

Chapter 260: SOIL REMOVAL

[HISTORY: Adopted by the Township Council of the Township of Livingston 11-5-1979 as Ch. 24 of the 1979 Revised General Ordinances. Amendments noted where applicable.]

GENERAL REFERENCES

Land use — See Ch. 170.

§ 260-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

DEVELOPER — Any person who, either directly or through an agent or independent contractor, engages or intends to engage in land subdivision or in the construction of two or more dwelling houses, business or industrial buildings for the purpose of sale to or occupancy by another person or persons.

EXCAVATOR — Any person engaged in the moving, removal or excavation of soil or topsoil from, in or upon any land.

LAND — Any land in the Township in excess of one acre in area.

MOVE — To dig; excavate; remove; deposit; place; fill; grade, regrade, level, or otherwise alter or change the location or contour; transport, or supply. This term shall not be construed to include plowing, spading, cultivation, harrowing or discing of soil, or any other operation usually and ordinarily associated with the tilling of soil for agricultural or horticultural purposes.

OWNER — Any person having title to any land or having such other interest or estate therein as will permit exercise of effective possession thereof or dominion thereover.

SOIL — Any earth, sand, clay, loam, gravel, humus, rock or dirt, without regard to the presence or absence therein of organic matter.

TOPSOIL — Soil that, in its natural state, which constitutes the top layer of earth, and is composed of 2% or more, by weight, of organic matter and has the ability to support vegetation.

§ 260-2. Permit required.

- A. No owner, developer, excavator or other person shall move or cause, allow, permit or suffer to be moved, any soil from any land in the Township, until a soil permit shall have been issued as hereafter provided.
- B. No owner, developer, excavator or other person shall cut down, or cause, allow, permit or suffer to be cut down, any bank of soil anywhere in the Township, until a soil permit shall have been issued as hereinafter provided.

§ 260-3. Application for permit.

The application procedure for the issuance of a soil permit shall be as follows:

- A. On a form supplied by the Township Engineer, the applicant shall set forth in duplicate:
 - (1) The identity and address of the applicant;
 - (2) The description of the land in question;
 - (3) The identity and address of the owner of the land: If the owner shall signify his consent to the application by signing it along with the applicant;
 - (4) The purpose or reason for moving, removing, or filling the soil;
 - (5) The kind and quantity, in cubic yards, of soil to be moved;
 - (6) In case of removal, the place to which the soil is to be removed and the kind and quantity of soil to be removed;
 - (7) The proposed dates of the commencement and completion of the work;
 - (8) The type and number of the machines or other equipment to be used in said operation, and the daily

starting and finishing time during which machines are to be operated; what fences, barriers or other structures are to be provided to keep children and others having no business on the land from being thereon.

- B. Accompanying the application there shall be filed a topographical map prepared and certified by a licensed civil engineer and land surveyor, in duplicate, showing:
- (1) The present grade on a one-hundred-foot-foot grid layout;
 - (2) The proposed grades of said points when the work has been completed;
 - (3) The quantity, in cubic yards, of the soil involved in the work;
 - (4) The grades of all abutting streets and lands;
 - (5) Proposed slopes and lateral supports;
 - (6) Present and proposed surface water drainage;
 - (7) The location of all trees having a diameter of six inches or more at the base.
- C. In addition to the above requirements of Subsections A and B of this section, the applicant shall furnish such other pertinent data as the Township Engineer may require after he has had an opportunity to examine the proposed project, including the extent (in cubic yards) of topsoil to be removed and whether such topsoil is to be replaced on the site in question or moved to some other place, and if so, to what other place.

§ 260-4. Permit fee; refund.

- A. With the application, there shall be submitted a permit fee of \$10.
- B. In the event of a refusal of such soil permit, 1/2 of the permit fee shall be returned to the applicant and the remaining 1/2 shall be retained by the Township to partially cover the expense of the investigation of the project by the Township Engineer prior to his refusal of the permit.

§ 260-5. Factors to be considered in reviewing application.

In considering the application, the Township Engineer shall be guided by, and shall take into consideration, the following factors:

- A. Soil erosion by wind and water;
- B. Surface and subsurface water drainage;
- C. Soil fertility;
- D. Lateral support of abutting streets and lands;
- E. Public health and safety;
- F. Land values and uses;
- G. Preservation of trees and shrubbery;
- H. Prevention of sharp declivities, pits and depressions:
- I. Such other factors as may bear upon or relate to the coordinated, adjusted and harmonious physical development of the Township.

§ 260-6. Issuance or denial of permit; appeal.

- A. The Township Engineer shall grant or refuse to grant the requested permit within 10 days from the date of the filing of the application.
- B. In the event of refusal, the applicant may, within five days thereafter, appeal said refusal to the Council. The Council, after investigation and study of the project, shall afford the applicant a public hearing at a regular meeting of the Council to be held not less than three weeks after the appeal of the applicant has been filed with the Township Clerk.
- C. No refusal of the Township Engineer shall be reversed by the Council except upon the vote of at least 2/3 of

its entire membership.

- D. The decision of the Council on any such appeal shall be immediately communicated to the applicant by letter, at the address shown on the application, and to the Township Engineer.
- E. In the event the Council decision is to cause the permit to be issued, the Township Engineer shall forthwith issue the permit applied for.

§ 260-7. Removal of bank; final grade.

- A. In the event the application for soil removal involves the complete removal of a bank which extends above the elevation of the surrounding lands or the elevation of a public road or street adjacent to the land or lot upon which such removal project is to take place, such removal shall be conducted in such manner as to leave the final grade of the land or lot from which the bank is to be removed no lower than the grade of the surrounding lands or of such public road or street.
- B. The final grade shall be established and maintained at a minimum of 1/2% to insure proper drainage.

§ 260-8. Partial cutting of bank.

In the event the application for soil removal involves the partial cutting down of a bank, such project shall be conducted in such manner as to leave all sides of the remaining portion of the bank at a slope of at least 1 1/2 horizontal to one vertical, if the resultant bank is less than 10 feet in height, and at least three horizontal to one vertical, if the resultant bank is 10 feet or more in height.

§ 260-9. Topsoil restrictions.

- A. Whenever any owner, developer or excavator shall move topsoil in or upon any land, provision shall be made for the storage of said topsoil within the boundary lines of said land.
- B. Except as hereinafter provided, all of the topsoil so stored shall be uniformly replaced over the entire area or surface of the land on or before the completion date set forth in the soil permit, so that the final grade or grades of said replaced topsoil shall be in accordance with the proposed final grades shown on the topographical map.
- C. No owner, developer or excavator shall remove to any point beyond the boundary lines of the land any topsoil whatsoever, unless and until topsoil not inferior in quality to that to be removed shall first have been replaced uniformly to a depth of not less than six inches when spread, or not less than four inches when packed or settled, measured from the proposed final grades as shown on the topographical map, over the entire surface or area of the land, excepting only such portions thereof as shall be or shall have become, since the date of filing of said topographical map, permanently covered by a building or structure, street, pavement, curb, sidewalk, driveway or other paved area, or by any body of water or waterway. In no event shall the owner, developer or excavator remove from the land more topsoil than that comprising the surplus or excess remaining after the replacement of the topsoil as aforesaid.

§ 260-10. Safety requirements; removal of debris.

- A. Every soil removal project authorized under and pursuant to a permit issued in accordance with the provisions of this chapter shall be conducted in such manner as not to create a condition hazardous to the life or limb of persons who may go upon the property, or to the health, safety or welfare of the Township.
- B. All boulders, tree stumps and other debris shall be removed from the property.

§ 260-11. Vehicle spillage; dust preventatives.

- A. Every person who shall transport over the streets, roads or highways of the Township any soil removed from any land or lot pursuant to a soil permit issued in accordance with this chapter shall sweep, pick up and remove or cause to be swept, picked up and removed all dust, dirt and mud from the roads, streets or highways abutting such land or lot for a distance of 500 feet from the site of the project and for a distance of 500 feet from the point of delivery of such soil, if such point of delivery is located within the Township, and shall apply, or cause to be applied, to said streets, roads or highways, for the distances herein specified, a dust preventative whenever the same shall be necessary or required by the Township Engineer.

- B. In the event of the failure, neglect or refusal of any person so to sweep, pick up and remove such dust, dirt or mud, or to apply a dust preventative, as required by this section, after notification so to do by any duly authorized officer, agent or employee of the Township, the Township Engineer is hereby authorized to suspend any soil permit issued to such permit for a period of not less than three days, or to revoke the same.
- C. In the event of revocation, no soil permit shall again be issued to such person unless application therefor is made as required by § 260-2 of this chapter.

§ 260-12. Performance bond.

No soil permit shall be issued unless and until the applicant therefor shall have posted with the Township a performance bond in form and with surety acceptable to the Township, and in such amount as the Township Engineer shall determine to be reasonable depending upon the nature and extent of the work to be done, conditioned upon full and faithful performance by the principal, within the time specified in the application, of all the proposed work in accordance with the provisions of this chapter and of the soil permit issued pursuant thereto.

§ 260-13. Authorized inspections.

For the purpose of administering and enforcing this chapter, any duly authorized officer, agent or employee of the Township shall have the right to enter into and upon any lands in or upon which soil moving operations are being conducted, to examine and inspect such lands.

§ 260-14. Violations and penalties.

Any person who violates any provision of this chapter shall, upon conviction thereof, be punished by a fine not exceeding \$500, or by imprisonment for a term not exceeding 90 days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.