

Chapter 52
EXCAVATIONS
With Changes Recommended by Attorney Ryan

§ 52-1. Purpose.

This Chapter is adopted to promote and protect the public good order, peace, health, safety and general welfare of the inhabitants of the town and the community and to protect and to secure their property; to protect and preserve the public roads and highways and other property of the town; and to preserve the natural contours of land within the town.

§ 52-2. Word usage; definitions.

A. Word usage.

- (1) Except where specifically defined herein, all words used in this Chapter shall carry their customary meanings.
- (2) Words used in the present tense shall include the future.
- (3) Words used in the singular, unless the context clearly indicates the contrary.
- (4) The word "shall" is always mandatory.
- (5) The word "may" is permissive.
- (6) "Building" or "structure" includes any part thereof.
- (7) The word "lot" is a portion of a "parcel".
- (8) The word "person" includes an individual person, a firm, a corporation, a limited liability company, a partnership and any other agency of voluntary action.
- (9) The phrase "used for" includes the phrases "arranged for", "designed for", "intended for", "maintained for" and "occupied for".

B. The following words and terms are specifically defined as follows:

- (1) **Cut and Fill:** An operation in which the material excavated and removed from one location is used as fill material at another location.
- (2) **Excavation:** The removal, addition of fill of earth, topsoil, subsoil or bedrock, and/or any activity which results in a change to the existing grade of any lot or parcel.
- (3) **Extractive Operation:** The activity of taking or extracting stone, gravel, clay, sod, topsoil or similar natural resource material which will be sold or used in conjunction with a business.
- (4) **Farm:** For purposes of this Chapter, a "Farm" shall be a commercial agricultural operation that is subject to filing a federal Schedule F profit and loss statement.
- (5) **Farming:** The commercial cultivation of the soil for the growing of plants, flowers or other commercial vegetative products.
- (6) **Fill:** The use of soil or other material used to raise the grade of a site area.
- (7) **Foundation:** That part of the structure of a building forming a retaining wall for the portion of the building that is below grade.
- (8) **Grade, Finished:** The elevation of the top surface of a lot or a portion thereof after excavation is completed.

- (9) **Grade, Existing:** The elevation of the top surface of the undisturbed of a lot or portion thereof prior to any excavation.
- (10) **Grade Change:** An alteration of the existing grade of any lot or parcel that results in a change in elevation of the lot or parcel.
- (11) **Grading:** Moving or relocating material on any lot or parcel.
- (12) **Gravel Pit/Quarry:** A surface excavation for extracting stone, rock, gravel, sand and similar materials.
- (13) **Landscaping:** Landscaping shall mean affecting the grade or a portion of a lot for nonstructural decorative purposes.
- (14) **Lot:** A portion of a parcel of land situate within a parcel with its boundaries defined by an approved subdivision, municipal district or public road or other division.
- (15) **Material:** Material shall mean stone, gravel, clay, sod, topsoil or similar natural material.
- (16) **Parcel:** A tract of land with its boundaries defined within the property deed. A "tract" can contain more than one "lot".
- (17) **Plot:** See "Parcel".
- (18) **Pond:** A water impoundment created by constructing a dam or embankment or by excavation, or a storm water retention basin.
- (19) **Retaining Wall:** Any wall that is higher than three (3) feet above the existing grade that is cut into an embankment or that is to be back filled and uses timbers, stones, blocks or similar containment materials.

§ 52-3 A. Permit required.

- 1. Except as provided in § 52-5, no stone, sand, gravel, topsoil, earth of any kind or other natural materials shall be moved, removed, excavated or deposited in any way from or onto any land in the town unless a permit shall first have been obtained as hereinafter provided.
- 2. Any proposed grade change that would result in additional water flow onto or from any adjoining property or onto or from a public right-of-way, or alters the course of a stream, shall require an excavation permit prior to excavation and is subject to review by the Town of Urbana Planning Board.
- 3. Any change in grade that alters the grade of a lot or parcel by a height or depth of two (2) feet and encompasses an area greater than 15% of the lot.

§ 52-3 B. Review Requirements.

- 1. All grade changes shall be performed within the established setbacks for the zoning district in which they take place as set forth in § 105-14, Area and Bulk Regulations. Any grade change encroaching upon any lot line setback shall require a variance and site plan review.

2. Commercial and private extractive operations, including but not limited to gravel pits and soil mining, shall require a Special Use Permit and shall be subject to a Site Plan Review by the Planning Board, which shall culminate in a public hearing.
3. Any change in grade that involves depositing, removing or relocating of material in excess of five hundred (500) cubic yards on any lot or parcel. Proposed projects that exceed this threshold shall be subject to a review by the Planning Board, which shall culminate in a public hearing.

§ 52-4. Application for permit; accompanying data.

- A. Before such a permit shall be issued, a written application therefor shall be filed with the Town Clerk by the owner of the land upon which the proposed moving, removing excavating or depositing is to take place. Such application shall be in duplicate, shall be signed and verified by the applicant and shall contain the following information:
 - (1) The full name of the owner of the subject property and his/her address.
 - (2) A statement of ownership of all other property in the town owned in the same name, identifying each such parcel by section, block and lot numbers as shown on the Steuben County Land and Tax Map.
 - (3) A complete description of the proposed work, including a statement of the nature and three-dimensional extent of the excavation and/or filling proposed.
 - (4) A statement whether topsoil only is to be excavated or filled or subsoil only is to be excavated or filled, or both subsoil and topsoil are to be excavated or filled.
 - (5) A statement of the total cubic yards of material proposed to be move, excavated or deposited.
 - (6) A complete statement of the proposed disposition of all material to be moved, removed or excavated and the proposed source of all material to be deposited.
 - (7) Such other information and data as the Code Enforcement Officer may require.
- B. A certificate of the Town Highway Superintendent of the Town of Urbana or his duly authorized deputy that such proposed excavating and/or filling and the proposed finished grades of the subject property will not endanger any county or town road, street or highway or any other public property.

§ 52-5. Exemptions. A permit is not required for:

- A. Landscaping or raised bed gardening providing that the raised area does not exceed three (3) feet in height and encompasses an area not to exceed fifty (50) square feet. The raised area shall not change or encroach upon any lot line setback.

- B. Excavation performed for the placement of a foundation of a structure that has received a Town of Urbana Building Permit.
- C. Gravel or material placed in a drive or walkway that does not alter the height of the existing grade at any point by a height exceed four (4) inches.
- D. The placement of topsoil or sod that does not alter the height of the existing grade at any point by a height exceeding six (6) inches.
- E. Ponds in an agricultural district.
- F. Commercial and private extractive operations in operation prior to the effective date of this Chapter.
- G. Grading not resulting in a grade change.

§ 52-6. General Requirements.

- A. For any grade changes that are undertaken within any State, County or Town municipal right-of-way, it shall be the responsibility of the property owner to obtain any required permits and/or approvals from the corresponding authority.
- B. For any grade changes that are undertaken within the Town of Urbana, it shall be the responsibility of the property owner to obtain any required permits and/or approvals from the corresponding authority.
- C. All grade changes in the Town or Urbana are subject to the provisions of the Town's Critical Slope requirements.
- D. All grade changes in the Town of Urbana are subject to all applicable provisions of FEMA Flood Plain requirements.

§ 52-7. Penalties for offense.

A violation of any of the provisions of this Chapter shall not constitute a crime, but rather a violation. Any person, upon conviction of a violation of this Chapter, shall be fined an amount not to exceed \$100.00 for the first offense and an amount not to exceed \$200.00 for the second or any subsequent offense reoccurring within a consecutive twelve month period. Additionally, such person shall be subject to imprisonment for a term not to exceed fifteen days for each offense or both such fine and imprisonment. The Court may issue a warrant for a person's arrest in the same manner as in a misdemeanor case. The continuation of any offense against the provisions of this Chapter shall constitute, for each day the offense is continued, a separate and distinct offense hereunder.

§52-8. Emergencies.

- A. Whenever the Code Enforcement Officer finds that an emergency exists which requires immediate attention to protect the public health or safety, the officer may, without notice or hearing, issue an order reciting the existence of such emergency and requiring that such action be taken as the officer deems necessary to meet the emergency. Notwithstanding any other provisions of this Chapter, such order shall take effect immediately.
- B. Any person to whom such order is directed shall immediately, or shall, within 24 hours of

the issuance or the order, comply therewith.

§ 51-9. Repealer.

All ordinances, local laws or resolutions or parts of ordinances, local laws or resolutions of the Town of Urbana which are inconsistent with the provisions of this Chapter are hereby repealed; provided, however, that such repeal shall be only to the extent of such inconsistency and that, in all respects, this Chapter shall be in addition to the other legislation regulating and governing the subject matter covered by this Chapter and the provision which establishes the highest standard shall prevail. More specifically, Chapter 52, adopted by the Town Board of the Town of Urbana November 14, 1983 and as thereafter amended, is hereby repealed in its entirety.

§ 52-10. Severability.

If any section, paragraph, subsection or provision of this Chapter shall be adjudged invalid or held unconstitutional, the same shall not affect the validity of this Chapter as a whole, or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

§ 52-11. When effective.

This Chapter shall take effect immediately upon the filing in the office of the Secretary of State of the State of New York.

** The Permit Application will be a separate application from our master application. It will be designed to help the applicant determine what the local requirements are and provide information regarding other regulatory agencies that oversee the "disturbance" of soils.

