

TOWN OF TUFTONBORO

ZONING BALLOT

March 14, 2017

1. Are you in favor of the following amendment to the Zoning Ordinance as recommended by the Planning Board?

Amend Section 1.1 DEFINITIONS as follows:

Add **Residence: The place in which a person lives or resides; dwelling place; a structure serving as a dwelling or home.** (definition of Residence to become Section 1.1.43 and all following numbering to change accordingly)

YES

321

NO

42

2. Are you in favor of the following amendment to the Zoning Ordinance as recommended by the Planning Board?

Amend Section 10.4 as follows:

~~Residential tenting and recreational vehicles will be allowed provided that the following requirements are met.~~ **In order to protect the health, safety, and general welfare of the community, occupancy of residential tents and recreational vehicles will be allowed provided that the following requirements are met. The Code Enforcement Officer is designated as the authority for enforcement of this ordinance.**

~~10.4.1 Limitations: Such occupancy of either tents or recreational vehicles at any residence shall not exceed a total of four contiguous weeks per year. No more than one such unit may be occupied in connection with any residence.~~ **Such occupancy of either tents or recreational vehicles on any lot requires one of the following conditions to be met:**

- A. The lot has toilet facilities connected to an onsite operational subsurface septic waste system.**
- B. Temporary maintained toilet facilities are provided on the lot at all times there is occupancy in either a tent or recreational vehicle.**
- C. In case of an RV with a septic holding tank, proof of proper disposal of septic waste at a State licensed facility must be available on site at all times and presented to the Code Enforcement Officer upon request.**

~~10.4.2 Location: Any tent or recreational vehicle temporarily placed upon a residential Lot shall be located as inconspicuously as possible so as to minimize to the greatest degree possible the unit's visibility from public roads or neighboring lands. Children's tents, used by the minor children of the occupants of the residence, are exempt from this paragraph.~~ **Any tent or recreational vehicle temporarily located upon a lot shall be located as inconspicuously as possible so as to minimize to the greatest extent possible the unit's visibility from public roads or neighboring lands. Children's tents, used by the minor children of the occupants of a residence, are exempt from this paragraph.**

YES

273

NO

90

3. Are you in favor of the following amendment to the Zoning Ordinance as recommended by the Planning Board?

Amend Sections 5.4.2 and 5.4.3 as follows:

5.4.2 Any Conversion of an existing Building or Structure shall require a permit from the Codes Enforcement officer. Before a Building permit may be issued, one of the following conditions must be met:

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~~A. The application shall supply a certificate of inspection from a qualified professional (e.g. Registered Civil or Sanitary Engineer or licensed Septic System Designer) certifying that the existing septic system is adequate for the proposed use, or~~

~~B.~~ **A.** The applicant must demonstrate that site conditions and land area are suitable and adequate for the installation of a septic system approved by Water Supply and Pollution Control Division (WSPCD) *for the proposed use in accordance with Env-Wq 1004.18.*

5.4.3 No building permit for Expansion of an existing Structure or construction of an accessory building on a lot one acre in size or less shall be granted without proof that the lot can accommodate a sewage disposal system built to current standards of NH Dept. of Environmental Services Water Supply & Pollution Control Division *for the proposed use in accordance with Env-Wq 1004.18.*

YES

278

NO

61

4. Are you in favor of the following amendment to the Zoning Ordinance as recommended by the Planning Board?

Amend Section 17.8.3 as follows:

17.8.3 Variances: The Board of Adjustment shall hear and decide requests to vary the terms of this Ordinance. At the hearing on the application, the applicant shall present testimony and other evidence to establish that all five conditions for a Variance have been met. The decision of the Board shall be based on the evidence presented at the hearing, not on allegations contained in the application. Abutters and residents shall be entitled to present testimony and other evidence to establish that the applicant either has or has not met all five of the listed conditions below.

~~A. No Variance shall be granted unless all of the following conditions are met:~~

- ~~1. A hardship must exist which is inherent in the land in question and which is not shared in common with other parcels of land in the District.~~
- ~~2. The spirit and intent of the Ordinance will not be broken by granting the Variance.~~
- ~~3. The granting of the Variance will not adversely affect other property in the District.~~
- ~~4. Not to grant the Variance would result in injustice.~~
- ~~5. Granting the Variance would not be contrary to the public interest.~~

A. No Variance shall be granted unless all of the following conditions are met:

- 1. Granting the Variance would not be contrary to the public interest.**
- 2. If the Variance were granted, the spirit of the Ordinance would be observed.**
- 3. Granting the Variance would do substantial justice.**
- 4. If the Variance were granted, the values of the surrounding properties would not be diminished.**
- 5. Unnecessary Hardship**

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship.

1. There is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property.

2. The proposed use is a reasonable one.

B. If the criteria in subparagraph A has not been established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a Variance is therefore necessary to enable a reasonable use of it.

YES 264

NO 65

5. Are you in favor of the following amendment to the Zoning Ordinance as recommended by the Planning Board?

Amend Section 19.2 as follows:
Any person, firm or corporation violating any of the provisions of this Ordinance shall for each violation, upon conviction thereof, ~~pay a fine of not more than One Hundred (\$100.00) dollars~~ **pay a designated fine as stipulated in RSA 676:17 for each day such violation shall exist.**

YES 253

NO 78

6. Are you in favor of the following amendment to the Zoning Ordinance as recommended by the Planning Board?

Amend Section XI as follows (all sections to be renumbered thereafter):

SECTION XI: LOCAL REGULATION OF EXCAVATION

11.1 AUTHORITY

This Ordinance is enacted pursuant to the authority granted to the Town of Tuftonboro to regulate earth moving activities within its boundaries under the provisions of Chapter 155-E of the N. H. Revised Statutes Annotated.

11.2 PURPOSES

The purpose of this Section ~~are to provide for the control of excavation of sand, clay, sod, loam, gravel or rock products and to provide an orderly procedure for such removal to take place while protecting the health, safety, and general welfare of the community.~~ **is to provide for reasonable opportunities for excavation; is to provide for the regulation of excavation of earth or rock products, minimize safety hazards, which can be created by open excavations; ensure that the public health and welfare will be safeguarded, protect natural resources and the environment. and maintain the aesthetic features of the Town.**

11.3 DEFINITIONS

For the purposes of this Section XI: Local Regulation of Excavation, the following definitions shall apply:

- A. **ABUTTER** means (1) any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration. (2) For the purposes of receiving testimony only, and not for purposes of notification, the term “abutter” shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration. (3) In the case of an abutting property being under a condominium or other collective form of ownership, the term “abutter” means the officers of the collective form of ownership or association, as defined in RSA 356-B:3, XXIII.B. (4) For purposes of notification and receiving testimony, “abutter” means all affected towns and

- B. the regional planning commission(s) in the case of a development having regional impact, as determined by the Board.
- C. AGRICULTURAL EXCAVATION means excavation of earth by the owner of the land to be used on the owners land exclusively for agricultural use.
- D. AGRICULTURAL USE means land used for agriculture, farming, dairying, pasturage, apiculture, horticulture, floriculture, silviculture and animal and poultry husbandry.
- E. APPLICANT means the owner of the property to be excavated or the owner's agent, so designated in writing as part of the excavation application.
- F. BOARD means the Planning Board of Town of Tuftonboro.
- G. COMMERCIAL EXCAVATION means excavation of earth intended for commerce, this may also include excavation that is strictly conducted for the purpose of alteration, renovation, improvement or construction to the property on which the excavation takes place. Any commercially useful earth material leaving the property for whatever reason is considered to be a commercial operation.
- H. COMMERCIALLY USEFUL means the amount of excavated earth deemed by the regulator to be commercially useful which has been determined to be 1,000 cubic yards or more.
- I. CONTIGUOUS means land whose perimeter can be circumscribed without interruption in common ownership except for roads or other easements, in a single town.
- J. DIMENSION STONE means rock that is cut, shaped or selected for use in blocks, slabs, sheets, or other construction units of specified shapes or sizes and is used for external or interior parts of buildings, foundations, curbing, paving, flagging, bridges, revetments, or for other architectural or engineering purposes. Dimension stone includes quarry blocks from which sections of dimension stone are to be produced. Dimension stone does not include earth as defined below.
- K. EARTH means sand, gravel, rock, top soil, loam or construction aggregate produced by quarrying, crushing or any other mining activity or such other naturally-occurring unconsolidated materials that normally mask the bedrock.
- L. EXCAVATING means extracting earth from a site that is in a natural state, or a site that is reclaimed or naturally reclaimed, by any method, such as dredging, blasting, digging out and removing, or forming a cavity or a hole in any land area. Excavating includes excavate.
- M. EXCAVATION means a land area which is used, or has been used, for the commercial taking of earth, including all slopes.
- N. EXCAVATION AREA means the area within an excavation site where excavation has occurred or is eligible to occur under the provisions of RSA 155-E. This is also known as the pit area.
- O. EXCAVATION SITE means any area of contiguous land in common ownership upon which excavation takes place.
- P. EXISTING EXCAVATION means any excavation, as described in RSA 155-E:2, I, which lawfully existed as of August 24, 1979, from which earth material of sufficient weight or volume to be commercially useful has been removed during the 2-year period before August 24, 1979 and had submitted the report as required by RSA 155-E:2, I, (d).
- Q. EXPANSION means excavation and disturbance of earth beyond the limits as shown on the plan as approved by the regulator.
- R. INCIDENTAL EXCAVATION means excavation of earth which has been granted an exception from an excavation permit by the regulator.
- S. MINOR TOPOGRAPHICAL ADJUSTMENT means a one time removal of earth from the site of less than 1,000 cubic yards that is exclusively necessary to change the physical configuration of the land for a specified use or situation.

- T. *NORMAL LANDSCAPING means the on-site alteration and contouring of the land exclusively devoted to improving the functional utility and planting of the grounds.*
- U. *RECLAMATION means the restoration of an excavation site to an acceptable standard as determined and approved by the regulator.*
- V. *REGULATOR means the Planning Board of the Town of Tuftonboro.*
- W. *STATIONARY MANUFACTURING AND/OR PROCESSING PLANTS means facilities which are placed on a site for the purposes of sorting, washing, screening, crushing, classifying, drying or processing excavated earth materials.*

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11.4

REGULATOR

The Planning Board of the Town of Tuftonboro is designated the Regulator as provided in RSA 155-E.

11.4

11.5

REGULATIONS

Pursuant to its responsibility as the Regulator, and in accordance with the provisions of RSA 155-E, the Planning Board is hereby authorized to adopt and from time to time amend regulations governing earth moving activities within the Town of Tuftonboro to ensure that said activities are conducted in a safe manner in accordance with sound environmental practice, to protect against erosion, and to further provide proper assurances that suitable restoration of affected areas are obtained.

11.6

PROJECTS REQUIRING A PERMIT

Any excavation of earth unless specifically exempted by either RSA 155-E:2, *RSA 155-E:2-a* or specifically excepted in Section 11.7 of *this Ordinance shall require a permit.*

11.7

EXCEPTIONS FROM AN EXCAVATION PERMIT

- A. *The following projects are deemed to be an exception from a permit:*
- 1) *Site development, construction activities, or other projects, that require excavation of earth and will not remove more than 1,000 cubic yards of earth from the site annually. In the event that the project will result in the removal from the site more than 1,000 cubic yards, the project will be considered incidental provided that all of the required state and local permits have been issued.*
 - 2) *Excavation of earth that is a result of agricultural use, normal landscaping or minor topographical adjustment as defined in Section ~~11.3~~ 11.3 of these regulations this Ordinance. In the event that the project will result in the removal of more than 1,000 cubic yards from the site annually, the regulator shall determine what is incidental.*
 - 3) *Excavation from a granite quarry for the purpose of producing dimension stone, if such excavation requires a permit under RSA 12-E (Mining and Reclamation).*

11.5

11.8

ADMINISTRATION

~~No person, firm or corporation shall within the Town of Tuftonboro undertake any clearing, grading, removal, excavation or other disturbance of land without first obtaining an Excavation permit and Site Plan Review approval from the Planning Board.~~ *Except as provided in RSA 155-E:2, RSA 155-E:2-a and Section 11.7, no firm, person or corporation shall conduct earth excavation activities as defined in Section XI: Local Regulations of Excavation without first obtaining a Special Exception from the Zoning Board of Adjustment and Site Plan approval and an Excavation Permit from the Planning Board.*

~~11.5.1~~ **11.8.1 Additional Regulations:** Said permit shall be granted pursuant to the provisions of RSA 155-E, as well as any additional regulations the Planning Board may have adopted ~~for such purpose~~ *pursuant to RSA 155-E:11.*

~~11.5.2~~ **11.8.2 Fees:** The Planning Board may adopt, and from time to time amend, a permit fee schedule so as to recover all reasonable costs of administration of this Section, as well as all inspections.

11.9 EXCAVATION EXPANSION

When the scope of an approved permitted excavation is proposed to be altered as to affect either the size or location of the excavation, the rate of removal, or the plan for reclamation, the owner must submit a new application, plans, and other required submission items for a new excavation permit hearing process. If the approved excavation previously required a special exception or variance, the proposed changes must first be approved by the Zoning Board of Adjustment.

11.10 SITE RECLAMATION STANDARDS

- A. For excavations requiring a permit, the standards contained in RSA 155-E:5 are considered to be the minimum standards and the regulator may require more stringent reclamation standards as deemed necessary by the nature and scope of the operation. The reclamation will be done in accordance with the approved plans and reclamation sequence.
- B. Any excavation permit applicant that requires a RSA 485-A:17 Alteration of Terrain Permit (AOT) from the NHDES shall incorporate the requirements of this Ordinance, to the extent that they are more restrictive, and not in conflict, with the AOT permit. Copies of all such AOT permits and update plans shall be filed with the regulator.
- C. Incidental excavations that have received an exception from the regulator to remove more than 1,000 cubic yards of earth shall reclaim the property in accordance with the specifications dictated by the regulator.

~~11.6~~ **11.11 ENFORCEMENT**

The Planning Board may appoint an Enforcement Officer to enforce the provisions of any permit issued hereunder. Said Enforcement Officer shall have the powers and duties prescribed in RSA 155-E:10.

~~11.6.1~~ **11.11.1 Existing Operations:** Any owner **or operator** of an existing earth excavation operation **area, that has been issued an filed a State of New Hampshire Department of Revenue Administration Notice of Intent to Excavate in the prior two years from the effective date of this Zoning Ordinance, prior to March 14, 2017** lawfully in existence prior to the effective date of this Ordinance and which is subject to the provisions thereof may **continue** such existing **operation** with permit as previously granted by the Board of Selectmen provided such operation is not substantially altered or enlarged except **subject to Planning Board Site Plan Review approval and issuance of a Permit to Excavate. Any alteration or enlargement of an excavation area must be** in conformance with this Ordinance or any regulations adopted pursuant thereto and further provided that the owner shall suitably restore said area of operation within one year following the intended cessation of the excavation or any completed section thereof so as to secure the area against any unsafe or hazardous conditions which may endanger the health and safety of the general public.

11.11.2 Permits

- A. Permits shall be issued only to the owner or his agent and shall not be transferable without the prior written consent of the Planning Board. A copy of the permit shall be prominently displayed at the site or the principal access to the site.
- B. A permit shall be **issued for five (5) years and renewable every five (5) years for a maximum of twenty-five (25) years from the date of the Planning Board Site Plan approval.** ~~valid for up to five years and the expiration date shall be specified. A permit is automatically withdrawn if no substantial work is done on the site for a period of two years from the date of the issuance of the permit.~~ **Planning Board Site Plan approval is valid for twenty-five (25) years.**
- C. Excavation of earth without a valid permit is a violation of RSA 155-E and this Ordinance. Violators may be issued a cease and desist order for non-compliance.
- D. The Planning Board may include in the permit any such reasonable conditions as are consistent with the purpose of this Ordinance.

- E. The Planning Board will establish a schedule by which all permitted sites are inspected on an annual basis. Incidental excavation exceptions that will remove more than 1,000 cubic yards will have an inspection schedule as determined by the Planning Board.

11.11.3 Inspections

The Planning Board or its designee may make periodic inspections of all excavation sites, or incidental excavations, to determine if the operations are in conformance with this Ordinance, the approved plans, or the exception criteria. A site inspection review letter will be sent to the owner citing any deficiencies and providing a timeline for correction of the deficiency.

11.11.4 Suspensions and Revocations

The Planning Board may suspend or revoke a permit if the regulator determines that any provision of the permit has been violated, a material misstatement made in the application upon which a permit was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist, or failure to correct any deficiency after notice. The Planning Board may suspend or revoke the exception for incidental excavation if the Planning Board determines that any provision of the exception has been violated, a material misstatement made in the exception application upon which an exception was granted, or any unsafe or hazardous conditions are determined by a site inspection to exist, or failure to correct any deficiency after notice. Such suspension or revocation shall be subject to a motion for rehearing thereon and appeal in accordance with this Ordinance.

11.11.5 Appeals

Any person affected by the Planning Board’s decision to approve or disapprove an application or any amendment thereto or any suspension or revocation of a permit, may appeal to the Zoning Board of Adjustment for a rehearing on such decision or any matter determined thereby. The motion for rehearing shall be filed within ten (10) days of such decision and shall fully specify every ground upon which it is alleged that the decision or order complained of is unlawful or unreasonable. The Zoning Board of Adjustment shall either grant or deny the request for rehearing within ten (10) days, and if the request is granted, a rehearing shall be scheduled within thirty (30) days. Any person affected by the Zoning Board of Adjustment’s decision on a motion or rehearing may appeal in accordance with RSA 677:4-15.

11.11.6 Penalties

Fines, penalties and remedies for violations of this Ordinance shall be the same as for violations of RSA 676:15, and RSA 676:17, **RSA 676:17-a and RSA 676:17-b.**

YES

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NO

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