

NEWTON

NEW HAMPSHIRE

EXCAVATION REGULATIONS

ADOPTED SEPTEMBER 2009

TOWN OF NEWTON
NEW HAMPSHIRE

REGULATIONS GOVERNING EARTH EXCAVATIONS

SECTION 1: 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 Planning Board by the voters of the Town of Newton and RSA 155-E, the Planning Board adopts the following regulations to govern the excavation of earth materials in the Town of Newton.

SECTION II: PURPOSE AND SCOPE

The goals of this regulation are to: provide for reasonable opportunities for excavation; minimize safety hazards which can be created by open excavations; ensure that the public health and welfare will be safeguarded; protect natural resources and the environment; and 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 means (1) any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. (2) 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. (3) 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. (4) For purposes of notification and receiving testimony, “abutter” means all affected towns and the regional planning commission(s) in the case of a development having regional impact, as determined by the Board.
- B. AGRICULTURAL EXCAVATION means excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use.
- C. AGRICULTURAL USE means land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry.
- D. APPLICANT means the owner of the property to be excavated or the owner’s agent, so designated in writing as part of the excavation application.
- E. BOARD means the Planning Board of Newton.
- F. COMMERCIAL EXCAVATION means excavation of earth intended for commerce, this may also include excavation that is strictly conducted for the purpose of alteration, renovation, improvement or

construction to the property on which the excavation takes place. Any material leaving the property for whatever reason is considered to be a commercial operation.

- G. CONTIGUOUS means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.
- H. DIMENSION STONE means 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.
- I. EARTH means sand, gravel, rock, top soil, loam or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
- J. EXCAVATION means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.
- K. EXCAVATION AREA means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.
- L. EXCAVATION SITE means any area of contiguous land in common ownership upon which excavation takes place.
- M. EXISTING EXCAVATION means any excavation, as described in RSA 155-E:2, I, which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979 and had submitted the report as required by RSA 155-E:2, I, (d).
- N. EXPANSION means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the regulator.
- O. INCIDENTAL EXCAVATION means excavation of earth which has been granted an exception from an excavation permit by the regulator.
- P. MINOR TOPOGRAPHICAL ADJUSTMENT means a one time removal of earth from the site of less than 100 cubic yards that is exclusively necessary to change the physical configuration of the land for a specified use or situation.
- Q. NORMAL LANDSCAPING means the on- site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.
- R. RECLAMATION means the restoring of an excavation site to a standard at least equal to those outlined in Section X of these regulations
- S. STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS means facilities which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.

SECTION IV: PROJECTS REQUIRING A PERMIT

The regulator of the Town of Newton has determined that none of the excavation sites within the municipality has met the burden of proof that they are exempt from a permit under RSA 155-E:2, I (Existing Excavation) and RSA 155-E:2, III (Stationary Manufacturing Plants). Any excavation proposing to begin operation after the effective date of these regulations requires a permit.

SECTION V: PROJECTS EXEMPT FROM A PERMIT

The following projects do not require a permit, but are nevertheless subject to Sections IX, X, and XI of these regulations. Compliance with these standards is mandatory in order to retain the non-permit status. Loss of such non-permit status can occur only after the Board has given written notice that the excavation is not in compliance and the owner has failed to bring it into compliance within 30 days of receipt of such notice.

The following projects are deemed to be an exception from a permit :

- 1) An excavation performed exclusively for the lawful construction, reconstruction, or maintenance of a Class I, II, III, IV, or V highway. A copy of the pit agreement executed between the pit owner and the governmental unit shall be filed with the Board; in addition, the provisions of Section VII of this regulation are to be complied with.
- 2) Excavation of earth that is a direct consequence and is exclusively incidental to the lawful construction or alteration of a building or structure, a parking lot or way including a driveway on a portion of the premises where removal occurs. This excavation cannot be started, however, until all required state and local permits have been issued.
- 3) Excavation that is exclusively incidental to agricultural or silvicultural-activities or normal landscaping.
- 4) Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).
- 5) Any minor topographical adjustment, however in the event that the project will result in the removal of more than 100 cubic yards the Board shall determine what is incidental.
- 6) A person owning land abutting a site which was taken by eminent domain or by any other governmental taking upon which construction is taking place may stockpile earth taken from the construction site and may remove the earth at a later date after written notification to the Board.

SECTION VI: ABANDONED EXCAVATIONS

- A. Any excavation, for which the affected area has not been brought into complete compliance with the reclamation standards of this regulation shall be considered abandoned if:

- 1) No material of sufficient weight or volume to be commercially useful has been removed from the site during any 2-year period either before, on, or after August 4, 1989.
 - 2) The excavation is in use, but either has not been brought into compliance with the incremental reclamation standards of this regulation, or a bond has not been posted and a reclamation timetable has not been approved by the Board.
 - 3) The owner or operator of the excavation has not secured a permit pursuant to these regulations.
- B. In the event the Board determines that any abandoned excavation presents a hazard to the public health, safety or welfare, the owner may be required, following a public hearing, to comply with the timetable and bonding requirements outlined above, or to complete reclamation within a reasonable period of time. Should reclamation not be completed, the Board may request the Town to authorize reclamation at the Town's expense. The Town's costs shall constitute an assessment against the owner, and shall create a lien against the property. Such assessment and lien may be enforced and collected in the same manner as provided for real estate taxes.

SECTION VII: PROHIBITED PROJECTS

- A. Excavations within 50 feet of the boundary of a disapproving abutter, or within the minimum setbacks as per Zoning of an approving abutter unless approval is requested by said abutter. Abutter's approval must be in writing.
- B. Where existing visual barriers would be removed, except to provide access to the excavation.
- C. Where the issuance of the permit would be unduly hazardous or injurious to the public welfare. The Board shall give particular consideration to such factors as noise, traffic, dust, fumes, or danger from operation.
- D. The Board shall not grant a permit where the hours of proposed operation will create a disturbance to abutters or neighbors who live on the street(s) providing access to the site. Unacceptable hours of operation shall presumptively include operation beyond 7 am to 6 pm Monday through Friday and 8 am to 12 noon on Saturday, with no operation on Sunday.
- E. Where the excavation would substantially damage a known aquifer, as designated by the United States Geological Survey.
- F. When the excavation cannot receive necessary approvals from state or federal agencies, such as Alteration of Terrain or Wetlands permits.
- G. Where the excavation is not permitted by zoning or other applicable ordinances, provided, however, that reasonable opportunities for excavation exist in town, as described in RSA 155-E:4,III.
- H. Where the project cannot comply with the requirements of Sections IX, X, and XI of these regulations.

SECTION VIII: EXCAVATION EXPANSIONS

When the scope of an approved excavation is proposed to be altered as to affect either the size or location of the excavation, the rate of removal, or the plan for reclamation, the owner must submit a new application for an excavation permit following the regulation criteria in Section XV. As part of the hearing process the regulator will consider any adverse impacts that may occur with the granting of a permit. Impacts will vary depending upon the particular neighborhood; nevertheless, the following criteria will be taken into consideration:

1. The excavation will not cause a diminution in area property values or unreasonably change the character of the neighborhood.
2. The excavation will not create any nuisance or create health or safety hazards.
3. The excavation will not unreasonably accelerate the deterioration of highways or create safety hazards in the use thereof.

SECTION IX: OPERATIONAL STANDARDS

- A. For those excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.
 1. 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.
 2. 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.
 3. Vegetation shall be maintained, or, if not existing, shall be established within the peripheral areas of items 1 and 2 of this section in accordance with acceptable horticultural practices.
 4. 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.
 5. 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.
 6. Appropriate drainage shall be provided to prevent the accumulation of freestanding water for prolonged periods in accordance with RSA 155-E 4-aIV.
 7. Excavation practices which result in continued siltation of surface waters or any degradation of water quality of any public or private water supplies are prohibited. The burden of proof lies on the injured party to submit in writing to the Board details of the incident.
 8. No excavation shall be permitted within 75 feet of any great pond, navigable river, or any other standing body of water 10 acres or more in area, or within 25 feet of any other stream, river or brook which normally flows throughout the year, or any naturally-occurring standing body of water less than 10 acres, prime wetland as designated in accordance with RSA 482-A:15,I, or any other wetland greater than 5 acres in area as defined by the Wetlands Board.

9. Acceptable hours of operation shall be 7 am – 6 pm Monday through Friday and 8 am – 12 noon on Saturday, with no operation on Sunday. The Board may modify these hours depending on resident's needs and the needs of the gravel pit owners.

10. No excavation shall be permitted within six feet of the seasonal high water table. A waiver to such prohibition shall be granted if the applicant demonstrates that such excavation will not adversely affect water quality, provided, however, that written notice of such exception shall be recorded in the registry of deeds, one copy filed with the Department of Environmental Services, and one copy filed with the Board.

B. For those excavations that have been deemed to be incidental, and have received an exception from a permit, the Regulator may impose operational conditions and a performance bond as may be deemed necessary to insure completion of the proposed project.

SECTION X: SITE RECLAMATION STANDARDS

A. For excavations requiring a permit, these standards are considered to be the minimum; more stringent standards such as are consistent with the purpose of these regulations may be applied, as deemed necessary by the Board.

B. Within 12 months following the expiration date of a permit issued under these regulations, or the completion of any excavation, whichever occurs first, the excavated area shall be reclaimed in accordance with the following standards:

1. 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.
2. Except for exposed rock ledge, all disturbed areas shall be spread with topsoil or any other soil capable of maintaining vegetation, and shall be planted and maintained with seedlings or grass suitable to prevent erosion.
3. All earth and vegetative debris resulting from the excavation shall be removed or otherwise lawfully disposed of.
4. All slopes, except for exposed ledge, shall be graded to natural repose for the type of soil of which they are composed so as to control erosion or at a ratio of horizontal to vertical proposed by the owner and approved by the Board. Changes of slope shall not be abrupt, but shall blend with the surrounding terrain.
5. Any standing bodies of water created by the excavation that are judged to constitute a hazard to health and safety shall be eliminated.
6. The topography of the land shall be left so that water draining from the site leaves the property at the original, natural drainage points and in the natural proportions of flow.
7. Any excavation permit applicant that requires a RSA 485-A17 alteration of terrain permit from NH DES shall incorporate the requirements of these regulations, to the extent that they are more

restrictive, in any NH DES permit application. Copies of all such permits shall be filed with the Board.

SECTION XI: INCREMENTAL RECLAMATION

Any excavated area of 5 contiguous acres or more which is depleted of commercial earth materials, excluding bedrock, or any excavation from which earth materials of sufficient weight or volume to be commercially useful have not been removed for a 2-year period, shall be reclaimed in accordance with Section X of these regulations within 12 months following such depletion or non-use, regardless of whether other excavation is occurring on adjacent land in contiguous ownership. A reclamation plan, including a reclamation timetable for the depleted areas within the reclamation site, shall be submitted to the Board for approval.

SECTION XII: PERFORMANCE GUARANTEE

- A. Prior to the granting of any permit, the applicant shall submit to the Selectmen a bond with sufficient surety as determined by the Planning Board. The purposes of the bond are to guarantee reclamation of the area, compliance with the permit, and any inspections. Off-site improvements for potential damage of Town roads or facilities caused by the transportation of earth materials shall be discussed at this stage.
- B. The surety may be in the form of cash or letters of credit, which shall be in an amount and form acceptable to the Board and its legal counsel. The surety may be phased to coincide with the phasing of work, in an amount sufficient to guarantee reclamation of the applicable section, to be released as sections are completed. Prior to a new section being opened, new securities shall be posted. The surety shall not be released until the Board is satisfied that all conditions of the site reclamation plan have been complied with.

SECTION XIV: EXCEPTIONS

Due to the diverse nature of excavation operations which vary in scale and scope, and due to the varying conditions of the land to be excavated, the Board may, upon application and following a duly-noticed hearing, grant any exception in writing to the standards contained in Sections IX, X, XI, and XII for good cause shown. The written decision shall state specifically what requirements are being waived and include any reasonable alternatives.

SECTION XV: APPLICATION PROCEDURES

Prior to the 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. Excavation Permit Applications Review

- 1. Complete applications for an excavation permits shall be filed with the Planning Board Clerk no later than 28 days before the next regularly scheduled Planning Board meeting. A complete application shall consist of a completed application page including submission items, a completed abutters list, and the appropriate fees as calculated on the application page.
- 2. The application will be reviewed with the applicant at the scheduled meeting. If the application is found to meet all submission requirements it will be accepted and voted by the regulator as

complete and the hearing scheduled. Should the application not be accepted as complete, another review meeting must be scheduled for re-submission as outlined in Section XV, A, 1.

3. Applicants are encouraged to participate in the technical review process prior to submission of the official application.

B. Board Action on Completed Application

1. Upon acceptance of a completed application the Planning Board will hold a public hearing within 30 days, to consider the application.
2. 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 144 hours.
3. The applicant may receive a copy of the minutes along with the decision if requested. If the application was approved with special conditions, these conditions shall also be stated. In the event the application is disapproved, the reasons for the disapproval shall be given.

C. Notices Required for Public Hearing

1. All abutters will be notified by certified mail, not less than 10 days prior to the meeting at which the application will be submitted for acceptance. Names and addresses of abutters must be taken from Town records not more than five (5) days before filing the application.
2. Public notice will appear in a newspaper of general circulation and in at least 2 public places not less than 24 hours prior to the meeting.
3. The notice must include the location and general description of the proposal, as well as the date, time and place of the meeting.

D. Fees – Fees associated with this process are outlined in the fee schedule in Appendix I (Application Package).

SECTION XVI: APPLICATION SUBMISSION ITEMS

The applicant for an excavation permit shall submit to the Planning Board a completed application form, including a current abutters list (along with 3 copies of abutter labels), an excavation and a reclamation plan, any other submission documents as requested, and the filing fee. At least 10 (ten) copies of all plans shall be filed with the Planning Board prior to a regularly scheduled Board meeting. The plans shall be at a scale of 1" = 100'.

A. Excavation Plan

Prior to excavation of land, an owner or owner's designee must submit an application package as follows. The application shall be signed and dated by the applicant. The applicant shall also send a copy of the application package to the Conservation Commission.

1. Name and address of the owner, the excavator (if different) and all abutters.*

2. Perimeter survey by a licensed engineer of the location and boundaries of the proposed and any existing excavations; the area in square feet and acre. Board will accept copies of engineering drawings required by NHDES in lieu of additional engineer drawings.*
3. A sketch and description of the access and visual barriers to public roadways to be utilized in the proposed excavation*
4. The breadth, depth and slope of the proposed excavation and the estimated duration of the project.*
5. The elevation of the highest annual average ground water table within or next to the proposed excavation.*
6. Specific actions to be taken on the site relative to fuel and chemical handling and storage, dust control, traffic, noise control and abatement, and comprehensive site safety of unauthorized persons.*
7. Zoning district boundaries of the proposed area and within 200 feet of the boundary of the project.
8. The location of existing buildings, structures, septic systems and wells within 200 feet of the boundary of the project.
9. Public streets, driveways, intersections, rights-of-way, and all easements within 200 feet; road network to be affected; intended transportation routes to be used.
10. Topography at contour intervals of five feet or less.
11. All surface drainage patterns including wetlands and standing water.
12. Sketch and description, and/or engineer surveyed map at the request of the Board, of existing and proposed access roads, including width and surface materials.*
13. An estimate of the total volume of earth to be excavated.
14. Test pits that extend to either the seasonal high water table, ledge, or a minimum of six feet below the maximum proposed excavation depth, including location and soils data; boring logs may be submitted separately.
15. Proposed fencing, buffers or other visual barriers, including height and materials.
16. All measures to control erosion, sedimentation, water pollution, air pollution, and any hazards to human safety.
17. Plans for stormwater management.
18. Plans for equipment maintenance.

19. Methods to prevent materials from the site from being tracked onto public roadways.
20. Copies of all necessary state and federal permits.
21. Signed and dated by licensed soil scientist/engineer. Board will accept copies of engineering drawings required by NHDES in lieu of additional drawings.

*These are statutory requirements as per RSA 155-E:3 and are ineligible for waiver consideration

B. Reclamation Plan

A plan for reclamation of the area affected by the excavation at least in compliance with RSA-E:5 and RSA 155-E:5-a must be filed as part of the application. The reclamation plan shall address the effects of the proposed excavation on soil, surface, and ground water, vegetation, overburden, topography, and fill material, and should address future land use consistent with the Master Plan. The plan shall, at a minimum, contain the following:

1. Seal and signature of a licensed surveyor or engineer. Board will accept copies of engineering drawings required by NHDES in lieu of additional drawings.
2. All boundaries of the area proposed for reclamation and the land within 200 feet of the boundary of this site.
3. First topography of the area proposed for reclamation, at contour intervals of five feet or less.
4. Final surface drainage pattern, including the location and physical characteristics of all artificial and/or modified drainage facilities.
5. Timetable as to fully-depleted sites within the excavation area.
6. Schedule of final reclamation activities including seeding mixtures, cover vegetation, fertilizer types, and application rates.

C. Other Information

The Board reserves the right, per RSA 155-E:3,VII to request any other information it deems necessary to make an informed decision, or to have plans reviewed by an outside agency. According to the authority vested in the Board by RSA 155-E:11, III & RSA 676:4,I(g), any reasonable expenses incurred for such information or reviews shall be charged to the applicant. Failure to pay such costs constitutes valid grounds for the Board to deny the application.

SECTION XVII: ADMINISTRATION AND ENFORCEMENT

A. Permits

1. Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site.

2. A permit shall be valid for no more than 6 years and the expiration date shall be specified. A permit is automatically withdrawn if no substantial work is done on the site for a period of 2 years from the date of the issuance of the permit.
3. Excavation of earth without a valid permit is a violation of RSA 155-E and these regulations. Violators may be issued a cease and desist order for non-compliance.
4. The Board may include in the permit any such reasonable conditions as are consistent with the purpose of these regulations.
5. The Board may establish a schedule by which all permitted sites are inspected on an annual basis by the Board, or its designee.

B. Inspections

The Board or its designee may make periodic inspections of all excavation sites to determine if the operations are in conformance with these regulations and the approved plans. A site inspection review letter will be sent to the Owner citing any deficiencies and providing a timeline for correction of the deficiency.

C. Suspensions and Revocations

The Board may suspend or revoke a permit if the Board determines that any provision of the permit has been violated, a material misstatement made in the application upon which a permit was granted, ~~or~~ any unsafe or hazardous conditions are determined by a site inspection to exist, or failure to correct any deficiency after notice. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with these regulations.

D. Appeals

Any person affected by the Board's decision to approve or disapprove an application or any amendment thereto or any suspension or revocation of a permit, may appeal to the Board for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The 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 or rehearing may appeal in accordance with RSA 677:4-15.

E. 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 XVIII: SEPARABILITY

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

SECTION XIX: EFFECTIVE DATE

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