

TOWNSHIP OF WANTAGE

ORDINANCE #2019-04

An Ordinance of the Township of Wantage, County of Sussex, State of New Jersey, Repealing Chapter 23 of the Municipal Code of the Township of Wantage Entitled "Soil Removal" & Replacing It With a New Chapter 23 of the Municipal Code of the Township of Wantage Entitled "Wantage Township Soil Importing and Exporting".

WHEREAS, the unregulated and uncontrolled dumping of fill in the Township of Wantage ("Township") may resulted in conditions detrimental to the health, safety and general welfare of the citizens of the Township; and

WHEREAS, there currently is no mechanism for the Township to abate and prohibit the hazards created by dumping of fill; and

WHEREAS, the Township Committee have determined that it is in the best interests of the Township to regulate the placement of fill within the Township; and

WHEREAS, procedures are needed to allow for submission of applications for the placement or removal of fill within the Township; and

NOW, THEREFORE, BE IT ORDAINED by the Township Committee of the Township of Wantage that Chapter XXIII Soil Removal shall be repealed and the following shall be enacted in its place:

SECTION 1. Title of Chapter XXIII shall be Soil Importing and Exporting.

SUBCHAPTER 23-1.2 This sub-chapter shall be known and may be cited as the Wantage Township Soil Importing and Exporting.

SUBCHAPTER 23-1.3 Definitions: As used in this subchapter:

SUBCHAPTER 23-1.3 Definition. : "Soil" shall mean and include dirt, stone, gravel, sand, humus, clay, loam, and mixtures of any of the these but this shall not include quarry process, consolidated material, rock products, or refer to the quarrying of rocks utilized in the construction of roads, driveways or similar types of construction.

SUBCHAPTER 23-1.5 No application for a permit shall be made, pursuant to this subchapter, until a use variance approval has been obtained from the land use board, or land use approval received from the land use board, except as otherwise provided in subsection 23-1.6.

SECTION 2.

SUBCHAPTER 23-2: SOIL IMPORTING & EXPORTING

ARTICLE I Title; Findings; Definitions; Permit Requirements

23-2. Title

This subchapter shall be known as the "Soil Importing and Exporting Ordinance of the Township of Wantage"

23-2.1. Purpose and Findings

The Township Committee finds that the unregulated and uncontrolled placement and movement of soil and other mineral deposits may result in conditions detrimental to the public safety, health and general welfare. Such conditions substantially hamper and deter the efforts of the Township to effectuate the general purposes of municipal planning. Soil movement operations and filling operations should relate to the overall physical development of the area within which the operation is located. It is essential that all soil movement operations and filling operations be reviewed and approved by the Township Zoning Officer and/or Township Engineer. The source soil to be tested for contaminants and certified by a testing lab prior to bringing the soil to a site in the Township. All soil movement operations and filling operations must be conceived and operated in such a way that there will be no appreciable harmful effects to the environment. In order to best ensure that all soil movement operations and filling operations are an asset to the Township of Wantage, rather than a liability, all such operations shall adhere to the conditions, restrictions and provisions outlined in this chapter.

23-2.2. Definitions

The words defined in this section shall mean and include the following when used in this chapter:

APPROVED PLAN - A plan for the placement of soil importing approved by the Zoning Official and/or Township Engineer (minor permit) or by the Township Land Use Board (major permit) pursuant to the provisions of this chapter.

MAJOR SOIL IMPORTING PERMIT - A permit for the importing of more than 300 cubic yards or more of soil in a calendar year.

MINOR SOIL IMPORTING PERMIT - A permit for the importing of up to 300 cubic yards of soil in a calendar year.

PERMIT - A soil importing permit.

PERSON - Includes an individual, a partnership, a corporation or any other legal entity.

LAND USE BOARD - The Planning Board of the Township of Wantage.

SOIL/FILL - Includes dirt, stone, gravel, sand, humus, clay, loam and mixtures of any of these, but this shall not include quarry process or rock products utilized in the construction of roads, driveways or similar types of construction.

TOPSOIL - The soil within eight inches of the surface.

TOWNSHIP - The Township of Wantage.

23-2.3. Permit Required

No person shall cause the placement of any soil on any premises in the Township of Wantage whether that soil/fill originated within the Township or was imported, whether such fill be for sale, gift or otherwise, unless a permit therefore is first secured from the Township Zoning Officer and/or Township Engineer or the Township Planning Board as hereinafter provided.

23-2.4. Exceptions and Exemptions

1. Nothing in this subchapter shall be construed to affect or require a Soil Importing Permit for any person engaged in the moving of soil in and upon lands enrolled in the Soil Conservation Program of the Sussex County Soil Conservation District, Department of Agriculture Soil Conservation Service and for which lands an approved farm plan has been established by said agency, provided that all soil moving operations and fill operations in and upon such lands are performed in accordance with said approved farm plan and provided further that a copy of said approved farm plan is placed on file with the Township prior to any soil moving operations or fill operations. However, any person importing soil to the Township must provide proof that the soil is acceptable in the form set forth below, including the laboratory test results, the address, block and lot that the soil/fill originated from and the quantity being imported. Failure to provide this proof will result in a stop work order until such information is provided to the Township.
2. A separate soil permit under this subchapter shall not be required for subdivisions and/or site plans approved pursuant to Chapter 15, Land Development Subcode of the Township of Wantage but shall be subject to any specific conditions imposed by the Land Use Board.
3. Nothing in this subchapter shall be construed to affect or apply to any person engaged in a state-mandated cleanup plan; provided that all soil moving, removal operations and fill operations are performed in accordance with said cleanup plan and provided further that notice of the state-mandated cleanup plan is placed on file with the Township Engineer prior to any soil moving, removal operations or fill operations.
4. The provisions of this subchapter shall not apply to the storage of sand, soil, stone, topsoil, mulch or other similar materials on lawfully existing landscaping and contractor yards, provided that the outdoor storage of materials on said property has previously been established or received site plan approval pursuant to Chapter 15, Land Use Procedures of the Township of Wantage.
5. This subchapter does not regulate the movement and placement of soil/fill from one location to another on the same parcel when that movement is directly related to agricultural uses on farm properties within the Township of Wantage and does not supersede any rights granted under the Right to Farm Act; however, any

importation of soil/fill to designated farmland is still required to comply with the regulations herein and permit process described below.

6. The provisions of this Chapter shall not apply to property owners within the Township seeking to import no more than 25 cubic yards of soil/fill for use on their property within a calendar year. A permit for such importation shall not be required, however, each property owner must fill out the Soil Importation Form which shall be available on the Township website or from the Township Clerk. Failure to submit the Soil Importation Form prior to said importation shall result in a request from the Enforcing Officer under this Chapter to provide the information requested on the Form. Failure to do so or repeated violation of this requirement may result in penalties pursuant to this Chapter.

23-2.5. Application for permit

1. Application for a minor soil importing permit shall be filed with the Township Zoning officer who shall issue the permit based upon finding substantial compliance with the provisions of this subchapter; provided, however, the Township Zoning Officer and/or Township Engineer shall have the authority to deny a permit if he/she determines that the placement of fill would be detrimental to the health, welfare or safety of the general public. The denial shall be in writing setting forth reasons for same.
2. Application for a major soil importing permit shall be filed with the Township Land Use Board and shall be accompanied by a fee prescribed in Section 21-3, Fees and Escrows. Fifteen (15) copies of the application shall be submitted on forms prescribed by the Township Land Use Board and supplied by the Secretary to the Board.
3. The application for minor and major soil importing permits shall set forth the following:
 1. Name and address of the applicant.
 2. Name and address of the owner, if other than the applicant.
 3. Name and address of the person/entity importing the soil/fill.
 4. Name and address of the person/entity trucking in the soil/fill.
 5. The description and location of the land in question, including the tax map block and lot numbers.
 6. The purpose or reason for placement of soil.
 7. The nature and quantity, in cubic yards, of soil to be filled.
 8. The source of material to be used as fill and proof that the acceptable soil material has been tested in conformance with §23-2.14 of this article and

that it complies with the Soil Ranking Criteria found in N.J.A.C. 7:26D, Appendix 1, Table 1A.

1. Proof under this section shall be an original letter from a laboratory certified by the state to perform soil analysis, stating that results meet or exceed the present Ranking Criteria, along with the actual test results, signed by an authorized signatory of the laboratory.
 2. A minimum of two samples are to be extracted from the source for laboratory analysis for each 1,000 (one thousand) cubic yard lot, or fraction thereof. Samples are to be extracted, tested, and evaluated by a state certified laboratory. Samples must be biased to the location of the highest suspected contaminated concentrations, as determined by the laboratory professional or his duly assigned representative.
 3. Soil material obtained from a quarry shall be exempt from the testing criteria, however a receipt from the quarry with the material amount is required.
9. Source from where the soil is coming from to be shown on the plans, including tax lot and block; owner's name and municipality.
 10. The location to which the soil is to be placed.
 11. The proposed date of completion of the soil fill.
 12. Additional supporting documentation as requested by the Township Engineer/Zoning Officer/Planning Board to adequately address and comply with the purpose and the provisions of this chapter.
 13. An approved soil erosion and sediment control permit (if applicable).

23-2.6. Supporting documentation for a major soil importing placement application

The application for a major soil importing placement permit shall be accompanied by a topographic map or maps prepared and certified by a professional engineer or land surveyor. The scale of said map shall not be more than 100 feet to the inch and shall include the following:

1. Key map.
2. Existing contour lines at five-foot intervals.
3. Proposed contour lines at five-foot intervals after fill of the soil.
4. All existing structures, all existing roads and drainage within 200 feet of the property.
5. Location of all property lines.

6. Location of any wetlands, streams, or other environmentally sensitive areas on the property.
7. Source from where the soil is coming from to be shown on the plans, including tax lot and block; owner's name and municipality.
 - A. The source of material to be used as fill and proof that the acceptable soil material has been tested in conformance with §23-2.14 of this article and that it complies with the Soil Ranking Criteria found in N.J.A.C. 7:26D, Appendix 1, Table 1A.
 1. Proof under this section shall be a letter from a laboratory certified by the state to perform soil analysis, stating that results meet or exceed the present Ranking Criteria, along with the actual test results.
 2. A minimum of two samples are to be extracted from the source for laboratory analysis for each 1,000 (one thousand) cubic yard lot, or fraction thereof. Samples are to be extracted, tested, and evaluated by a state certified laboratory. Samples must be biased to the location of the highest suspected contaminated concentrations, as determined by the laboratory professional or his duly assigned representative.
 3. Soil material obtained from a quarry shall be exempt from the testing criteria, however a receipt from the quarry with the material amount is required.
8. Location of any topsoil storage areas.
9. Soil erosion and sediment control measures.
10. Cross sections of the fill areas at fifty-foot intervals.

23-2.7. Referral

Upon receipt of an application for a major soil placement permit, the Land Use Board Secretary shall forthwith send a copy of same to the Zoning Officer, Construction Official, and Township Engineer, who shall review the application, and shall submit their reports, recommendations, and their findings, to the Township Land Use Board within 45 days of receipt of the application.

23-2.8. Action by Land Use Board; notice of hearing on major soil importing applications

1. The Township Land Use Board shall grant or deny the application within 45 days after receipt of the reports and recommendations of the Zoning Officer, Construction Official, and Township Engineer. On an application for a major soil importing permit, the Land Use Board shall schedule a public hearing and shall

notify the applicant of the date of such hearing. The applicant shall provide notice in accordance with municipal land use law.

2. Five (5) days prior to the hearing, the applicant shall present to the Township Planning Board Secretary the following:
 1. Certification, in the form of an affidavit, signed and sworn by the applicant, affirming that he has notified all property owners, as required in Subsection A of this section.
 2. Proof of publication of the newspaper notice required in Subsection A of this section.

23-2.9. Factors to be considered in approving permits

In considering and reviewing the application and arriving at a decision, the Zoning Officer and/or Township Engineer (minor permit) and the Township Planning Board (major permit) shall be guided by and take into consideration the public health, safety and general welfare and the general purposes of municipal planning. Particular consideration shall be given to the following factors:

1. Soil erosion by water and sand.
2. Surface water drainage.
3. Soil fertility.
4. Lateral support of abutting streets and lands.
5. Public health and safety.
6. Land values and uses.
7. Contours, both existing and proposed.
8. Existing contours and topographic character of the land prior to the placement of any soil and proposed contours which will result subsequent to the placement of soil in accordance with the soil fill application.
9. Whether the proposed placement of soil is necessary and incidental to the development of the property for its intended use or whether the proposed placement of fill constitutes primarily a commercial activity.
10. History of Applicant/Recipient/Importer related to soil placement permits within the Township, if any.

23-2.10. Issuance of permit

1. A permit shall be issued after the approval of the application by the Zoning Official and/or Township Engineer (minor permit) or by the Township Land Use Board (major permit).

2. Once a permit is issued, it shall be maintained on site and must be available for inspection by the Enforcing Officer immediately upon request. Additionally, each truckload of soil/fill shall have the required documentation and proof of acceptable dirt and duplicate original of the permit it is acting under available for inspection at all times.
3. The approval shall specifically list the total number of cubic yards of soil authorized to be filled as calculated by the Township Engineer based upon the contour maps submitted and approved.
4. The approval shall be specific to the Applicant/Owner/Importer and based on the source of the soil/fill identified in the permit application.
5. Permits are not transferrable to other sites of common ownership, nor can soil/fill be accepted by the site owner from other source(s) or Importer(s) than those listed in the permit application and on the permit.
6. Acceptance of soil/fill in excess of the permitted amount or from a source other than the permitted source shall constitute a violation of the terms of the permit and be grounds for revocation and/or other penalties as set forth elsewhere in this Article.
7. Each permit shall also contain an expiration date to be set by the approving authority not to exceed two years, by which all soil/fill importation must be complete.
8. If deemed necessary by the approving authority, a permit may include a requirement that a performance guarantee be posted by the Applicant, in an amount determined by the Township Engineer, and will be returnable upon completion of the work allowed under, and confirmation by the Township Engineer that all work was done in compliance with the permit.

ARTICLE II Operating Requirements

23-2.11. Method of operation

If a permit is issued for the placement of fill, the owner or person in charge shall conduct the operations to ensure there are no sharp declivities, pits or depressions, and in such a manner that the area shall be properly leveled off, cleared of debris, and graded to conform with the contour lines and grades as required and shown on the approved plan.

23-2.12. Regulation of operation

1. No soil shall be placed nor shall any operation be conducted so as to violate any of the regulations contained in this article.
2. Detailed records are to be kept relating to each truckload of soil/fill deposited, including: the source of the soil/fill, the testing results proving it is acceptable as detailed elsewhere in this article, and the location on the site where it is deposited.

23-2.13. Deposit of soil on adjoining property or public roads

Soil/fill shall not be deposited or in any way placed upon adjoining property or public roads. Any soil or material resulting from any such operation accumulating on any adjoining property or public road shall be removed immediately upon notice to the permittee, at their sole cost and expense, of such accumulation.

23-2.14. Compliance with other standards and terms of permit

1. All operations shall be conducted in strict accordance with any state law, other ordinances of the Township, and the terms and conditions of any permit granted for such operations.
2. Any approved soil material to be brought in to the Township must be tested at the source for compliance with the Soil Ranking Criteria found at N.J.A.C. 7:26D, Appendix C, Table 1A, in accordance with §§23-2.5 and 23-2.6 of this article and evaluated by a state certified laboratory. Additionally:
 - A. All expenses connected with such testing are to be borne by the recipient of the fill or the Applicant;
 - B. The Township Health Department, Township Engineer, or Zoning Officer shall have the authority to order additional reports or testing as it/they may deem necessary and appropriate, such costs to be borne by the recipient of the fill.

23-2.15. Nuisances and unsafe conditions

The operation shall be so conducted as not to constitute a nuisance, and in no event shall said operation create any hazardous or unsafe condition with regard to any person or persons. Natural screening is to be preserved by the applicant.

23-2.16. Restoration of area

1. Upon completion of any operation delineated on the approved plan, said area shall be properly leveled off, cleared of debris, and graded to conform to the contours and grades as approved by the Zoning Officer and/or Township Engineer. A final map for all major soil fill permits shall be submitted containing and complying with all requirements as set forth in this chapter.
2. No trash, junk or debris may be stored in any area, and no safety hazards shall be permitted either during or after the completion of operations.

23-2.17. Storage limitations

The material temporary stored shall not exceed a height of 20 feet, and the maximum storage slope shall be 45 degrees.

§ 23-2.18. Enforcing officer; inspections

1. The Zoning Officer and/or Township Engineer are designated as the officials whose duty it shall be to enforce the provisions of this chapter. They shall, from time to time, upon their own initiative, and whenever directed by the Township, inspect the premises for which permits have been granted to ensure compliance with the

terms of the permit and of this chapter. The Zoning Officer and/or Township Engineer shall have the right to enter upon any lands for the purpose of examination and inspection of the operation without advance notice. The Zoning Officer and/or Township Engineer may also inspect trucks entering the Township of Wantage carrying soil/fill. They shall also have the right to request proof of compliance and documentation required in §23-2.12(2) above, as well as the Permit they are operating under and the laboratory results for the soil/fill .

2. In conjunction with the right to examine and inspect the operation, the Township Health Department, Township Engineer, or Zoning Officer shall have the authority to order additional testing of the soil/fill. Such testing shall be performed by a state certified laboratory and all costs of that testing shall be borne by the recipient of the soil/fill or the Applicant. Said testing shall comply with the testing requirements in §§23-2.5 and 23-2.6 of this article.
 - A. If the results of that additional testing indicate soil/fill containing material or otherwise in violation of the testing requirements above, the Owner shall be responsible for environmental clean up of the site and shall bear the entire cost of the clean up.

§ 23-2.19. Use of Streets for soil transportation

In the placement of soil or fill operation, the applicant shall cause streets to be kept free from dirt and debris resulting from the soil or fill operation.

ARTICLE III Fees; Bonds; Penalties and Miscellaneous Provisions

§ 23-2.20. Permit fees; inspection fees

1. The fees for a minor or major soil placement permits are set forth in Chapter 21, Fees and Escrows.
2. The applicant shall be responsible for all of the inspection fees of the Township Engineer incurred in reviewing the application and making inspections.

23-2.21. Revocation of Permit; Violations and Penalties.

1. Proof of compliance with this article and any specific conditions of an individual permit may be requested by the Township Health Department, Zoning Officer or Township Engineer at any time and must be provided immediately pursuant to §23-2.10 herein. Failure to respond or provide proof of compliance shall be considered a violation of the terms of the permit, and may result in an immediate stop work order until the requested proofs are provided.
2. After notice and an opportunity to be heard before the Township Zoning Officer, the permit of any person may be revoked or suspended for such period as the Township Zoning Officer may determine for any violation of the terms hereof or the terms and conditions of any permit granted hereunder.

3. In addition to the revocation provided for herein, any Landowner, trucking company or Importer who violate this chapter or any director or officer of a corporation who participates in a violation of this chapter shall, upon conviction thereof, be subject to a maximum fine of \$2,000, or imprisonment for a period not to exceed 90 days, or both. Each and every day that such violation continues or exists, and each and every truckload of soil/fill that is deposited in violation of the terms of the permit, shall be considered a separate and specific violation of these provisions and not as a continuing offense.
4. If it is determined that the terms of the permit have been violated and soil/fill deposited is not in compliance with the testing requirements of this article, the permit shall be permanently revoked, and the recipient of the fill shall have the soil/fill removed or remediated, as deemed necessary by the Township, at recipient's sole expense.
5. No revocation of the permit or other penalty in this section shall relieve the Owner of their responsibility to clean up a site that has been determined to have contaminated soil/fill in violation of their permit.
6. Any importation without a permit pursuant to this Chapter is subject to the same penalties and fines outlined above. Penalties and fines may be imposed on any or all parties involved with the illegal importation of soil/fill including the receiving land owner, the trucking company, the truck owner, and the owner and/or operator of the site from which the soil/fill originated.

§ 23-2.22. Other permits

Nothing contained in this sub chapter shall be construed to affect the owner's application for soil erosion and sediment control permits or any other state or federal regulations or permits as required.

SECTION 3. Chapter 21: Fees and Escrows of the Municipal Code of the Township of Wantage shall be amended to include fees and escrows for soil fill permits as follows:

§ 21-3 Soil Fill Placement

1. Minor Soil Importing Placement Permit (up to 300 cubic yards) Fee: \$100 Escrow: \$500
2. Major Soil Importing Placement Permit (greater than 300 cubic yards) Fee: \$500 Escrow: \$2,000

SECTION 4. Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity of constitutionality of any other sections or parts thereof.

SECTION 5. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

SECTION 6. This Ordinance shall take effect immediately upon final passage, approval, and publication by law.

SECTION 7. Any violations of the prior Ordinance relating to Soil Importing and Exporting occurring prior to the date of enactment of this Ordinance shall continue to be enforced pursuant to that Ordinance.