August 24, 1979, subject to the following:
 - a) Such an excavation shall be exempt from local zoning or other ordinances regulating the location of the excavation site, provided that at the time operation began it was in compliance with any local ordinances that may have been in effect.
 - b) The owner or operator shall file an excavation report with the Planning Board within one (1) year of written notification by the Board, and in no case later than two (2) years from the effective date of this statute (August 4, 1991). Any existing excavation that fails to file said report shall no longer be considered to be grandfathered and must obtain a permit from the Planning Board before continuing excavation of the site. The report shall contain the following information:
 - i. tax map and lot number;
 - ii. location of the site;
 - iii. the date excavation first began;
 - iv. a description of the permissible limits of expansion as described in Section IV-C;
 - v. an estimate of the area which has been excavated to date; and
 - vi. an estimate of the amount of commercially-viable earth materials still available on the site.

SECTION VI: ABANDONED EXCAVATIONS

The permit and zoning exemptions under RSA 155-E:2, I shall not apply to any abandoned excavation, as defined below:

- A. Any excavation for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation shall be deemed abandoned if excavation occurred on the site subsequent to August 24, 1979 and:
- 1) No earth material has been removed from the site during any three (3) year period either before or after August 4, 1989; the owner or operator may, however, extend the period by submitting a timetable for reclamation to the Planning Board and posting a bond or other surety sufficient to cover the costs of reclamation in a form and amount prescribed by the Planning Board; or
 - 2) The excavation is still in use, but the owner or operator has not brought the affected area into compliance with the incremental reclamation requirements of this regulation within three (3) years of August 4, 1989 or posted a bond or other surety sufficient to cover the costs of reclamation; or
 - 3) The owner or operator of the excavation has neither secured a permit pursuant to this regulations nor filed a report of an existing excavation within the prescribed time period.
- B. The Planning Board may order the owner of any land containing an abandoned excavation to either file a reclamation timetable and bond or other surety, or to complete the reclamation in accordance with this regulation within a stated reasonable time. Failure to complete said reclamation in the prescribed time period may result in the Planning Board requesting the Town to authorize reclamation at Town expense. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the real estate on which the excavation is located. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

SECTION VII: PROHIBITED EXCAVATIONS

No permits shall be granted to the following projects:

- A. For excavation within 100 feet of a boundary or any body of water.

SECTION IX: OPERATIONAL STANDARDS

All existing, or grandfathered, operations are subject to the following minimum standards. Operations requiring a permit may be subject to additional conditions, as deemed necessary by the Planning Board, that are consistent with the purpose of these regulations.

- A. No excavation shall be permitted closer than 150 feet to an existing dwelling or to a site for which a building permit has been issued at the time the excavation permit is granted.
- B. No excavation shall be permitted below road level within 50 feet of the right-of-way of any public highway as defined in RSA 229:1 unless such excavation is for the purpose of said highway.
- C. Vegetation shall be maintained or provided within the peripheral areas required by paragraphs A and B of this section.
- D. No fuels, lubricants or other toxic or polluting chemicals shall be stored on-site unless in compliance with State laws or rules pertaining to the storage of such materials.
- E. Where temporary slopes will exceed a 1:1 grade, a fence or other suitable barricade shall be erected to warn of danger and/or to limit access to the site.
- F. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods.
- G. Projects requiring a permit from the Division of Water Supply and Pollution Control pursuant to RSA 149:8-(a) shall file a copy of said permit with the Planning Board prior to receiving excavation approval.
- H. Excavating, handling, processing and trucking of materials shall not be allowed between 8:00 P.M. and 7:00 A.M.

SECTION X: SITE RECLAMATION STANDARDS

- A. Areas visible from a public way, from which trees have been removed, shall be replanted with tree seedlings, set out in accordance with acceptable horticultural practices.
- B. All disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted with seedlings or grass suitable to prevent erosion.
- C. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.

its abutters, and the Town, and strict application of these requirements would create an undue and excessive hardship for the applicant. The applicant must request any waivers in writing as part of the application. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives. The decision of the Planning Board may be appealed in accordance with RSA 155-E:9.

SECTION XIV: APPLICATION FOR EXCAVATION

The applicant for an excavation permit shall submit to the Planning Board a completed application form, all other submission documents as requested, and the filing fee. At least three (3) copies of all plans shall be filed with the Planning Board prior to a scheduled public hearing, and one (1) copy shall be sent to the Conservation Commission. These same procedures and information apply to operators not needing a permit, but who do need to demonstrate to the Planning Board their compliance with the regulations. Submission documents shall include the following:

- A. APPLICATION FORM, signed and dated by the applicant, and accompanied by any necessary state or federal permits. Such forms may be obtained from the Town Clerk.
- B. EXCAVATION PLAN, containing, in the form of maps and narrative, where applicable, the following information for the proposed project; these same requirements shall also apply to any existing excavation on the same parcel:
 1. name and address of the owner, the excavator (if different) and all abutters;
 2. seal and signature of an engineer, surveyor or soil scientist licensed in the State of New Hampshire;
 3. sketch and description of the location and boundaries of the existing and/or proposed excavation, at an appropriate scale (suggested scale: 1" = 40'), the number of acres involved and the municipalities and counties in which the project lies;
 4. zoning district boundaries of the proposed area and within 200 feet of the boundary of the parcel of land on which the excavation will take place;
 5. the location of existing buildings, structures, stone walls, utilities, septic systems and wells within 150 feet of the boundary;
 6. lot lines, public streets, driveways, intersections, rights-of-way, and all easements;
 7. topography at contour intervals of five feet or less;

SECTION XV: APPLICATION PROCEDURES

Prior to the Planning Board rendering a decision for an excavation permit, a public hearing shall be held, with due notification of all abutters and the public. The procedure for holding these public hearings is as follows:

A. Filing of the Application

1. Applications for excavation permits shall be filed with the Planning Board at least 15 days prior to the next regularly scheduled Planning Board meeting.
2. The application will be submitted at a duly-noticed public hearing, and will be accepted by the Board only if it is found to be complete.

B. Notices Required

1. All abutters will be notified of the hearing by certified mail, return receipt requested, not less than 14 days prior to the hearing. Names and addresses of abutters must be taken from Town records not more than 5 days before filing the application.
2. Public notice of the hearing will appear in the local newspaper and in at least three (3) public places in Town not less than 14 days prior to the hearing.
3. The notice must include the location and general description of the proposal, as well as the date, time and place of the hearing.
4. All costs for notification shall be borne by the applicant. Failure to do this is a valid reason for the Board to disapprove the application.

C. Board Action on Application

1. Providing that the application is complete, the Board shall vote to accept the application for review, after which time the Board has 30 days to schedule a public hearing on the application proposal.
2. Should the application not be accepted as complete, another public hearing for submission must be scheduled.
3. Within 20 days of the close of the hearing on the application, or any continuation thereof, the Board shall make a decision. Notice of this decision shall be recorded in the minutes of the meeting and placed on file in the Town offices within 72 hours.

decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Planning Board shall either grant or deny the request for rehearing within ten (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Board's decision on a motion for rehearing may appeal in accordance with RSA 677:4-15.

- F. **FEES:** Fees, on a scale posted with the Town Clerk, shall be assessed against all applications, granted permits, and excavation operations, in order that the Town may recover all reasonable costs of administration of these regulations, and any other costs incurred to ensure compliance with the conditions of the permit or the approval; e.g., site inspections by a qualified engineer, etc. Failure to pay these or any other costs associated with the application process shall be grounds for denial of the permit or approval.
- G. **PENALTIES:** Fines, penalties and remedies for violations of this regulation shall be the same as for violations of RSA 676:15 and RSA 676:17. Whoever violates any provision of this regulation, a permit or a valid order issued hereunder shall be guilty of a misdemeanor.

SECTION XVII: SEPARABILITY

The invalidity of any provision, sentence, paragraph, etc. of this regulation shall not affect the validity of any other provision.

SECTION XVIII: EFFECTIVE DATE

These regulations shall take effect upon adoption by the Planning Board and as amended.

APPENDIX B

Erosion and Sediment Control

1. Activities requiring a certified erosion and sediment control plan: A plan shall be provided for all site plans and for subdivisions. Applicants may request a waiver for this requirement thru the Planning Board who, in turn, will request and act upon the recommendation of the Cheshire County Conservation District. Expenses incurred for this recommendation or plans will be paid by the applicant.
2. Exemptions: A single family dwelling that is not a part of a subdivision of land shall be exempt from these soil erosion and sediment control plans.
3. Erosion and Sediment Control Plan:
 - a. To be eligible for certification, a soil erosion and sediment control plan shall contain proper provisions to adequately control accelerated erosion and sedimentation and reduce the likelihood of excessive storm water runoff from the proposed site, based on the best available technology. Such principles, methods and practices necessary for certification are found in the "Erosion and Sediment Control Design Handbook for Developing Areas of New Hampshire (1981)", as amended. Alternative principles, methods and practices may be used with prior approval of the Planning Board.
 - b. The Plan shall contain, but not be limited to:
 1. A narrative to describe: (a) the development; (b) the schedule for grading and construction activities including the starting and completion dates, sequence of grading and construction activities, sequence for installation and/or application of soil erosion and sediment control measures, and sequence for final stabilization of the project site; (c) the design criteria for proposed soil erosion and sediment control measures and storm water management facilities; (d) the construction details for proposed soil erosion and sediment control measures and storm water management facilities; (e) the installation and/or application procedures for proposed soil erosion and sediment control measures and storm water management facilities; and (f) the operations and maintenance program for proposed soil erosion and sediment control measures and storm water management facilities.

6. Conditions Relating to Soil Erosion and Sediment Control:

a. The estimated costs of measures required to control soil erosion and sedimentation, as specified in the certified plan, may be covered in a performance bond or other assurance acceptable to the Planning Board.

b. Site development shall NOT begin unless the soil erosion and sediment control plan is certified; and those control measures and facilities in the plan scheduled for installation prior to site development are installed and functional.

c. Planned soil erosion and sediment control measures and facilities shall be installed, as scheduled, according to the certified plan.

d. All control measures and facilities shall be maintained in effective condition to ensure the compliance of the certified plan.

7. Inspection:

a. Inspections shall be made by the members of the Planning Board or its designated agent during development to ensure compliance with the certified plan and that the control measures and facilities are properly performed or installed and maintained.

b. The Planning Board may require the permittee to verify through progress reports that soil erosion and sediment control measures and facilities have been performed or installed according to the certified plan and they are being operated and maintained.