

Chapter 7

EXCAVATIONS AND SOIL REMOVAL*

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*Cross references—Buildings and building regulations, Ch. 5; environmental conservation, Ch. 6; nuisance excavations, § 15-1; street excavations, etc., § 20-51 et seq.

State law references—General authority to regulate excavations, Town Law, § 130(23); New York State Mined Land Reclamation Law, Environmental Conservation Law, § 23-2701 et seq.



ARTICLE I. IN GENERAL

Sec. 7-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Earth products includes such material as topsoil, sand, gravel, stone and other minerals.

Excavations means any hole, pit, side hill cut, stripping or similar condition, except that the provisions of this chapter shall not apply when the extent of such excavation shall be limited to the requirements for actual construction of a wall, driveway or sidewalk, or to the requirements for actual construction of a building or structure or part thereof for which the building inspector has issued a building permit, or to a cesspool, septic tank or recharge basin excavation.

Extraction includes, but is not limited to, all the various methods used in excavating or mining earth products, including quarry sand pit, gravel pit and topsoil stripping operations.

General regrading means any rearrangement of the topography of a property, except that, when it does not affect any other property or lot or any natural drainage system, limited regrading for foundation drainage and landscaping treatment for individual lots of less than one (1) acre shall be excluded from the provisions of this article.

Removal means the transport of earth products from the property upon which they are naturally located to some other property, whether they remain in their original form or become changed in any way, and whether or not such removal is for profit.

Subdivider means a person who proposes a subdivision under the provisions of the planning board regulations for the subdivision of land, whether such subdivision is for residential purposes or some other use.

(Code 1966, § 9-2)

Cross reference—Definitions and rules of construction generally, § 1-2.

Sec. 7-2. Declaration of policy.

(a) The regulation and control of the general regrading of land, extraction and removal of earth products and other excavations are necessary to protect and to prevent serious and irreparable damage to the public health, safety and general welfare as well as to make effective the general purposes of comprehensive planning and zoning.

(b) These regulations and controls are intended to prevent the following conditions from occurring:

- (1) The interruption and diversion of natural watersheds and drainage lines resulting in inadequate and improper surface water drainage.
- (2) The erosion of soil by water and wind.
- (3) The increase in or destruction of fertility of the land.
- (4) The removal of lateral support of abutting streets, lands and premises.
- (5) The creation of dust storms and mosquito-breeding places.
- (6) The creation of dangerous banks, depressions or pits.
- (7) The interruption of suitable access roads to other lands and the disruption of the future road pattern.
- (8) The rendering of lands unfit or unsuitable for their most appropriate uses.
- (9) The depreciation of property values.
- (10) The creation of other deterrents to the coordinated and harmonious physical development of the town.

(Code 1966, § 9-1)

Sec. 7-3. Compliance; responsibility for violations.

(a) No contractor, agent for, or subdivider of property, or property owner shall cause, allow or permit any general regrading, extracting and removing of earth products, or other excavating except in conformity with this chapter.

(b) For each violation of the provisions of this chapter the owner, general agent or contractor of

a building on the premises on which the violation exists, and the owner, general agent, contractor, lessee or tenant of any part of the premises in which part of the violation has been committed or exists, and the general agent, architect, engineer, surveyor, building contractor or any other person who knows, permits, takes part or assists in any such violation, shall be punished as provided in section 1-7.

(Code 1966, §§ 9-3, 9-9(A))

Sec. 7-4. Enforcement officer.

The town engineer is designated as the administrative and enforcement officer for matters covered by this chapter.

(Code 1966, § 9-9(B))

Sec. 7-5. General exceptions.

(a) Nothing contained in this chapter shall require a person to obtain a general regrading and excavation permit for or prevent a person from moving topsoil from one (1) part of his lands to another part of the same premises when such moving is necessary as an accessory use or is made for the purpose of farming or improving the property.

(b) Exceptions or waiver of requirements established by this chapter may be approved by the town board upon recommendation by the town engineer.

(c) Persons who have made excavations prior to the effective date of the local law from which this chapter is derived shall install fences as required by this local law around such excavations within thirty (30) days after such date. Such persons shall not be required otherwise to bring such prior excavations into conformity with this chapter provided that they make no excavations after such date within preexisting excavations and that all subsequent excavations are at least twenty (20) feet from such preexisting excavations. Except to the extent that the town board authorizes exceptions or imposes other conditions, in order to make additional excavations within preexisting excavations, such preexisting excavations shall be made to conform to this chapter. Applications for such exceptions or other conditions shall be made to the town board within thirty (30) days

of such effective date (unless the town board waives or extends the thirty-day requirement). In addition to following the procedure set forth elsewhere in this chapter, such applications shall indicate the provisions of this chapter from which an exception is sought, the hardships which will result to them if variance from this chapter is not allowed, whether they can partially comply with such provisions and the nature and extent of such partial compliance or of other steps which are feasible for them to take in furtherance of the purposes and intent of this chapter. The filing of such application shall permit such persons to continue their activities in the manner they have proposed in their application until the application has been heard and determined; except that if the application alleges that a proposed method of operation would not be feasible if conducted only until such determination, the town engineer or the town board may waive compliance therewith; and also, except that the town board may terminate such continuing nonconforming operations if it finds that the applicant has failed to make good-faith efforts to operate in compliance with his proposal, or fails to promptly prosecute his application or otherwise fails to act in good faith, or if the public safety is endangered.

(Code 1966, § 9-10)

Sec. 7-6. Permitted districts.

Excavations shall be a permitted use in all districts as outlined by section 24-126 subject to all of the provisions of this Code.

(Code 1966, § 9-11)

Secs. 7-7—7-20. Reserved.

ARTICLE II. PERMIT

Sec. 7-21. Required.

No contractor, agent for, or subdivider of property, or property owner shall cause, allow or permit any general regrading, extracting and removing of earth products, or other excavating without a permit issued under this article.

(Code 1966, § 9-3)

Sec. 7-22. Application.

(a) The standard application form for the permit required by this article will be available at the town engineer's office. To obtain a permit the following information must be submitted:

- (1) A duly acknowledged notarized consent in writing of the owner of the premises, including his address.
- (2) A certificate from the receiver of taxes of the town and the county treasurer showing payment of all taxes or assessments to date against the property described in the application.
- (3) A certified estimate, prepared by a professional engineer or land surveyor licensed in the state, showing the total number of cubic yards of material to be generally regraded, excavated or removed from the property during each of the described stages of the proposed operation and time schedule.
- (4) A drawing at a scale of one hundred (100) feet to an inch or larger on a sheet not larger than thirty-six (36) by forty-eight (48) inches prepared by a professional engineer or land surveyor licensed in the state showing the following information:
 - a. The location and survey data of the premises where it is proposed to generally regrade, excavate or remove earth products.
 - b. All streets adjoining and within two hundred (200) feet of the premises.
 - c. All existing buildings or structures on the premises or within two hundred (200) feet of the premises.
 - d. Existing and proposed elevations at each described stage in the proposed operation for the premises and all land within two hundred (200) feet of its boundaries, shown on a horizontal grid system with a fifty-foot interval, and also on a cross section derived from that grid system. Additional elevations shall be shown at each break in the grades and along the centerline of all adjoining streets.
 - e. Present and proposed surface water drainage and natural drainage features.

- f. A key map at the scale of six hundred (600) feet to one (1) inch indicating the relationship to the highway pattern, school and town boundaries and zoning districts.
- g. A certification by a duly licensed professional engineer or land surveyor in the state that the existing grades and elevations are based on an actual field survey.

(b) The town engineer may require additional data or waive requirements in appropriate cases. (Code 1966, § 9-4)

Sec. 7-23. Permit procedure.

(a) *General procedure.* The permit procedure for any person who proposes to remove earth products (topsoil, loam, sand, gravel, fill, etc.), or any person, other than a subdivider, who proposes to do general regrading, extracting of earth products, or other excavating, shall include the following:

- (1) The applicant discusses the proposed project and application with the town engineer.
- (2) The applicant files with the town engineer the standard application form and required supplementary documents and drawings, in triplicate, and the application fee.
- (3) The town engineer prepares a report with recommendation to town board for action including performance bond estimate and necessary permit fee, and further advising the town clerk that application is ready for town board public hearing.
- (4) The town clerk advertises the town board public hearing and place subject on the town board agenda.
- (5) The town board holds public hearing, reviews town engineer's report and recommendation and comes to decision.
- (6) Upon approval, the town board authorizes the town engineer to issue general regrading and excavation permit and establish the amount of performance bond and liability insurance.

- (7) The applicant files a performance bond and liability insurance in triplicate with the town engineer.
- (8) The town engineer sends the performance bond and liability insurance to the town attorney for approval.
- (9) The town attorney, when in proper form, approves performance bond and liability insurance and sends one (1) copy each to the town clerk and town engineer.
- (10) The applicant pays any required permit fee to the town engineer.
- (11) The town engineer issues the permit.

(b) *Special procedure for subdividers.* Any subdivider who proposes to do general regrading work shall be required to comply with the technical provisions of this chapter. In addition:

- (1) The planning board advises subdividers of need for general regrading project and the area covered by such regrading on approval of preliminary layout.
- (2) The subdivider certifies that his proposed plat indicates no need for processing under the provisions of this chapter with exception of those areas for which a general regrading plan or an application for removal of earth products has been submitted, and, further, with the exception of regrading necessary for the following:
 - a. Construction of roads generally following the natural grade of the right-of-way and providing for adequate drainage of the immediately abutting lots.
 - b. Alteration of slopes for the protection of foundation or general lot drainage, provided that the slope of the finished grade is not greater than a two (2) percent slope.
 - c. Construction of a recharge basin.
- (3) The subdivider submits a general regrading plan as required by the provisions of this chapter prior to any final plat procedure.
- (4) The town engineer reviews general regrading plan and recommends action to planning board.

- (5) The planning board considers for approval the general regrading plan prior to any final plat approval for the subdivision. A public hearing before the town board and action by the town board is not required. The cost of providing and seeding the estimated quantity of topsoil, if any, required by the subdivision regulations of the town for the site shall be included in a performance bond which shall be filed by the subdivider as generally required for public improvements. No additional liability insurance over that required in the subdivision regulations shall be required.

- (6) The subdivider submits prior to release of bond a certification by a duly licensed professional engineer or land surveyor in the state and elevations of buildings are as shown on the general regrading plan approved by the planning board.

(Code 1966, § 9-3)

Sec. 7-24. Performance bond.

(a) The applicant for the permit required by this article and the owner shall execute a performance bond in the amount established by the town board, but not less than five thousand dollars (\$5,000.00) with a surety company covering all the conditions stipulated by the town, and also guaranteeing the repair of any town roads damaged during the execution of the project. The bond shall be processed as provided for in section 7-23.

(b) The bond shall remain in full force and effect until a certificate of completion has been issued by the town engineer, certifying to the fact that all provisions of this chapter and conditions of the permit have been fully complied with. Application for the certificate shall be made by the applicant, owner, lessee or his agent on standard forms provided by the town clerk and shall be accompanied by a certification by a duly licensed professional engineer or land surveyor of the state stating:

- (1) The property has been brought to the finished grade elevation as shown on the approved drawing.

- (2) There is not less than six (6) inches of topsoil of a quality native to the site.
- (3) The area has been seeded as provided for in section 7-50.

(c) In lieu of a bond, a cash deposit or deposit of negotiable securities may be made with the supervisor of the town.

(d) The bond shall be in default if not released by the town board by the time the permit expires. (Code 1966, § 9-6)

Sec. 7-25. Liability insurance.

(a) The applicant for the permit required by this article and the owner shall execute a public liability insurance policy insuring the town and themselves and covering the complete project, with limits as follows:

- (1) For death or injury to any one (1) person, five hundred thousand dollars (\$500,000.00).
- (2) For death or personal injury to two (2) or more persons arising out of one (1) occurrence, one million dollars (\$1,000,000.00).
- (3) For damage or destruction of property, one hundred thousand dollars (\$100,000.00).

(b) The insurance shall continue in force until the required performance bond has been released. Such insurance shall be processed as provided in section 7-23. (Code 1966, § 9-7)

Sec. 7-26. Fees.

(a) *Application fees.* The application fee shall be paid to the town engineer on filing an application pursuant to this article. The fee shall cover the costs of processing and advertising and therefore shall not be refunded. The application fee shall be as follows:

- (1) For projects other than those of topsoil stripping and/or removal, two hundred dollars (\$200.00).
- (2) For topsoil stripping and/or removal projects, twenty-five dollars (\$25.00).

(b) *Permit fees.* The permit fee shall be paid to the town engineer prior to the issuance of the

general regrading and excavating permit. It shall cover only such work as is proposed during the life of the permit. The permit fee shall be as follows:

- (1) For projects other than those of topsoil removal, one cent (\$0.01) per cubic yard in excess of the first twenty thousand (20,000) cubic yards.
- (2) For topsoil removal projects, twenty-five dollars (\$25.00) for each five thousand (5,000) cubic yards or parts thereof after the first five thousand (5,000) cubic yards.

(Code 1966, § 9-8(B), (C))

Sec. 7-27. Expiration.

(a) General grading and excavating permits other than those for topsoil stripping and subsequent removal shall expire by limitation one (1) year from the date of issuance unless extended by the town board.

(b) General grading and excavating permits for topsoil stripping and subsequent removal shall expire by limitation sixty (60) days from the date of issuance unless extended by the town board. No such permit shall be granted for more than four (4) acres of land in any one (1) tract until full compliance with this chapter is had under the existing permit or permits for that tract, except for the provisions of section 7-50 with regard to preparation of the ground and seeding. No permit shall be valid except between April 1 and October 1 of any year. (Code 1966, § 9-8(A))

Sec. 7-28. Renewal.

(a) The renewal of an expired permit for topsoil stripping and removal without change in the extent of the work may be approved by the town board.

(b) The renewal of an expired permit for projects other than topsoil stripping and/or removal without change in the general plan of the work, may be approved by the town board.

(c) The renewal of any permit which extends the scope of the work shall be processed as a new application upon payment of a new application

fee, and such additional permit fees as are required to cover the additional work shall become payable after approval.

(Code 1966, § 9-8(B))

Secs. 7-29—7-40. Reserved.

ARTICLE III. TECHNICAL STANDARDS

Sec. 7-41. Scope.

This article applies to general regrading, extracting and removing of earth products and other excavating.

Sec. 7-42. Grading and rehabilitation plan.

No excavation shall be permitted without an adequate plan for finished grading and general rehabilitation of the area consistent with the declared policy of the town as found in section 7-2. Such finished grading and general rehabilitation shall be covered by the performance bond.

(Code 1966, § 9-5(A)(6))

Sec. 7-43. Location restricted.

No excavation shall be located within twenty (20) feet of any property line or within a required yard as established in chapter 24.

(Code 1966, § 9-5(A)(1))

Sec. 7-44. Manner of termination.

All excavating, extraction, grading and regrading shall terminate not less than one (1) foot above the highest known level of the water table of the premises; and the bottom of an excavation shall not be below the established grade at the property boundaries unless the sidewalks have a natural stabilized slope, but in no case greater than one (1) vertical on two (2) horizontal, or in special cases by retaining structures, but in any case the town engineer shall require a standard specified in good practice.

(Code 1966, § 9-5(A)(2))

Sec. 7-45. Fences, gates.

Before any excavating of a hole or pit is done, the area to be excavated shall be enclosed by a

six-foot-high mesh fence and gate. The gate shall be securely locked except when actually in use. Side-hill cuts or other regrading operations which are generally above road levels which are not pit operations below the level of surrounding streets shall be enclosed before excavation by a six-foot-high wire-mesh fence and gate. The gate shall be securely locked except when in actual use. The fence shall consist of a four-foot-high wire-mesh fence on posts complete with No 7 coil-spring brace wire top and bottom, plus three (3) bottom ties per panel. The three (3) tie points per panel at the bottom of the wire mesh shall be firmly anchored into the ground by means of five-sixteenths-inch galvanized steel rods, fifteen (15) inches long, clinched to the fabric and anchored in not less than one (1) cubic foot of concrete per tie. All other detailed specifications shall be in accordance with those provided for fenced areas in the subdivision regulations of the town.

(Code 1966, § 9-5(A)(3))

Sec. 7-46. Air pollution control.

Adequate provisions shall be made at the site of each excavation within the town for the prevention of flying dust and other types of air pollution.

(Code 1966, § 9-5(A)(4))

Sec. 7-47. Conformity with zoning.

No use of land, structures or plant equipment shall be contrary to the provisions of chapter 24.

(Code 1966, § 9-5(A)(5))

Sec. 7-48. Topsoil stripping.

(a) No stripping or removal of topsoil shall be made within ten (10) feet of any property line.

(b) The collection and storage upon the property of the original topsoil to permit general regrading and excavation work shall be so carried out that it shall not be buried or mixed with material of inferior quality.

(c) When topsoil has been stripped, collected and stored or removed from the property, there shall be left, or replaced, not less than six (6) inches of topsoil upon the surface of the land.

(d) Dust-down, or its equal, shall be spread to prevent dust from flying.

(e) No topsoil shall be stripped between October 1 and April 1 of the following year.

(f) All areas from which topsoil is stripped shall during the period between August 20 and October 1, inclusive, be reseeded, as provided in section 7-50, except when the stripping is preliminary to general regrading or excavating or as provided in section 7-5.
(Code 1966, § 9-5(B))

Sec. 7-49. Surface water drainage.

(a) No stormwater runoff or natural drainage water shall be so diverted as to overload existing drainage systems, or create flooding or the need for additional drainage structures on other private properties or public lands.

(b) Where necessary, the required drawing shall indicate adequate drainage structures to carry off and store or discharge the stormwater runoff and natural drainage water which originates not only within the property boundaries but also that which originates beyond the property boundaries. Such structures shall be constructed according to the specifications of the town engineer.
(Code 1966, § 9-5(C))

Sec. 7-50. Finished grading and general rehabilitation.

(a) After completion of excavating or stripping, the property shall be finish-graded with a surface layer of not less than six (6) inches of topsoil of a quality native to the site.

(b) The finished grade shall promote and be consistent with the declared policy of the town found in section 7-2.

(c) No excavation shall be made either below or beyond the finished grades indicated on the site plan approved by the town engineer. Exceptions to this subsection over limited areas may be recommended by the town engineer for approval by the town board in the event that the type and technique of backfill is acceptable to the town engineer.

(d) The finished grade shall form an appropriate part of the natural drainage area or some positive drainage system.

(e) During the period between August 20 and October 1 inclusive, all finish-grade areas shall be prepared into a loose level seed bed, limed, fertilized and seeded in the following steps or in accordance with good landscape practice:

- (1) Apply ground limestone at the rate of one (1) ton per acre.
- (2) Apply 5-10-5 fertilizer at the rate of six hundred (600) pounds per acre.
- (3) Disc area to work limestone and fertilizer into the soil to a depth of at least three (3) inches.
- (4) Smooth area with a smoothing harrow.
- (5) Sow the following seed mixture at the rate of one hundred (100) pounds per acre:

	<i>Pounds</i>
Timothy	30
Perennial rye grass	30
Kentucky blue grass	25
Red top	10
Alsike clover	4
Wild white clover	1
Total	100

- (6) Brush in seed lightly.
- (7) Roll firm with ground roller.
(Code 1966, § 9-5(D))

Chapters 8–11

(RESERVED)

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