

## **Article VI**

### **SOIL CONSERVATION FOR THE TOWN OF ACUSHNET**

#### **Section 1**

The Town By-Laws shall be amended to establish a Soil Conservation Board in the Town of Acushnet for the purpose of exercising the powers and duties hereunder.

- A. The members of the Board shall consist of the Board of Selectmen.
- B. In the event that a vacancy shall occur on the Board, the Board from which such representative comes, shall select a representative to fill such vacancy by a majority vote of the Board at any meeting at which a quorum is present in the same manner as which the original representative was selected.
- C. Organization
  - 1. A quorum for the conduct of any and all business shall be two (2) members.
  - 2. The affirmative vote of at least two (2) members shall be required for the recommendation to grant, modify, revoke or remove any permit authorized hereunder.
  - 3. The members shall elect a chairman and vice-chairman, the latter to serve in the absence of the chairman.
  - 4. The Board may appoint a secretary, who need not be a member of the Board. The secretary shall keep a true record of the proceedings of the Board, which shall be a public record.
  - 5. The Board shall file a copy of all its official actions with the Town of Acushnet Clerk and Board of Selectmen as required by law.
  - 6. The Board may appoint an enforcement officer who need not be a member of the Board. The enforcement officer shall keep a record of all duties performed and inspections made.

#### **Section 2**

##### **Definitions**

- A. For the purpose of this by-law, “earth” shall include soil, loam, sand, gravel, clay, rock, bedrock or other allied products.

- B. For the purpose of this by-law, the “enforcement officer” shall be the inspector or inspectors appointed by the Soil Conservation Board to carry out these duties.
- C. For the purpose of this by-law, “Board” shall mean the Soil Conservation Board.
- D. For the purpose of this by-law, “petitioner” shall be the person or persons making application to remove earth from a property in the Town.
- E. For the purpose of this by-law, “parcel” or “parcel of land” shall mean a lot showing on the then current Assessors’ Plat Plans.
- F. As used in this by-law, the following terms shall have the meanings indicated.

**BULK MATERIAL** is stone, sand, gravel, soil, aggregate material less than twelve inches in length or diameter, and other organic or inorganic particulate matter.

**DISTURBED SURFACE AREA** means a portion of the earth's surface which has been physically moved, uncovered, destabilized, or otherwise modified from its undisturbed natural soil condition. This definition excludes those areas which have: (a) been restored to a natural state, such that the vegetative ground cover and soil characteristics are similar to adjacent or nearby natural conditions; (b) been paved or otherwise covered by a permanent structure; or (c) sustained a vegetative ground cover of at least 70 percent of the native cover for a particular area for at least 30 days.

**DUST SUPPRESSANTS** are water, hygroscopic materials, or non-toxic chemical stabilizers used as a treatment material to reduce fugitive dust emissions.

**EARTH-MOVING ACTIVITIES** means the use of any equipment for any activity where soil is being moved or uncovered, and shall include, but not be limited to the following: grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing from open storage piles of bulk materials, quarry operations, weed abatement through disking, and soil mulching.

**DUST CONTROL SUPERVISOR** means a person with the authority to expeditiously employ sufficient dust mitigation measures to ensure compliance with this regulation and any permit or condition issued thereunder.

**HIGH WIND CONDITIONS** means that instantaneous wind speeds exceed 20 miles per hour.

**LARGE OPERATIONS** means any active operations on property which contains 50 or more acres of disturbed surface area; or any soil removal operation with a soil removal throughput volume of 15,000 cubic yards during the most recent 365-day period.

**FILL** means soil, sediments, rocks/stones, or other organic or inorganic material obtained off-site that is used to fill holes, pits or depressions; create mounds; or otherwise artificially change the grade or elevation of real property.

**SOIL REMOVAL** means the use of any equipment for any activity where soil is being moved or uncovered, and shall include, but not be limited to the following: grading, earth cutting and filling operations, loading or unloading of dirt or bulk materials, adding to or removing from open storage piles of bulk materials, landfill operations, weed abatement through disking, and soil mulching.

**OPEN STORAGE PILE** is any accumulation of bulk material, which is not fully enclosed, covered or chemically stabilized, and which attains a height of three feet or more and a total surface area of 150 or more square feet.

**PROPERTY LINE** means the boundaries of an area in which either a person causing the emission or a person allowing the emission has the legal use or possession of the property.

**WATER TABLE** means the spring high water table established from a test pit or piezometer and the level related to a permanent monument on the property.

### **Section 3**

#### **Earth Removal Procedure**

- A. No earth shall be removed from any parcel of land within the Town except as hereafter provided, and only in accordance with a written permit issued by the Board of Selectmen. The Board of Selectmen may grant a permit for such removal and for temporary structure accessory thereto, in accordance with the procedure hereafter set forth for special permits. No permit for removal shall be granted unless the Board of Selectmen finds that such removal (subject to the conditions imposed by the permit) will not be contrary to the best interests of the Town, and no removal operations subsequently conducted under such permit shall continue if contrary to such interests. For this purpose, removal of earth material shall be considered contrary to the best interest of the Town which
- (1) will be injurious or dangerous to the public health or safety,
  - (2) will produce noise, dust, or other effects observable at or beyond the lot lines in amounts seriously objectionable or detrimental to the normal use of adjacent property,
  - (3) will result in transportation of materials on ways giving access to the land in question which will cause traffic congestion or hazards,
  - (4) will result in transportation which will cause undue injury to the roadway surfaces,
  - (5) will result in change in topography and cover which will be disadvantageous to the most appropriate use of land on which the operation is conducted, or

- (6) will have a material adverse effect on the health or safety of persons living in the neighborhood, or on the use of amenities of adjacent land.
- (7) Will result in transportation of materials in excess of the Federal truck weight limits of 80,000 pounds.

B. Any person wishing to remove such material from a property in the Town shall file a formal application with the Board, which application shall include the following specific information and supporting documentation:

1. The location of the proposed excavation, including Assessors' Plat and Lot numbers
2. The legal name and address of the owner of the property involved.
3. The legal name and address of the petitioner, which address shall be used by the Board for all correspondence hereunder.
4. Names and addresses of all abutting property owners, including those across any streets.
5. The proposed method of performance security to be used or a performance bond of \$10,000.00 per acre to secure a permit.
6. A plan and representative profiles of the area covering the permit prepared by a Registered Professional Engineer, from which final grades may be established.  
Topographical plans depicting existing and proposed grades. A reclamation plan prepared by a Professional Engineer with all associated costs and requirements to complete the reclamation of the entire property.
7. Copies of the information outlined in the above articles shall be filed with the Town Clerk.
8. In approving the issuance of a permit, the Board shall impose reasonable conditions, especially designed to safeguard the neighborhood and the town, as follows:
  - a. The finished leveling and grading shall be indicated on approved plans indicated and submitted to the Board.
  - b. The placing of swales, basins, check dams, topsoil and planting of vegetation necessary to control erosion.
  - c. The duration of the removal operation.
  - d. The construction of necessary fencing and other protections against nuisances. Boulders may be used for this purpose; boulders not used

for this purpose must be disposed of as required by sub-paragraph (i) hereunder.

- e. Method of removal.
- f. Hours of operation.
- g. Routes of travel and number of trips for transportation of material.
- h. Control of temporary or permanent drainage, discharge and compliance with Article IX of the Town Bylaws.
- i. Disposition of boulders and tree stumps. Boulders may be buried below grade. Stumps may not be buried below the normal grade.
- j. Set and maintain permanent monuments at each property corner.
- k. At the conclusion of every day's operation, the vertical bank shall be caved into a slope no greater than a 2 to 1 vertical slope to protect public safety.
- l. All soil removal activities that exist as of the effective date of this regulation must apply for a permit within sixty (60) days of such effective date.

For all active operations or large operations requiring a permit under this Regulation, the Board may consult, at the applicant's expense, and pursuant to G.L. c. 44, § 53G, a Professional Engineer and/or Licensed Site Professional (LSP) registered in the Commonwealth of Massachusetts, approved of or chosen by the Board. Said Engineer or LSP, if retained by the Board, shall assist the Board with analysis of the proposed soil removal activities so that the Board may determine whether such project may result in the removal of contaminated soil or whether such project may otherwise impact the public health safety or welfare or the environment.

Any appeal of the Board's selection of a Professional Engineer and/or Licensed Site Professional (LSP) may be filed pursuant to G.L. c. 44, § 53G.

The Board's hearing may be continued as may be necessary to receive any and all applicable and relevant evidence. In all cases, it shall be the Applicant's burden to demonstrate that the proposed soil removal will not adversely impact the public and or be contrary to the benefit of the town. The Board may deny a permit if the Applicant fails to supply adequate materials to evaluate the project or if the soil removal activities

will adversely impact the public and or be contrary to the interests of the town.

- C. No permit for the removal of earth shall be issued by the Board of Selectmen, except as provided in Section 4 below, until a public hearing has been held by the Board, notice of which shall have been given by them at least fourteen days in advance, in a paper of general circulation, published not less than weekly, in the Town of Acushnet, the posting of copies thereon on municipal bulletin boards and the mailing of copies thereof to the abutting property owners, and abutters to abutters within three-hundred feet (300') including those across any streets and a recommendation has been received in writing from said Board.
- D. Any permit issued hereunder shall automatically expire upon the completion of the earth removal project for which it was issued or at the expiration of one year from the date of issue, or upon revocation for cause by the Board of Selectmen, whichever shall first occur.
- E. Approval of the renewal of a permit for a period not in excess of one year may be made by the Board of Selectmen without hearing if the Board of Selectmen, after a report from the inspector, finds that all conditions of this By-law and permit then applicable have been complied with and that the work has been carried on continuously and in good faith.
- F. The removal of earth pursuant to any permit granted hereunder shall be deemed a permitted use under Section 4 of the Zoning By-law.

## Section 4

### Exceptions

- A. No permit shall be required for the following purposes:
  - 1. Repealed (05/10/2020 b. p. TBD a. 22)
  - 2. As part of a cemetery operation.
  - 3. When such earth removal is necessary in connection with the construction of a building being built in accord with a permit issued by the Building Inspector. The amount to be removed to be limited to the volume of earth necessary to construct the structure authorized by the permit.
  - 4. Repealed (05/10/2020 b. p. TBD a. 22)

- B. The Board of Selectmen, without a public hearing, may approve permits without requiring compliance with conditions set forth in Section 3, B1 – B8, for the removal from the site of earth for the following purposes:
  - 1. Where necessary as part of farm, garden or nursery activities.
  - 2. When incidental to landscaping or similar activities for which building or zoning permits are not required.
- C. Repealed

(05/10/2020 b. p. TBD a. 22)

## **Section 5**

### **Specific Limitations**

- A. No permit for the removal of earth shall be approved by the Board of Selectmen except upon the condition that a drainage layer of not less than eighteen inches (18”) in depth, with a permeability of <10<sup>-5</sup> and a cover of topsoil of not less than 4 inches in depth shall be replaced or allowed to remain, except that it shall be no greater than the depth of the topsoil, if any, shown on submitted plans, and except where, due to construction of roads, buildings or other permanent physical features, such provision is impractical.
- B. Every permit granted under this bylaw shall be valid for a period not to exceed one year. Requests for renewal must be submitted no later than the end of the 10th month following issuance, with decisions on renewal to issue within thirty days of such request. Renewals shall be granted based upon compliance with the terms of the underlying permit. Any expansion or material modification of the underlying soil removal activities, as may be determined by the Board's Agent, shall require a new hearing.

## **Section 6**

### **General Limitations**

- A. No permit for the removal of earth shall be approved by the Board of Selectmen if the work extends within two hundred (200) feet of a public road unless the Board of Selectmen is satisfied that such removal will not undermine the way.
- B. No permit shall be issued for the removal of earth within one hundred (100) feet of a dwelling foundation or existing leaching field unless the Board is satisfied that such removal will not interfere with the dwelling or septic system.

- C. No permit shall be issued for the removal of earth within twenty (20) feet plus a sufficient distance to provide a 2 horizontal to 1 vertical foot slope from an abutting owner, unless the Board of Selectmen finds after a report from the inspector that a closer distance would not be detrimental to the site or if a closer dimension is not objectionable to the abutting property owner. In the case of two abutting gravel operations, if it is agreeable to both parties, there shall be no lot line restrictions.
- D. The required bond or the method of performance security will be used to enforce performance of conditions imposed by this By-law or under this section.

## **Section 7**

### **Fees**

- A. The Board of Selectmen shall establish such fees as it shall find necessary for the administration of this By-law, including for the issuance of the original permit, renewal permits, semi-annual inspections, complaint inspections and special inspections.
- B. Any fees received hereunder shall be transmitted to the Town Treasurer.
- C. The Town Treasurer shall pay all charges or bills, properly authorized by the Board charged with the administration of this By-law.

## **Section 8**

### **General Administration**

- A. The Board or Enforcement Officer may enter upon the premises involved to inspect and ensure proper conduct of the work.
  - 1. The inspector shall be required to notify the owner or petitioner before making any inspections.
- B. The Board or inspector may retain a civil engineer to inspect the site and to do such engineering as is necessary to determine conformity with plans and conditions of the permit and such necessary costs for engineering shall be borne by the Town.
- C. Prior to the anniversary date of the permit, each petitioner shall specify the number of cubic yards of material to be taken out of his/her pit the following year. At the end of the year, he/she shall file a statement of how many cubic yards have been removed during that preceding year. Annual removal shall not exceed the amount permitted at the beginning of the year unless the Board of Selectmen, on the advice of their Enforcement Officer, determines there will be no adverse effect to the Town.

- D. A permit shall be issued only after full payment of all annual fees and charges and receipt of a bond or other approved financial assurance.

## **Section 9**

### **Violations**

- A. If the Enforcement Officer concludes that there has been a violation of this By-law, he or she shall hand deliver or send to the person in charge or permit holder, by certified mail, return receipt requested, to the address stated on the initial application, or any other manner provided for by law, a notice ordering a cessation of the improper activities.
- B. If a permit holder or other offender persists in such violation, the inspector shall seek the imposition of the penalties authorized by paragraph 17, of Section 21D of Chapter 40, G.L., through appropriate legal action; and the penalty for removing earth in violation of this By-law shall be a fine of not more than two-hundred dollars (\$200) for the first offense after such warning; not more than three hundred dollars (\$300) for the second offense; and not more than three hundred dollars (\$300) for any subsequent offense. Each day or part thereof shall constitute a separate offense.
- C. If the offender persists with the violation, a permit issued under the By-law may be revoked, by the Board of Selectmen, after notice and hearing.

## **Section 10**

Any permit issued by the Board of Selectmen shall be accompanied by a copy of the following:

Bond must be filed in amount indicated on list of stipulations attached to permit.

Any soil or loam shall, in connection with removing sand and gravel under this permit, be stockpiled on the premises in accordance with a stockpile plan approved by the Board.

As soon as practicable, and in accordance with good conservation practices not to exceed 90 days, all stripped areas shall be graded and covered with a drainage layer, topsoil and loam, graded and vegetated in a proper soil conserving manner.

As soon as practicable, and in accordance with good conservation practices, not to exceed 10 days, as soon, as the loam is restored, it shall be planted with a suitable cover crop approved by the Board to prevent erosion of the surface.

The operations to be conducted under this permit are to be carried on in such a way as not to interfere with the natural flow of any stream, intermittent or otherwise running through the premises.

No earth shall be removed within four feet of spring high water table. This elevation shall be established from a test pit or piezometer and the level related to a permanent monument on the property. This information shall show on the topographic plan.

Boulders that are dug up during this operation must be taken from the land or buried as per Article III (B) (I).

No mounds of loam, fill, silt, waste, gravel, stones, brush, sand, etc. are to be left at the completion of this operation, or upon the termination of this permit.

At the completion of the operation, or upon the termination of this permit, any uncovered portions of the pit shall be sloped and reclaimed as provided in the paragraphs above.

All work shall be performed in the following manner:

After the operation has proceeded 600 feet, the operator shall slope, grade, and reseed the initial 300 feet before or during the period when he begins work on the following 300 feet. Thereafter, he shall proceed to advance his operations at integral distances of 300 feet while he simultaneously grades, slopes, loams and reseeds the previous integral distance of 300 feet.

The conveyance of the property covered by this license by the licensees, or either of them, shall result in the termination of the right to remove any further earth, sand, rock and gravel under this permit and the premises shall be restored as above provided. This termination shall not be effective if prior to such conveyance as bond conditioned upon the full performance of all the terms and conditions of this license and with sureties satisfactory to the Soil Conservation Board of Acushnet shall be filed with such Board.

## **Section 11**

### **Validity**

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

This By-Law accepted at Town Meeting

On this date: 9/11/89

Voted: 79 Yes  
2 No

(09/11/1989 b 7 p 311 a 3)  
(05/10/2021 b p TBD a 22)