

CHAPTER XLIX

SOIL REMOVAL BY-LAW

49-1 GENERAL.

49-1.1 Permit to Remove Required. The removal of sod, loam, soil, sand, gravel, or stone (herein referred to as material) from any land in Topsfield not in public use is hereby prohibited except as allowed by issuance of a permit under the provisions of this By-Law.

49-1.2 Violations; Penalty Established.

a. For violation of this section or Section 49-4 of this By-Law, the penalty shall be fifty (\$50.00) dollars for the first offense, one hundred (\$100.00) dollars for the second offense, and two hundred (\$200.00) dollars for each subsequent offense. Under this By-Law, each individual truckload removed will be considered a violation.

b. Topsoil will be retained on the property and re-spread by the property owner.

c. When, in the opinion of the Soil Removal Board, removal of topsoil from the property is necessary, a special permit conforming with all provisions of this By-Law may be issued, provided that such removal is to some other location within the Town.

49-2 SOIL REMOVAL BOARD.

Exclusive jurisdiction to issue permits shall be in a Board known as the Soil Removal Board (herein referred to as the Board), the membership of which shall consist of three (3) members appointed by the Board of Selectmen for a period of one (1) year each; one (1) member from the Zoning Board of Appeals; one (1) member from the Conservation Commission; and one (1) member from the Planning Board

49-3 PROCEDURES.

a. To be considered for such permit, the applicant shall present to the Soil Removal Board the following items:

1. A subdivision plan approved by the Planning Board, or other plan showing ultimate use of the land conforming with the current Zoning By-Laws. Desirability as well as technical feasibility of such use of the land shall be considered in approval or disapproval of the plan.

2. A topographic chart in five (5) foot elevation increments indicating existing contours and proposed final contours.

3. A study and report indicating the effect of the proposed material removal on water tables and the effect of the resulting changes in water runoff on the height of all encompassed, bordering and downstream surface water. Effect on both the lowest and highest water levels occurring during the year shall be considered by this study. This report shall be reviewed by the Soil Conservation Service of the Essex County Conservation District or other authority acceptable to the Board and shall be submitted to the Board along with the written recommendations of the reviewing agency, such recommendations to be made a part of the records of the Board. This requirement shall apply only when the working area, when combined with any previously worked area on the premises, exceeds one (1) acre.

4. A complete list of the names and addresses of all current abutters of the property where such removal is proposed.

5. The names of all contractors authorized by the owner to remove material from the property.

6. The proposed entrance and egress from the property and routes within the Town.

b. No permit shall be issued until the above requirements in Section 49-3 a.1-6. are met.

c. In the event that the above information is shown to be inaccurate or incomplete, the permit shall be suspended until all provisions have been met.

d. Prior to issuance of any permit, a public hearing shall be held. Before such public hearing, the applicant shall file all the above required information with the Board, which documents shall be a public record. Written notice of the public hearing shall be given each abutter, the Conservation Commission, and the Planning Board. Notice shall be advertised in the newspaper of widest circulation in Topsfield at least ten (10) days before the hearing, with expenses to be borne by the applicant.

For purposes of determining abutters under this By-Law, all contiguous land registered under names of individuals, corporations or trusts having common interest shall be considered as a single parcel. All persons owning land having at least one (1) common boundary (including roads) with such single parcel shall be considered as abutters for purposes of this Bylaw.

49-4 SAFEGUARDS.

The Board shall issue such permits for a period not to exceed one (1) year only upon conditions imposed, which in its discretion and judgment in each particular case, are especially designed to prevent personal injury and to safeguard the surrounding district and the Town against possible permanent and temporary injury to values in the district during or after operations are completed or caused by methods of handling such material at the site or caused by transporting such material through the Town. As minimum requirements, permits shall require that:

a. The following buffer areas be left in their natural state on the applicant's property during the life of the permit. All areas within:

1. Three hundred (300) feet of any street line;
2. Two hundred (200) feet of any other boundary line;
3. Six hundred (600) feet of any occupied dwelling.

Reduction in the width of buffers above is allowed, provided that written consent of the affected abutters and/or occupants and the written approval of the Planning Board and/or the Conservation Commission is first obtained and filed with the Board.

Once such buffer strip has been established, no removal of trees or other natural screening within such buffer strip shall be allowed until building construction in accordance with a duly issued building permit is started.

b. Work hours shall be limited to 7:00 a.m. to 4:30 p.m., Monday through Friday. Operation of trucks (in or out) and all machinery including, but not limited to, dozers, shovels, loaders, chain saws, shredders, screens, etc., shall be limited to these hours.

c. In material removal areas, ledge shall not be left exposed above the approved grade. Boulders and all cleared trees, stumps, and brush shall be removed, shredded or completely buried.

d. All final bankings shall be graded to a slope no steeper than one (1) foot vertical to two (2) feet horizontal.

e. Following material removal, topsoil shall be spread to a minimum depth of six (6) inches and seeded in accordance with the recommendations of the appropriate Soil District Supervisor and the County Extension Director, or their successors or other authorities acceptable to the Board. Their recommendations shall be made a part of the records of the Board.

f. No excavation shall produce standing water except as part of the final plan approved by the Planning Board and the Conservation Commission under provisions of the Wetlands Protection Act, GLc 131 ~ 40.

g. Under no circumstances and at no time shall material be removed to an elevation less than six (6) feet above the maximum water table elevation.

h. A plan showing the location of all buried trees, stumps or other material subject to subsequent compacting by decay shall be filed with the Planning Board, the Building Inspector and the Board of Health.

i. No trees, stumps or other material subject to decay shall be buried at an elevation below the maximum water table.

j. A bond shall be posted with the Town Clerk and a covenant approved by the Town Counsel, with penal sum and surety satisfactory to the Soil Removal Board, conditioned upon the faithful performance by the applicant of the conditions of the permit. Such bond shall not be less than two thousand (\$2,000.00) dollars per acre of working area, i.e., any area in condition other than its natural state or reconditioned state in accordance with c, d. and e. above. Such bond money, if forfeited, shall be used to restore the property as required by this By-Law.

k. The working area shall not exceed five (5) acres at any given time.

49-5 NOTICE OF VIOLATION; HEARING; REVOCATION OF PERMIT.

a. Upon verbal or written notification of violation of any conditions of the permit or of this By-Law to any member of the Board or to any member of the Topsfield Police Department, such member shall immediately investigate such claim of violation. If, in the opinion of the member or officer so notified, this or any other violation has been committed, the member shall be obligated and empowered to order immediate termination of material excavation and all related activity pending a formal hearing.

b. The Board shall, after due hearing and proof of violation of any term of the permit or this By-Law, revoke the permit. If said violation involves removal of material from the premises, all material shall be returned to proper grade or the penalties defined in subsection 49-1.2 of this By-Law shall be levied. If the infraction involves violation of the natural buffer areas, material and loam shall be replaced to the natural buffer areas, and trees destroyed shall be replaced with suitable trees of the size, type and spacing approved by the Conservation Commission. If all corrections cannot or are not made within a reasonable time stipulated by the Board, the bond will be forfeited and the penal sum provided therein paid to the Town.

c. This bylaw may be enforced by the Soil Removal Board, its agent, or any Police Officer of the Town of Topsfield, by any available means in law or equity, including but not limited to

enforcement by non-criminal disposition pursuant to M.G.L. Chapter 40, §21D. Each day a violation exists shall constitute a separate violation. When enforced through non-criminal disposition, unless otherwise specifically provided for by bylaw, rule or regulation, the penalties shall be as follows:

First violation:	\$25.00
Second violation:	\$50.00
Third violation:	\$100.00
Fourth and subsequent violations:	\$200.00

(Art. 30, 5/4/2010)

49-6 EXCEPTIONS.

a. The provisions of this By-Law do not apply to removal of sand, gravel or stone:

1. Solely for the purposes of construction of foundations for buildings and other allowable structures for which building permits have been issued and for which the plot plan required by the Town Building Code for issuance of a building permit has been filed with the Board; such plan to contain not less than to scale size and location of all new construction and all existing structures on the site, distance from lot lines and the established street grades, and which shall be drawn in accordance with an accurate boundary line survey.

2. For construction on the premises of roads for which plans have been approved by the Planning Board and for which plans have been filed with the Board.

b. At any time that the Board determines that material removal is not solely for purposes of Sections 49-6 paragraph a. or 49-6 paragraph a.2, the Board shall require that a permit, in accordance with this By-Law, be obtained for any further removal and initial deviation from the requirements of this By-Law shall be treated under Section 49-5 Notice of Violation; Hearing; Revocation of Permit.

c. When said permit involves a working area of less than one (1) acre and also the removal of less than five hundred (500) cubic yards of material, the Board may waive the requirements of Section 49-3 paragraphs a., 2. and a., 3. and/or Section 49-4 paragraph j.

49-7 WAIVER

Any part of this by-law may be waived by the Soil Removal Board, with conditions, upon findings of good cause shown and written concurrences of the Planning Board, Zoning Board of Appeals and Conservation Commission as to such findings.

(Art.7, 1/25/54; Art. 2,3 & 4, 11/15/54; Art. 40, 3/20/72; Art. 25, 5/1/07)