

**LOCAL LAW NO. 2, 1987**

**A LOCAL LAW REGULATING EXCAVATION AND TOPSOIL REMOVAL  
WITHIN THE TOWN OF CAMBRIA**

**PASSED BY TOWN OF CAMBRIA TOWN BOARD SEPTEMBER 3, 1987**

Be it enacted by the Town Board of the Town of Cambria as follows:

Section 1. This Local Law is adopted to protect the health, safety and welfare of residents of the Town of Cambria and is intended to mitigate adverse impacts which may be caused by excavation material within the Town of Cambria.

Section 2. This Local Law shall regulate the excavation of materials as defined herein within the territory of the Town of Cambria and is intended to control the location of such excavation together with the operation of such excavation where permitted herein.

Section 3. Definitions

- A. Applicant: That person making application for a permit and who is responsible for fulfilling the requirements for the restoration plan and all rules and regulations promulgated hereunder. If the applicant is other than the property owner, written proof must be presented showing authorization from the property owner to the applicant.
- B. Appurtenant Activities: All on-site operations involved in the treatment, processing or further fabrication of soil, sand, gravel or natural deposits, including washing, sedimentation ponds, grading, sorting, grinding, concrete batching plants, asphalt mixing plants and aggregate dryers.
- C. Buffer: Trees, hills, fences, berms or other natural or artificial features which are located so as to conceal or separate the excavation site and related activities from other land uses and to reduce the negative effects on these land uses of noise, glare, dust, visual ugliness and other factors associated with the excavation site and related activities.
- D. Excavation: A cavity, hole, mine, pit or quarry on land formed by digging, for the purpose of extracting clay, stone, gravel, sand, shale or other natural minerals or the topsoil therefrom.
- E. Farm: An area of land of a minimum of ten (10) acres currently active as agricultural and such use properly zoned.
- F. Mine: Any pit or underground workings from which any mineral is produced.
- G. Mineral: Aggregate, clay, gravel, sand, shale, stone or any other solid material of commercial value found in or on the earth.
- H. Operator: Any owner, lessee, or other person who operates, controls or supervises the operation.
- I. Owner: That person having title to the tract of land.
- J. Person: Any individual, public or private corporation, political subdivision, government agency, partnership, association, trust, estate or any other legal entity.
- K. Planning & Zoning Board: The Planning Board and Zoning Board of the Town of Cambria.

- L. Restoration: The reparation to an environmentally acceptable natural state of an area which has undergone physical change due to excavation and related activities.
- M. Topsoil: Surface earth, including the organic layer in which most plants have their roots.

#### Section 4. Applicability

This Local Law shall apply to all territory within the Town of Cambria whether or not said excavation is governed by any other state or federal rule or regulation. Where more than one law applies, the more stringent shall control.

#### Section 5. Exceptions

The following operations and uses are hereby excepted from the application of this Local Law.

- A. Excavations or removal of stone, gravel, clay, sand, shale, subsoil or topsoil incident to highway, sidewalk or driveway construction to the extent that said materials are removed solely from the bed of said highway, sidewalk or driveway.
- B. The moving of stone, gravel, clay, sand, shale, subsoil or topsoil from one part of a premises to another part of the same premises incident to the construction of a building or other improvement of land or incident to landscaping. The moving to excess of thirty (30) yards of such material will be subject to approval by the Zoning Board of Appeals after consideration of the requirements of Section 6 herein when in the discretion of said Board such requirements are needed to protect the environment.
- C. Removal of excess stone, gravel, clay, sand shale, subsoil or topsoil from the area of a subdivision granted final approval by the Planning Board of the Town of Cambria, provided that any such removal is in accordance with plans and specifications approved by said Planning Board.
- D. Construction of sewage disposal systems.
- E. Any excavation operation conducted by the Town of Cambria, including the cleaning of ditches by the Highway Department and/or official of the Highway Drainage District or their authorized agent.
- F. Construction of drainage facilities on a farm, as defined in Section 3 E, must be shown on a plan approved by the Soil Conservation Service of the County of Niagara. Further, such plan must be reviewed by the Zoning Board, which Board may require any or all of the conditions of Section 6 as well as standards and considerations of Section 10 of this Local Law which in the Board's best judgment would be required to prevent environmental problems in the future.

#### Section 6. Permit Requirements

- A. No excavation shall be permitted within the Town of Cambria from those areas zoned residential by the zoning regulations of the Town of Cambria.
- B. Any other excavation permitted herein must be pursuant to a written permit or renewal thereof granted under authority of this Local Law subject to the following conditions:
  - 1. Each application for a permit or renewal shall be filed with the Town Clerk of the Town of Cambria, which application shall be in substantially the form of application approved by the Town Board. The applicant must file twelve (12) duplicate copies of such application.

2. Proof by deed or otherwise of ownership of property must be submitted.
3. Statement as to period of time required to complete the proposed excavation, including restoration.
4. Statement as to zoning classification of the land on which the excavation is to be conducted.
5. Survey of the land in question, together with map showing the surrounding area sufficient to identify adjoining property.
6. A map or survey at a scale of no smaller than one inch to fifty feet showing the following:
  - a. Existing topography at contour intervals of ten feet or grid elevations to be tied into benchmarks.
  - b. Soil boring sufficient to demonstrate the type of material to be removed to the depth of the proposed excavation.
  - c. Surfacing drainage patterns including grades of all existing creeks.
  - d. Location of all proposed and existing underground utilities and facilities.
  - e. Profiles and cross-sections of premises before and after excavation.
  - f. Prior to granting of a permit, applicant must submit the following:
    1. Operations Plan.
    2. Long Form Environmental Impact Statement.
    3. Restoration Plan.

#### Section 7. Filing Application

The Town Clerk shall forward a copy of the application to the following: to each member of the Town Board, to the Chairman of the Planning Board, to the Town Engineer, to the Town Attorney, to the Town Building Inspector and to the Chairman of the Zoning Board of Appeals. The Planning Board shall make a recommendation concerning the application to the Zoning Board of Appeals within sixty (60) days of receipt of said application by its Chairman.

#### Section 8. Public Hearing

The Zoning Board of Appeals shall hold a public hearing, shall publish a notice in the official newspaper of the Town at least 10 days prior to said public hearing, and shall post the same on the official sign board of the Town Cambria.

#### Section 9. Variances

After the public hearing, the Zoning Board of Appeals may require any additional conditions to be met in addition to those listed herein, and the Zoning Board of Appeals shall have the power to vary standards and conditions required herein which in its discretion would result in unnecessary hardship to the applicant.

#### Section 10. Standards and Conditions for Permit

In approving or denying an excavation permit, the standards and considerations to be taken into account shall include but not be limited to the following:

- A. No excavation shall be permitted within 250 feet of any road right-of-way nor within 100 feet of any property line, nor shall any such excavation be permitted within 500 feet of any residential dwelling unit within the Town of Cambria.
- B. Whether such excavation and proposed installation plan are in accord with the intent of the Master Plan of the Town of Cambria.
- C. Whether such excavation will result in the creation of holes and pits which may be hazardous or dangerous.
- D. Whether such excavation will cause soil erosion or depletion of vegetation.
- E. Whether such excavation will render the land unproductive or unsuitable for agricultural or developmental purposes.
- F. Whether the excavation will impair the aesthetic or natural environment of the area of such excavation or the surrounding area.
- G. Whether such excavation will affect the character of surrounding land use.
- H. Whether such excavation will create excessive traffic or impair the quality of existing facilities or drainage or will materially injure existing highways or roadways. The Zoning Board of Appeals may require construction of haul roads to alleviate this problem and may require maintenance of said roads to prevent emission of dust.
- I. Whether the area excavation can be effectively restored and revegetated.
- J. Whether surrounding drainage areas will be adversely affected.
- K. Whether such excavation will be in the best interest of the Town of Cambria.

The finding of the Zoning Board of Appeals that any one of the foregoing conditions will be injurious to the general welfare of the people of the Town of Cambria shall be grounds for denial of the special permit.

The Zoning Board of Appeals may grant a permit after consideration of the foregoing conditions for a period not to exceed two years which may be extended on a yearly basis without the necessity of further public hearings upon a finding of the Town Board that such extension will be in the best interest of the people of the Town of Cambria.

#### Section 11. Performance Bond

Any permit issued by the Zoning Board of Appeals pursuant to this Local Law must be conditioned upon the filing of a performance bond as described herein. The performance bond must be submitted to the Town Board for approval. The performance bond shall be jointly and severally executed by the applicant and all owners of record of the premises and filed with the Town Clerk of the Town of Cambria. The Bond shall be secured by a letter of credit or surety to the Town in the amount of at least \$5,000.00 per acre up to a total of \$1,000,000.00. The bond shall guarantee that upon termination of the permit or the operations, whichever shall first occur, the land shall be restored in conformity with the permit requirements and the standards of this Local Law. In the event of default with compliance, the letter of credit or bond shall be forfeited to the Town of Cambria. The Town shall return to the applicant any amount not needed to cover any and all necessary expenses of restoration, administration, including legal fees and engineer expenses incurred by the Town as a result of the default.

The bond shall continue in full force and effect until a certificate of compliance has been issued by the Town of Cambria.

Section 12. Certificate of Insurance

- A. Upon approval of the application but before issuance of the permit, the applicant shall file with the Town Clerk certificates of insurance evidencing the issuance of liability coverage in the following amounts:
  - 1. Bodily Injury - \$1,000,000.00
  - 2. Property Damage - \$1,000,000.00
- B. Said insurance must be maintained throughout the term of the permit and until a certificate of compliance has been certified by the Town Board of the Town of Cambria. Said insurance must name the Town of Cambria and its agents as an additional insured.

Section 13. Fees

- A. Permit ó upon filing of the application a filing fee of \$2,500.00 non-refundable must be paid to the Town of Cambria. Prior to issuance of any permit pursuant to this Local Law, the applicant must pay an additional fee for the permit based upon the following schedule:

<u>Total Acres</u>	<u>Permit Fee</u>
Up to 50 Acres	\$2,500 plus \$200/Acre
Over 50 Acres	\$7,500 plus \$100/Acre

Said total sum shall be deemed a reasonable sum to cover cots of review and administration, no part of which shall be returnable to the applicant. Acreage shall be based on total area for the overall site plan, including newly relocated off-site ditches. Acreage calculations to be by Town Board. Fee for renewal of permit shall be \$2,500.00 plus \$100.00 an acre up to 50 acres and \$3,750.00 plus \$50.00 an acre over 50 acres.

- B. Excavation Fee ó To assure the Town that the restoration take place, Town streets are adequately maintained and rebuilt, and the improvements required are satisfactorily completed, the Town shall require a fee payment of one dollar (\$1.00) per cubic yard of al excavated material removed from the site. This sum shall be billed by the Town and paid by the permittee every six months. The first payment shall be made in advance upon issuance of permit by payment based on the phasing schedule and computed by the Town Engineer. The Town shall split this excavation fee in two equal parts. One-half to be immediately paid over to the Town and used as the Town Board may determine. The other half of the excavation fee shall be placed in an interest bearing escrow account.

The amount of the excavation fee including the up front payment, shall be determined by the Town. Calculations will be based on original baselines established by the approved surveyor and re-surveyed at the semi-annual inspection to determine the exact volume removed. The inspection and survey cost shall be paid out of the escrow account as shall the emergency repairs of any Town roads, including restoration and/or reconstruction of said roads as well as other reasonable costs incurred by the Town.

Excavation fee shall be paid within thirty (30) days of receipt of Town bill. Failure to pay within this time frame shall constitute cancellation of permit and forfeit of

performance bond and escrow fund. At the satisfactory conclusion of the excavation project, including the acceptance by the Town of all utilities and other amenities, all unused escrow funds shall be returned to the developer along with a financial statement of all transactions.

#### Section 14. Nonconforming Pre-Existing Excavation

- A. Any excavation which has been discontinued for a period of one or more years shall not thereafter be reestablished, and any additional excavation must be pursuant to the requirements of this Local Law.
- B. Except as provided herein, a nonconforming use for excavation may be continued. Provided, however, that such use must be terminated on or before the expiration of a period of time after the effective date of this Local Law fixed for such termination. In the case of excavations, such period of time shall be a period of one year (12 months) from the date of the filing of this Local Law with the Secretary of State.
- C. Any continuation of the excavation subsequent to that one year period shall be subject to the terms and conditions and all of the requirements of this Local Law.

#### Section 15. SEQR and DEC Land Use Reclamation Permit

Prior to the issuance of any permit, the applicant must apply to this Town for SEQR review and it is hereby declared that any excavation in excess of 20,000 yards of material shall be a Type I action, and it is the intention of the Town Board or its agent to act as lead agent in relation to any and all applications under this Local Law. Further, prior to the issuance of any permit under this Local Law, applicant must file with the Town all necessary permits required by the State of New York for such excavation when required.

#### Section 16. Prohibition

In the Town of Cambria, no refuse, garbage or toxic waste of any kind shall be deposited in any area excavated pursuant to the requirements of this Local Law or within any other area of the Town of Cambria.

#### Section 17. Construction

This Local Law shall be deemed an exercise of power of the Town of Cambria to control excavation and to regulate the manner of construction and removal of material from draining and cleaning and operating and using lands in the Town for excavation purposes and to prohibit such excavations which do not comply with these regulations.

#### Section 18. Penalties

A violation of any provision of this Local Law shall be punishable as a misdemeanor to the extent prescribed by law and each violation shall result in a fine not exceeding \$500.00 for the first offense; the minimum of \$500.00 and a maximum of \$1,000.00 for a second offense within five years; and a minimum of \$1,000.00 and a maximum of \$2,000.00 for a third or subsequent violation within five years; or imprisonment for a period not to exceed six months or both. Each week of a continued violation shall constitute a separate violation. Also, the Town Board after five days notice to the applicant may modify, suspend, or revoke the permit upon any violation of the conditions of that permit.

Further, this Local Law will authorize the Town Clerk to initiate a proceeding in the Supreme Court of the State of New York for injunctive relief in the event of a violation of any of the conditions or requirements contained herein.

Section 19. Enforcement

The Building Inspector shall be empowered to enforce this Local Law and regulations set forth herein or any other person designated by the Town Board.

Section 20. Severability

If any section or part thereof of this Local Law shall be deemed to be void, unconstitutional or invalid by a court of law, such determination shall not be deemed to affect, impair or invalidate the remainder thereof.

Section 21. When Effective

This Local Law shall take effect immediately upon filing with the Secretary of State of the State of New York.