

## Chapter 164, SOIL DISTURBANCE

[HISTORY: Adopted by the Township Committee of the Township of Washington 5-15-1972 (Sec. 15-1 of the Revised General Ordinances); amended in its entirety 10-17-2005 by Ord. No. 38-05. Subsequent amendments noted where applicable.]

### GENERAL REFERENCES

Floodplain management -- See Ch. 92.

Open pits and trenches -- See Ch. 132.

Street openings -- See Ch. 172, Art. V.

Subdivision of land -- See Ch. 175.

### § 164-1. Title.

This chapter shall be known and may be cited as the "Soil Disturbance Ordinance of the Township of Washington."

### § 164-2. Definitions.

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

SOIL -- All unconsolidated mineral and organic material of any origin, including earth, sand, clay, loam, sediment, muck, gravel, stone, humus, rock or dirt.

SOIL DISTURBANCE -- To dig, excavate, remove, deposit, fill, grade, replace, level or otherwise alter or change the location or contour of land or to transport or supply soil.

### § 164-3. Permit/waiver required.

No person shall perform soil disturbance without first having procured a permit from the Township Committee. Any waiver to this permit requirement must be submitted in writing to the Township Committee with a detailed explanation as to why a waiver should be granted. Waiver approval shall be memorialized by resolution from the Township Committee. Soil disturbance permits shall not be required for the following:

A. Soil disturbance, other than for installation of a driveway, in connection with the construction of a building on such premises and excavation or grading incidental thereto, provided that no soil is transferred to or from the lot.

B. Soil disturbance in connection with construction for an approved subdivision or site plan, provided that the applicant submits to the Planning Board/Board of Adjustment all information required by this chapter, the performance bond required by § 164-10 and the approval resolution includes approval of soil disturbance. If an applicant/developer wishes to amend his/her approval under this provision, then the applicant shall apply to the Board that granted the original soil disturbance approval for an amended approval.

C. Soil disturbance in connection with projects on municipal land and/or rights-of-way.

D. Soil disturbance of insignificant amounts, wherein "insignificant" is defined as less than 100 cubic yards in any twelve-month period.

- E. Soil disturbance in connection with agricultural uses.
- F. Soil disturbance in connection with septic system repairs to existing building.
- G. Soil disturbance in connection with percolation tests and/or soil borings.
- H. Soil disturbance for the construction of a swimming pool for which a permit has been issued.
- I. Soil disturbance for the construction of a driveway pursuant to a permit issued in accordance with Chapter 172, Streets and Sidewalks, Article III, Driveway Construction.

§ 164-4. Filing of application; information required.

The Township Committee shall not issue a permit for the disturbance of soil unless and until the owner of the premises shall first file four copies of an application requesting such permit with the Township Clerk. The application shall include or be accompanied by the following:

- A. The name and address of the owner of the land.
- B. The lot and block numbers of the land as shown on the current Tax Map of the township.
- C. The reason for soil disturbance.
- D. The type or types of soil to be disturbed.
- E. The volume of soil of each type to be disturbed. The volume shall be in both cubic yards and in truckloads.
- F. A map or maps of premises in a scale of one inch equals 50 feet, showing the existing contour lines, the proposed contour elevations resulting from the soil disturbance and trees and vegetation on the premises before and after the proposed soil disturbance.
- G. The location of any soil to be imported to the Township, including the address, block and lot of the location and a description of the property's history and use (e.g., farmland, residential, industrial etc.)
- H. The location(s) to which any disturbed soil is to be taken. If one or more such locations are within the township, a map of each shall be provided showing the information required by Subsections B and F.
- I. The measures that will be undertaken to prevent road damage, traffic problems and the dropping of soil onto public streets or roads while in transit.
- J. The proposed dates for the commencement and completion of the work.
- K. The proposed sequence of operations indicating the time allotted to each phase.
- L. Engineering data, such as soil borings or test pits, certified by a professional engineer licensed to practice in the State of New Jersey substantiating the feasibility of any proposed soil disturbance project.
- M. Such other pertinent data as the Township Engineer may deem necessary or appropriate.
- N. Where the soil disturbance area exceeds 5,000 square feet, a soil erosion/sedimentation control approval from the Morris County Soil Conservation Service.
- O. Where soil disposal areas are located within a floodplain, a stream encroachment approval from the New Jersey Department of Environmental Protection.
- P. Certified soil analysis/test results, from a soils engineer, geologist or licensed subsurface evaluator, in accordance with the testing procedures set forth in the soil disturbance application, as well as the technical requirements for site remediation set

forth in N.J.A.C. 7:26E-2.1 and 7:26E-3.4, for all soil to be imported to the Township or to be relocated within the Township.

§ 164-5. Consideration of application.

A. Upon submission of a completed application for soil disturbance in accordance with § 164-4, the Township Clerk shall forward one copy to the Township Engineer, one copy to the Soil Consultant and one copy to the Washington Township Environmental Commission for their review.

B. In reviewing the application, the Environmental Commission, the Soil Consultant and the Township Engineer shall be guided by a general concern for the public health, safety and welfare. In addition, specific consideration shall be given to the following factors, rules and minimum standards:

- (1) The potential for soil erosion by water and wind.
- (2) The prevention of silt and sediment from entering brooks, streams, ponds, lakes, rivers and other bodies of water.
- (3) The existing drainage of the site involved and any changes in drainage patterns that may result from the establishment of new contours.
- (4) Types and fertility of the soil to be removed and the use to which it will be put.
- (5) Lateral support slopes and grades of abutting streets and lands.
- (6) Land values and uses of those properties affected directly or indirectly by the proposed disturbance of soil.
- (7) No soil disturbance for transport off site shall be done in any area within 100 feet of any residential property line, and the buffer area shall remain in its natural state.
- (8) The grade of excavated slopes shall not be steeper than 3 to 1 (three feet horizontal to one foot vertical).
- (9) The possible need for any soil disturbance excavation to be completely fenced with a six-foot-high chain-link-type fence or approved equivalent where necessary to protect the safety and welfare of the public.
- (10) No more than four acres shall be scheduled for disturbance at any time, and any previously disturbed area must be stabilized and completed to the approved proposed contours and the provisions of § 164-9 complied with before further disturbance.
- (11) Satisfactory soil test results, below the current NJDEP residential, or most stringent, soil cleanup criteria.

C. If the soil tests have not been completed, any approval will be subject to satisfactory soil test results.

§ 164-6. Public hearing on application.

A. The Township Committee shall hold a public hearing on each application for a soil disturbance permit within 30 days of its receipt by the Township Clerk.

B. No later than 30 days after the public hearing on an application, the Township Engineer and the Environmental Commission shall recommend, in writing, to the Township Committee that the permit applied for be either granted or denied. Any conditions for approval or the reasons for denial shall be included in the recommendations.

§ 164-7. Notice to owners of adjacent property.

A. The applicant shall, at least 10 days prior to the time appointed for the hearing on the application, give notice to all owners of property situated within or without the township, as shown by the most recent tax lists of the municipality, whose property or properties are shown by said lists to be located within 200 feet of the boundaries of the property which is the subject of said applications. Such notice shall be given by certified mail, return receipt requested, to the last known address of the property owner or owners, as shown by the most recent tax lists of their municipality. Where the owner is a partnership, service upon any partner as above provided shall be sufficient, and where the owners are corporations, service upon any officers, as above set forth, shall be sufficient.

B. The applicant shall, by affidavit, present satisfactory proof to the Township Committee at the time of the hearing that said notices have been duly served as aforesaid. At the hearing, any party may appear in person or by agent or by attorney.

§ 164-8. Issuance or denial of permit.

At the first regularly scheduled meeting of the Township Committee held not more than 30 days after receipt of the Township Engineer's, Township Soil Consultant's and the Environmental Commission's recommendations relative to the application for a soil removal permit, the Township Committee shall by resolution either grant or deny such application. This resolution shall set forth any conditions imposed in granting the permit or the reasons for denying the application therefore.

§ 164-9. Conduct of operations.

If a soil disturbance permit is granted, the owner or person in charge shall so conduct the operations that:

A. There shall be no sharp declivities, pits or depressions.

B. The area shall be properly leveled off, cleared of debris and graded to conform with the contour lines and grades as approved by the Township Committee.

C. All operations shall take place only between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 5:00 p.m. on Saturday.

D. The top layer of arable soil for a depth of six inches shall be set aside for retention on the premises, stabilized to prevent erosion and respread over the premises when the soil disturbance has been completed, pursuant to levels and contour lines as recommended by the Township Engineer and approved by the Township Committee, unless permission to remove such soil shall be granted by the Township Committee.

E. Grass or another cover crop approved by the Township Engineer capable of retaining and/or stabilizing soil on any surface which results from subject disturbance shall be established within a reasonable length of time. A reasonable length of time shall be considered as 60 days or less and prior to the stabilization date of October 15 established by the Soil Conservation Service. In the event that the cover crop shall fail to grow, it shall be replaced promptly until a successful growth is accomplished.

§ 164-10. Bond or letter of credit required.

A. Before any permit for soil disturbance shall be issued, the owner or applicant shall file with the Township Committee a cash bond or letter of credit in such amount as in the opinion of the Township Committee shall be sufficient to insure the faithful performance of the work to be undertaken pursuant to the permit granted according to the provisions of this chapter.

B. In no event shall the performance bond or letter of credit be in an amount less than \$1 per cubic yard of proposed disturbance or \$1,000, whichever is greater.

C. Before any performance bond or letter of credit will be released to the permittee, the authorized soil disturbance must be completed to the approved contours, and the permittee shall submit an as-built plan prepared by a professional engineer licensed to practice in the State of New Jersey.

#### § 164-11. Conformity with provisions required.

No soil disturbance shall be made under the provisions of this chapter unless a permit therefor shall have been first obtained as provided herein, and no soil disturbance shall be made except in conformity with the provisions of this chapter.

#### § 164-12. Fees.

A. Each applicant shall pay the following fees to the Clerk for the use of the Township of Washington:

(1) A filing fee of \$100 to be paid at the time of application.

(2) An escrow review fee in the amount of \$1,000 for the review of the application by the Township Soil Consultant and Township Engineer and any other professional retained by the Township in connection with the application. The balance of the escrow fee deposit, if any, shall be refunded to the applicant at the conclusion of the soil disturbance operation. The escrow fee deposit shall be administered by the Township in accordance with the requirements set forth in the Municipal Land Use Law for escrow deposits.

(3) A permit fee of \$0.10 per cubic yard of soil proposed to be disturbed, with a minimum fee of \$100, to be calculated by the Township Engineer as hereinafter provided and to be paid upon issuance of the permit, which permit shall be valid for a period of one year from date of issuance, at which time application shall be made to the Township Committee for renewal.

#### § 164-13. Violations and penalties. [Amended 4-16-2007 by Ord. No. 9-07]

Any person, firm or corporation violating any of the provisions of this chapter shall be subject, upon conviction, to the penalties provided in § 1-3 of this Code. Each and every violation or a nonconformance with this chapter or each day that any provision of this chapter shall have been violated shall be construed as a separate and distinct violation thereof.