

Chapter 238

EXCAVATION REGULATIONS

§ 238-1 Excavation Regulations 1
§ 238-2 General Purpose 1
§ 238-3 Definitions 1
§ 238-4 Permit Required 2
§ 238-5 Application for Permit 2
§ 238-6 Operational Standards 5
§ 238-7 Reclamation Standards 6
§ 238-8 Bonding 7
§ 238-9 Enforcement 7
§ 238-10 Waivers 7
§ 238-11 Severability 8

[HISTORY: Adopted by the Planning Board of the Town of Peterborough 4-20-92. Amendments noted where applicable.]

§ 238-1. Excavation Regulations

Pursuant to the authority vested in the Town by RSA 155-E:11, these regulations are hereby adopted as a supplement to the regulations contained in New Hampshire RSA 155-E, as amended which are hereby adopted by reference. All other applicable land use regulations in the Town of Peterborough shall be complied with.

§ 238-2. General Purpose

The purpose of these excavation regulations is to minimize safety hazards created by open excavations; to safeguard the public health and welfare; to preserve the natural assets of soil, water, forests, and wildlife; to maintain the aesthetic features of the environment; to prevent land and water pollution; and to promote soil stabilization.

§ 238-3. Definitions

In addition to the definitions in RSA 155-E:1 and Division 3 (Land Use Regulations) of the Code of the Town of Peterborough, the following definition shall apply:

STATIONARY MANUFACTURING AND PROCESSING PLANTS - Structural improvements that are permanently placed and that are essential to the grading, crushing, and stockpiling of excavated material.

§ 238-4. Permit Required

All excavations require a permit except those specifically exempted in RSA 155-E:2 and 155-E:2-a. However, for excavations for the purpose of highway construction as provided for in 155-E:2 IV, a copy of the pit agreement shall be submitted to the Planning Board along with a plan which identifies and limits the exemption granted to that portion of the pit which is necessary for the public highway project. The regulations in RSA 155-E:2 IV shall be complied with.

§ 238-5. Application for Permit

Any owner or owner's designee subject to these regulations shall apply for an excavation permit by submitting an application which includes an Excavation Plan and a Reclamation Plan in compliance with the following items. The Planning Board may waive items if the applicant has provided rational justification for the exclusion of said items. All plans submitted shall be of a quality that they are easily understood and of an accuracy that compliance can easily be checked.

At least five copies of all plans shall be submitted to the Planning Board and one copy to the Conservation Commission.

A. The Excavation Plan shall be drawn at a scale of no less than 1"=100', and shall include the following:

- (1) seal of a professional engineer or licensed land surveyor registered in the State of New Hampshire
- (2) tax map and lot numbers of the site
- (3) zoning district(s)
- (4) complete description of the site boundaries
- (5) the acreage of the site
- (6) location of all easements
- (7) name, location, and width of all public roads and rights-of-way
- (8) dwelling units, septic systems, and wells on the site and within 150' of the perimeter of the area to be excavated
- (9) location and extent of any stone walls, ledge outcroppings, existing buildings, utilities, and other significant natural and man-made features on the site
- (10) a locus map showing the proposed operation in relation to existing roads
- (11) existing and proposed access roads, including width and surface materials

- (12) the location of all driveways and road intersections within 200 feet of the property boundary
- (13) existing and proposed visual buffers from the roadways, specifying which, if any, existing buffers are to remain intact
- (14) existing and proposed fencing, buffers, and visual barriers, including height and materials
- (15) existing excavation areas, if any
- (16) distances between disturbed areas and the closest property lines
- (17) the area to be excavated, including the breadth, depth, and slope of the proposed excavation
- (18) estimated volume of material to be removed
- (19) description of project duration and phasing
- (20) any existing and proposed accessory facilities and/or activities
- (21) storage areas for topsoil to be used in reclamation
- (22) existing topography at two foot contour interval
- (23) proposed topography at two foot contour interval at the completion of excavation and restoration
- (24) existing vegetation
- (25) all surface drainage patterns, including wetlands, standing water, lakes, streams, and the like
- (26) log of borings or 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
- (27) the elevation of the highest annual average groundwater table within or next to the proposed excavation
- (28) all measures to be used to control erosion, sedimentation, water pollution, air pollution, and hazards to human safety
- (29) aquifer locations and limits as identified on the Aquifer Map produced by Whitman & Howard, Inc. in 1985, and as amended

B. The Reclamation Plan shall be drawn at the same scale as the Excavation Plan, shall cover the same area, and shall include the following:

- (1) seal of a professional engineer or licensed land surveyor registered in the State of New Hampshire;
- (2) the boundaries of the area proposed for reclamation;
- (3) the final topography for the reclaimed area;
- (4) the final surface drainage pattern, including the location and physical characteristics of all drainage facilities;
- (5) soil conditioning specifications;
- (6) the schedule of vegetative and temporary reclamation activities including seeding mixtures, mulching materials, fertilizer types, lime, and application rates;
- (7) the plant materials to be used in the restoration, including the quantities and sizes of the plants;
- (8) subsequent use of the site, if known;
- (9) cross sectional views showing existing, excavated, and reclaimed topographical configuration; and
- (10) erosion and sedimentation control plan.

C. In addition, the following items shall be submitted as part of the application for an excavation permit:

- (1) Copies of related permit approvals, such as WSPCD (RSA 485-A:17, 148:5-a), Wetland Board (RSA 483-a), stump disposal, DOT (access permit, RSA 249:13-18), and any other permits required by state or federal agencies.
- (2) Hauling information, including routes to be utilized, the type and weight of motor vehicles involved, and the frequency and schedule of operations of such vehicles. The Planning Board may require modifications to such plans and/or may place conditions upon such operations, depending on surrounding land uses and road conditions. The Planning Board may require that a traffic study be done at the applicants expense to ensure that public safety, neighborhood compatibility, and road capacity and condition have been properly considered and addressed in the hauling plans.
- (3) All applicable fees, including the excavation fee per RSA 155-E:8 (for the processing of the application), all fees for the notification of abutters and the publication of the public notices, and an inspection fee (for any on-site inspections). In addition, the applicant

shall be responsible for the payment of any expenses incurred for special studies required by the Planning Board.

§ 238-6. Operational Standards

In addition to the standards provided in RSA 155-E:4 and 4-a, the following shall apply to all excavations covered by these regulations:

- A. Access roads leading to the excavation site shall intersect existing streets and roads at locations that have been duly approved by state or local officials and in a manner that will not endanger the safety of highway users and local residents.
- B. Permit approval shall be conditioned on compliance by the applicant with street and highway regulations promulgated by federal, state, and local authorities.
- C. Natural vegetation adjacent to neighboring properties on which excavation is not intended shall be maintained for the purposes of erosion control, screening, noise reduction, and property value. The Planning Board shall have the authority to require additional screening where necessary.
- D. All temporary structures required during excavation operations shall be removed from the site within 30 days after such operations cease.
- E. All vehicles transporting excavated material shall utilize adequate covering and/or sideboards to prevent dust and spillage when loaded.
- F. Start up time for all machinery associated with a gravel or sand pit shall be no earlier than 7:00 am and all machinery must be shut down by 6:00 pm. Hours of operation other than those stipulated may be allowed if specifically authorized by the Planning Board, provided there is no detrimental impact on surrounding properties.
- G. Topsoil shall be stripped from the excavation area and stockpiled for use in subsequent reclamation of the site. It shall be protected from erosion by seeding, covering, or some other acceptable method. No topsoil shall be removed from the site without specific approval from the Planning Board.
- H. Appropriate erosion, sedimentation, air and water quality measures shall be integrated into the excavation process. Excavations shall comply with the erosion and sedimentation control provisions in the town's subdivision regulations.
- I. The applicable state statutes pertaining to forestry practice and timber harvesting shall apply to the removal of vegetative cover at excavation sites.
- J. Excavation operations shall be set back at least 50 feet from wetlands as defined in the Wetlands Protection District¹ and it must be demonstrated that no sedimentation of the wetlands will occur as a result of the excavation. The Planning Board shall have the

¹ Editor's Note: See § 245-15 C(1).

authority to require greater wetlands setbacks in situations where it can be demonstrated that they will be required to protect the wetlands from degradation due to the proposed excavation operations.

K. Excavation operations shall be performed in such a manner as to not cause substantial damage to any aquifer identified on the 1985 Aquifer Map prepared by Whitman & Howard, Inc. The Planning Board shall determine whether or not substantial damage to the aquifer will be incurred by considering the following criteria:

- (1) the excavation shall not detrimentally affect the quality of the groundwater contained in the aquifer by directly contributing to pollution or by increasing the long term susceptibility of the aquifer to potential pollutants;
- (2) the excavation shall not cause a significant reduction in the long term volume of water contained in the aquifer or in the storage capacity of the aquifer.

Furthermore, the Planning Board may require that the applicant provide data or reports prepared by a professional groundwater consultant which assess the potential aquifer damage caused by the proposed excavation project. The Planning Board may require that the information submitted be reviewed by Whitman & Howard or another groundwater engineering firm at the applicant's expense.

§ 238-7. Reclamation Standards

In addition to the standards provided in RSA 155-E:5 and 5-a, the following shall apply to all excavations covered by these regulations:

- A. No slope in soil material shall be left steeper than 3:1 unless it can be demonstrated by the applicant that a steeper grade can be adequately vegetated and stabilized.
- B. Ground levels and grades shall be established as shown on the approved reclamation plan as soon as practical during site excavation, but not later than one year after excavation has been completed.
- C. Stockpiled topsoil shall be spread over the disturbed area to a depth sufficient to allow establishment and maintenance of vegetation. Areas posing the most critical problems for re-vegetation shall be given first priority should available topsoil be limited. The disturbed areas should be limed and fertilized, if necessary, and seeded with a grass or grass-legume mixture.
- D. If deemed necessary by the Planning Board, suitable trees or shrubs may be planted in order to provide screening and natural beauty and to aid in erosion control. Such planted areas shall be protected from erosion during an appropriate establishment period by mulch and structural erosion control devices.

E. The responsible party shall not be released from its reclamation bond until the Planning Board receives certification from a registered professional engineer that all terms of the Excavation Plan and Reclamation Plan have been complied with.

§ 238-8. Bonding

The Planning Board shall establish the amount of the bond prior to the issuance of the excavation permit. The bond shall be an amount sufficient for the reclamation of the site pursuant to RSA 155-E:4-a VII and to guarantee compliance with the permit, which may include re-landscaping areas visible from abutting properties if necessary, repairs to public roadways damaged as a result of the excavation operation traffic, and other items as may be required by the Planning Board. The reclamation portion of the bond shall be based on the acreage of the project or approved phases and the estimated per acre reclamation costs. That portion of the bond shall be released when the reclamation has been completed and a final satisfactory site inspection has been conducted by the Planning Board or its designee. The remainder of the bond shall be released after a final satisfactory inspection by the Planning Board or its designee of any required road repairs and other bonded work. The applicant shall pay for any bond reviews by the Town Engineer or Town Counsel.

§ 238-9. Enforcement

In addition to the provisions of RSA 155-E:10, the Planning Board or its designee will conduct site inspections to verify permit compliance. These shall be done on an annual basis unless a more frequent schedule is necessary due to special characteristics of the excavation or reclamation plans.

§ 238-10. Waivers

In addition to the provisions of RSA 155-E:5-b, which addresses exceptions to the standards of RSA 155-E:4-a, 5, and 5-a, the applicant may request waivers to the submission requirements for the Excavation Plan or Reclamation Plan. Any such request must be made in writing at the time of submitting the application, and shall include specifically which submission requirements the applicant requests the waivers for, the reasons why the waivers are being sought, and reasonable alternatives where appropriate. All waivers must be discussed at the public hearing, and the Planning Board's decision regarding waivers must be in writing and shall state specifically what submission requirements are being waived and what alternatives are accepted.

§ 238-11. Separability

If any section, paragraph, subdivision, clause, or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause, or provision adjudged, and the remainder of these regulations shall be deemed to be valid and effective.