

Town of Acworth Planning Board

Excavation Regulations
March 1991, Amended 10-29-2008

I. General Purpose and Authority

Chapter 155-E of the New Hampshire Revised Statutes Annotated requires that, with several exceptions, all mining and excavation operations in the State obtain prior approval and permit from the local municipality in which the operation is to occur. This is to minimize safety hazards created by open excavations, to safeguard public health and welfare, to preserve natural assets of soil, water, forests and wildlife, to prevent land and water pollution and to promote soil stabilization.

II. Definitions

- A. **Abutter:** Any person whose property is within 200 feet of the property under consideration.
- B. **Commercial:** Any use of earth material for sale or resale on or off site of the excavation area. In addition, an excavation shall be considered commercial if earth materials are transported to other land whose ownership is different than that of the land from which the materials are excavated.
- C. **Earth:** Sand, gravel rock soil or construction aggregate produced by quarrying, crushing or mining, or such other naturally-occurring unconsolidated materials that normally mask the bedrock..
- D. **Excavation:** A land area which is used or has been used for commercial taking of earth.
- E. **Excavation Site:** Any area of contiguous land in common ownership upon which an excavation takes place.

III. Permit Required - All excavations require a permit except:

- A. Excavation that is exclusively incidental to the construction or alteration of a building or driveway and/or parking lot; provided, however, that no such excavation is commercialized unless all relevant permits have been issued.
- B. Excavation that is incidental to agricultural or silvicultural activities, normal landscaping or minor topographical adjustment.

- C. Excavation from a granite quarry for the purpose of producing dimension stone, if such an excavation already requires a permit under RSA 12-E.
- D. Excavation that is performed exclusively for the lawful construction, reconstruction or maintenance of a class I, II, III, IV or V highway by a unit of government having jurisdiction for the highway or a contracted agent of said government, subject, however, to the relevant provisions of RSA 155-E:2 regarding reclamation standards and filing of agreements.
- E. Excavations that lawfully existed prior to August 24, 1979 may continue to be operated, subject to the relevant requirements of RSA 155-E:2, which include operational standards, restriction of expansion and filing of reports.
- F. Abandoned excavations, as defined by RSA 155-E:2. However, as per the same RSA, the owner of an abandoned excavation may still be required to file reclamation plan and bond, and to complete the reclamation within a stated reasonable time.

IV. Application for Permit

- A. Except as provided in Section III, any owner or owner's designee subject to these regulations shall, prior to the excavation of or continuance or expansion of excavation of any land, apply to the Planning Board for a permit for excavation and submit a reclamation plan. The permit application will be signed, dated and completed in full unless the Planning Board waives any items.
- B. Permit term shall be three years beginning on the date of approval. (PB: 10-29-8)

V. Operational Standards

- A. No excavation covered under RSA 155-E shall be permitted closer than 50 feet of the boundary of a disapproving abutter. If written concurrence is received from an abutter, then the boundary setback shall be ten feet.
- B. No excavation shall be permitted closer than 150 feet of an existing dwelling.
- C. 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.
- D. No excavation shall be permitted in the Conservation Zone: one hundred feet back from maximum high water level of any stream, river, pond or lake.

- E. Vegetation shall be maintained or provided within the buffer areas mentioned just above in paragraphs A. through D. In addition, natural vegetation adjacent to the excavation site will be maintained for the purposes of erosion control, noise reduction, screening and property valuation.
- F. Drainage shall be maintained so as to prevent the accumulation of free-standing water for prolonged periods. Excavation projects which result in the siltation of streams or the degradation of any water supplies are prohibited.
- G. No fuels, lubricants or other toxic or polluting materials shall be stored on-site unless in compliance with pertinent state laws or rules.
- H. Where temporary slopes will exceed a grade of 1: 1, a fence or other suitable barrier shall be erected to warn of danger or limit access to the site.
- I. Nothing in this section shall be deemed to supersede or preempt applicable environmental standards or permit requirements contained in state laws nor should any exemption in this section be construed as an exemption from state statutes.

VI. Restoration Standards

Within 12 months after the expiration date in a permit issued under these regulations, or of the completion of any excavation, the owner of the excavated land shall complete the reclamation of the areas affected by the excavation to meet each of the following minimum conditions:

- A. Except for exposed rock ledge, all areas which have been affected by the excavation shall be covered by soil capable of sustaining vegetation and shall be planted with seedlings or grass suitable to prevent erosion. Areas visible from a public way from which vegetation has been removed, shall be replanted in accordance with acceptable horticultural practices.
- B. Earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
- C. All slopes, except exposed ledge, shall be graded to natural repose for the type of soil of which they are composed, but in no case steeper than 2:1.
- D. The elimination of any standing bodies of water created in the excavation project that may constitute a hazard to health and safety.
- E. The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points, unless the project already requires a permit from the Division of Water Supply and Pollution Control as per RSA 149:8-a, in which case, the provisions of that statute and the rules adopted under it supersede this paragraph.
- F. The responsible party shall not be released from its performance commitment (Restoration Bond) until the Planning Board certifies compliance with all the terms of the Excavation Plan and the Restoration Plan.

VII. Hearing

Prior to the Planning Board approving an application for an excavation permit, a public hearing shall be held within 30 days of the submission of a completed application. A notice of said hearing shall be sent to all abutters at least 14 days in advance of the hearing and shall specify the grounds for the hearing as well as the date, time and place. A similar notice will be published in a paper of general circulation in Acworth and three others posted in public places in town. Within 20 days of said hearing, the Planning Board shall render a decision approving or disapproving the application, giving reasons for diapproval.

VII. Appeal

If the Planning Board approves or disapproves an application for an excavation permit, any interested person affected by such a decision may appeal to the Board for a rehearing. The motion for a rehearing shall specify every ground upon which it is alleged that the decision is unlawful or unreasonable. Such appeal shall be filed within 10 days of the date of the decision appealed from. The Board shall either grant or deny the request for rehearing within 10 days, and if granted, a rehearing shall be scheduled within 30 days.

IX. Enforcement

- A. The Planning Board may suspend or revoke the permit of any person who has violated the provisions of their permit or these regulations or made a material misstatement in the application upon which their permit was granted.
- B. To ascertain compliance with these regulations, the Planning Board, Conservation Commission or member thereof may enter upon any land on which there is reason to believe an excavation is being conducted.