CHAPTER 36: EXCAVATIONS

§ 36.1 Title

This Chapter shall be known and may be cited as the "Excavations Law of the Town of Camillus, New York."

§ 36.2 Applicability

This Chapter shall apply to all lands lying within the Town of Camillus outside the Village of Camillus. Permits required hereunder are required in addition to and not in place or instead of permits required under any other provisions of law.

§ 36.3 Purpose

The purpose of this Chapter is to regulate excavations pursuant to Town law § 130(23) and to provide for the wise and efficient use of lands and resources and, in conjunction with excavating operations, for reclamation of affected lands; to encourage productive use, including but not restricted to the planting of forests, the planting of crops for harvest, seeding of grass and legumes for grazing purposes, protection and enhancement of wildlife and aquatic resources and establishment of recreational, residential, commercial and industrial sites; to provide for the conservation, development, utilization, management and appropriate use of all the natural resources of such areas for compatible multiple purposes; to prevent pollution; to prevent all manners of excavation which create pits, holes or hollows in the earth; to protect and perpetuate the taxable value of property; and to protect the health, safety and general welfare of the people and the natural beauty and aesthetic value in the affected areas of the Town.

§ 36.4 Definitions

As used in this Chapter, unless the context or subject matter otherwise requires, the following terms shall have the following meanings indicated:

1. "Appurtenant activities" means all on-site operations involved in the hauling, treatment, processing or further fabrication of soil, sand, gravel or natural deposits, including washing, sedimentation ponds, grading, sorting, grinding and crushing
2. "Buffer" means trees, hills, fences 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, caused by noise, glare, dust, adverse appearance and other factors associated with the excavation site and appurtenant activities
3. "Development" means the construction and erection of residential, commercial, industrial or professional buildings, shopping centers or subdivisions
4. "Enforcement Officer" means such person as may be designated by the Town Board of the Town of Camillus to perform the duties and carry out responsibilities under these regulations
5. "Excavation" means the removal of sand, gravel, rock or stone, topsoil, soil or earth, turf and other similar substances from their natural location in or on the ground for any purposes other than for the construction of a wall, driveway, sidewalk, building, structure

or part thereof for which a building permit has been issued; farm pond, wildlife marsh or other farm conservation practice; or for the construction of any public utilities. All grading of lands pursuant to plans approved by the Town Planning Board for site preparation, public and private site development and site improvement shall also be excluded from this definition

6. "Mining" means any use of any land or other premises for the excavation, cutting, crushing, screening, washing or processing of stone, sand, gravel, rock, soil, earth, turf or other similar substances
7. "Overburden" means soil and all other natural material, other than vegetation, overlying the material to be excavated
8. "Restoration" means the reparation, to an environmentally acceptable natural state, of an area which has undergone physical change due to excavation and appurtenant activities
9. "Topsoil" means the layer of surface material which is not less than four (4) inches deep and which is capable of nurturing vegetation

§ 36.5 General Requirements

A. All excavations and appurtenant activities commenced henceforth shall be in conformity with the provisions of this Chapter, the New York State Mined Land Reclamation Law[1] and Chapter 30 entitled "Zoning" of the Town of Camillus Municipal Code

B. All excavations lawfully in operation at the time when this Chapter becomes effective may continue and will be issued a temporary permit for ninety (90) days. To continue operation beyond the period of the temporary permit, a permit shall be applied for and obtained under the provisions of this Chapter

§ 36.6 Exceptions

Nothing contained in this Chapter shall require any person to obtain a permit for the following purposes:

A. A person engaged in farming operations for the purpose of moving topsoil, soil or earth from one location on his or her land to another location on the same land for grading, improving or draining said land, provided that such removal is necessary for or accessory to the farming operations

B. Any person in any location engaged in removing one hundred (100) cubic yards of material or less within one (1) year; provided, however, that any person who intends to sell the material or remove the material to any location other than upon the premises owned by such person and contiguous to the removal site shall register with the Enforcement Officer. Whenever the enforcement officer determines that the operation may have or is likely to cause a detrimental effect on the ecology or may or is likely to cause an aesthetically detrimental effect on the Town or any adjacent property, then the Enforcement Officer shall report same to the Town Board with his or her reasons therefor. The Town Board may, in its discretion require such operation to be subject to such procedures under this Chapter as it deems appropriate and may

[1] ECL § 23-2701 - § 23-2727

waive such conditions or procedures as it deems just and equitable under the circumstances

C. Any excavation by, for or on behalf of the Town of Camillus when such excavation is by official resolution of the Camillus Town Board of the Town of Camillus

D. Any excavation for sewage disposal systems or underground fuel storage tanks

E. Any sanitary landfill operation by, for or on behalf of the Town of Camillus

F. Any and all excavation necessary for or accessory to the development of land, excluding, however, holding ponds which shall require compliance with this Chapter

G. Any excavation by public utilities, provided that such public utilities give the Town Board of the Town of Camillus written notice listing those areas to be excavated with a description of services to be provided at least sixty (60) days before the inception of such excavation

§ 36.7 Application information

A. Five (5) copies of the application for each permit shall be signed by the applicant and by each owner of the premises, other than the applicant, and shall include the following information:

1. Name and address of the applicant
2. Name and address of each owner of the premises
3. Receipted tax bills or photostatic copies thereof, or a letter signed by the Receiver of Taxes of the Town of Camillus or by the Commissioner of Finance of Onondaga County or by any title insurance, abstract or searching company authorized to do business in Onondaga County, certifying that all taxes and assessments against the property described in the application have been paid
4. A duly acknowledged consent in writing of the owner of the premises and mortgagee, if any, including their addresses
5. The existing groundwater level at the location proposed for the operation, when required by the Town Board of the Town of Camillus

B. For each proposed excavation having less than five hundred (500) cubic yards of material to be excavated, the applicant shall submit five (5) copies of a tape location map or similar accurate sketch of the area to be excavated and of all lands and improvements thereon within three hundred (300) feet from such area to be excavated

C. For every proposed excavation of five hundred (500) cubic yards or greater, the application shall include five (5) copies of each of the following plans prepared by a licensed engineer or surveyor:

1. Location map at a scale of one (1) inch equals two hundred (200) feet or larger, showing the following: The location map must be a licensed surveyor's or professional engineer's map or an aerial photograph showing the area as it exists at the time of the application, marked to show the following items:

a. Proposed and existing excavated area
b. Physical features within one thousand (1,000) feet from the proposed excavation and appurtenant activities
c. Boundaries of land owned or leased by the applicant
d. Existing private and public land uses within one thousand (1,000) feet from the proposed excavation and appurtenant activities

2. Natural features map at a scale of one (1) inch equals two hundred (200) feet or larger, showing the following within five hundred (500) feet of the proposed excavation and appurtenant activities:
    a. Existing topography at contour intervals not exceeding five (5) feet
    b. Areas of trees and forests
    c. Drainage features, including streams, springs, ponds and drainage channels
    d. Existing structures and improvements

3. A written detailed statement of proposed operations and manner in which the operation is to be conducted in the future

4. Operations map and plan at a scale of one (1) inch equals two hundred (200) feet or larger and covering the same area as the natural features map, showing, in addition to the information on the natural features map:
    a. Proposed excavation area, including depths and slopes of proposed excavation
    b. Thickness of overburden
    c. Existing and proposed appurtenant and incidental activities, structures, equipment and improvements, including but not limited to all washing and settling ponds
    d. Existing and proposed access roads and parking facilities, identified by type of surface material
    e. Existing and proposed fencing, berms and buffers, identified by height and type of material
    f. Area where topsoil and overburden will be stockpiled for use in restoration
    g. Location and logs of test borings, including groundwater levels.

5. Restoration map and plan at the same scale and covering the same area as the natural features map, showing, in addition to the information on the natural features map:
    a. Boundaries of area proposed for restoration
    b. Final topography of area proposed for restoration at contour intervals not exceeding ten (10) feet
    c. c. Final surface drainage pattern and the location and characteristics of artificial drainage facilities in the area proposed for restoration and in contiguous areas
    d. Depth of topsoil proposed to be used in restoration
    e. The type and density of trees, shrubs and other vegetation proposed to be used in restoration

6. The location map and natural features map may be combined

§ 36.8 Permit applications, review, issuance and renewal

A. Before any excavation or appurtenant activities are commenced in the Town, the five (5) copies of an application for an excavation permit as required by § 36.7 shall be filed with the Town Clerk, and this application shall be approved and an excavation permit shall be granted by the Town Board pursuant to the provisions of this Chapter

B. Upon filing an application for an excavation permit involving the excavation of any earth materials regulated by this Chapter, the applicant shall pay to the Town a nonrefundable fee of One Hundred Dollars ($100.00) and guarantee any further payment for reasonable and necessary advertising and stenographic fees over and above said One Hundred Dollars ($100.00)

C. At least sixty (60) days prior to the public hearing held by the Town Board, a copy of the permit application, together with the information as required by § 36.7 of this Chapter must be submitted by the Town Board to the Town Planning Board, the Town Council for the Environment and the Town Engineer for their review and recommendations

D. The Town Board shall fix a reasonable time for a public hearing on the proposed permit application and shall publish notice thereof at least ten (10) days and no more than thirty (30) days prior to the date of the hearing. Not less than five (5) days before such hearing, the Town shall mail, to each owner (according to the latest completed assessment roll) of premises adjoining the applicant's lands proposed as an excavation site, a written notice of such public hearing

E. Approval or denial of the application by the Town Board shall be rendered within sixty (60) days after a complete application is filed by the applicant, unless both the Town Board and the applicant mutually consent to a time extension. The Town Board shall notify the applicant within thirty (30) days after the application is filed if said application is incomplete. In the event that the Town Board determines that additional information is necessary and that the application is therefore not complete, the sixty (60) days time period in which to approve or deny the application shall be extended to sixty (60) days beyond the date when such required additional information has been filed by the applicant. The application shall be presumed approved if the Town Board has not made a decision at the end of the sixty (60) day period following the filing of a complete application or at the end of any agreed upon time extension

F. Excavation permits shall be issued for a period of the remainder of the calendar year and shall be renewable for additional one year periods on January 1, subject each year to payment of the annual permit fee or fees and the receipt of a certification from the operator's duly licensed engineer that the operation is in compliance with the terms and conditions of the permit and also subject to approval by the Town Engineer following an annual site inspection by the Town Engineer or other agent designated by the Town Board

G. If, upon periodic inspection and review, the excavation and appurtenant activities have not been conducted in full compliance with the terms of the excavation permit and compliance is not effected within ten (10) days after written notice to the permit holder of the violations existing, the permit may be terminated by the Town after a hearing before the Town Board, held on notice

to the applicant, who shall have the right to be heard thereat, and/or the Town may bring action to compel compliance. The Town shall also have the right to do or cause to be done such work, including reclamation, necessary to bring the excavation operation into compliance with the terms of the excavation permit and to recover the cost from the permit holder and/or his or her surety

H. Renewal of an excavation permit upon its termination shall be in accord with the procedures required in this Chapter for the original permit, except that a public hearing will not be required to be held on an application for such a renewal

§ 36.9 General standards for approving or denying permits

In approving or denying an excavation permit, the standards and considerations taken into account shall include but not be limited to the following: whether the excavations are in accord with the intent of the Town Comprehensive Plan or Master Plan, if one has been adopted; whether they will result in the creation of pits or holes which may be hazardous or dangerous; whether they will cause soil erosion or the depletion of vegetation; whether they will render the land unproductive or unsuitable for agricultural or developmental purposes; whether they will impair the aesthetic or natural environment of the excavation area or surrounding land use; whether they will create excessive traffic or impair the quality of the existing and proposed thoroughfare facilities, community facilities and drainage; whether they will affect the control of nuisances; whether the proposed excavation or its appurtenant activities will pollute the air, streams or groundwater or will cause unreasonable noise; whether the sate and federal laws and regulations as to safety, water and air pollution standards, noise abatement and related matters will be met; and whether the areas excavated can be effectively restored and revegetated.

§ 36.10 Standards for site design and operation

A. Active excavation area
The active excavation area shall not exceed a total of ten (10) acres at any one (1) time. "Active excavation areas" shall mean areas that have had natural materials removed therefrom or appurtenant activities conducted therein within the annual permit period

B. Setback

1. No excavation or stockpiling of excavated materials, other than topsoil, shall be conducted closer than two hundred (200) feet to a public right-of-way or any adjoining property line. Topsoil may be stockpiled not closer than one hundred (100) feet to a public right-of-way or any adjoining property line. No parking areas shall be located closer than fifty (50) feet to any property line. However, excavations may be conducted within two hundred (200) feet of the New York State Thruway, provided that such excavations shall not be to a depth lower than the lowest grade of said Thruway property line lying within two hundred (200) feet of the excavation

2. This setback area shall not be used for any use in conjunction with excavation or appurtenant activities, except one (1) sign for identifying the use of the property, fencing, buffers, access roads and parking

3. All structures and appurtenant activities shall be located not closer than two hundred

(200) feet to a public right-of-way or adjoining property line, except that sedimentation ponds may be located within this setback area if the applicant demonstrates that the topography necessitates such a location and also demonstrates that, where appropriate, sufficient safeguards, such as buffers, will be provided for the protection of neighboring residents. Building permits for structures and Planning Board site plan approval shall be obtained as required by Chapter 30 entitled "Zoning" of this Municipal Code

4. Whenever required by the Town Board as necessary for the protection of the public, barriers consisting of trees, plantings and hedges, such as solid multiflora rose hedge, or wire fencing of the type known as "Chain link" as approved by the Town Board, of such heights as shall be specified by the Town Board as necessary for the protection of the public considering the particular circumstances of the terrain and location, substantially erected and with no opening except a necessary ingress and egress, shall be erected and maintained to prevent public access to the area of any operation permitted hereunder or any part thereof. Any and all gates shall be closed and locked at all times except during the working hours of such operation when all permittee or his or her agent or employee shall be within the premises. Irrespective of the foregoing, settling ponds or other flooded excavation shall be surrounded with fences of appropriate height to exclude trespassers

C. Access roads and parking
   1. All access roads shall be designed to take advantage of buffers and to include curves or other features to screen, as much as feasible, excavation and appurtenant activities from public view. The junction of access roads and public roads shall be at an angle of not more than ten degrees (10) deviation from a right angle. Site distances at intersections shall be provided

   2. All excavated areas, parking ares and access roads shall be sufficiently free of dust and mud to prevent such material from being spread or blown from the premises. All precautions, such as applying calcium chloride, oiling or watering daily or more frequently when necessary, shall be taken to prevent dust and sand from being blown from the premises. The first two hundred (200) feet of access from a public road shall be paved or surfaced with washed gravel of a depth of at least six (6) inches

   3. Sufficient off-street parking shall be provided for company, employee and visiting vehicles. The parking of any such vehicle on a public right-of-way or the impeding of traffic or creation of traffic hazards by the parking of any such vehicle shall be prima facie evidence of failure to provide for adequate parking

D. Preservation of natural features
   1. Topsoil. All topsoil shall be stripped from the active excavation area and shall be stockpiled for use in accordance with the restoration plan. All such stockpiles shall be seeded, covered or otherwise treated to minimize the effects of erosion by wind or water upon public roads, streams or other water bodies or upon adjacent property

2. Landscape. Existing hills, trees or ground cover fronting along public roads or adjacent property shall be preserved, maintained or supplemented by selective cutting, transplanting and addition of new trees, shrubs or other ground cover for the purpose of providing a buffer. If the existing topography and vegetation do not lend themselves to such treatment, the operation shall take into consideration the potential of grading overburden around the perimeter of the excavation site to create a berm for the purpose of providing a buffer, provided that the berm is properly landscaped with trees, shrubs and other ground cover. No berm shall be constructed within fifty (50) feet of a public right-of-way or adjoining property line. The side slopes of berms shall be not steeper than a ratio of three (3) horizontal to one (1) vertical. The berm shall be of sufficient height to screen the operation from public roads and adjacent properties

3. Drainage. An adequate drainage system shall be provided to convey storm water runoff originating on or crossing the premises such that the runoff follows, as much as feasible, the natural pattern of run off prior to excavation and such that it does not adversely effect neighboring property owners. No excavation shall be allowed closer than fifty (50) feet to a river, stream, lake or other natural water body. Soil erosion, sedimentation, groundwater seepage and rate of runoff shall be controlled so as to prevent any negative effects on bodies of water, public roads and neighboring properties. No ponds or pools of water shall be created or allowed to remain in any excavated area, unless said ponds or pools are specifically authorized as an accessory use

E. Other safeguards

1. Lateral support. Lateral support shall be sufficient to prevent the hazard of damage to persons, adjacent properties and public roads by reasons of slides, sinking or collapse

2. Slope limitations. No minus slopes (undercuts) will be permitted within the excavated area at any time. Vertical slopes in excess of five (5) feet are prohibited. Side slopes shall be not more than one (1) vertical to two (2) horizontal, unless the owner takes special precautions to prevent caving or instability of the embankment

3. Hours of operation. Excavation and appurtenant activities shall be conducted only between 7:00 A.M. and 5:00 P.M. local time and shall not be allowed on Sundays or public holidays, including but not limited to New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving and Christmas. Loaded trucks shall leave the premises only within the hours permitted for the operation of excavation and appurtenant activities

4. Noise. Noise from excavation, appurtenant activities and related operations shall not be such as to interfere unduly with the quiet enjoyment of the neighboring properties, and all operations shall be conducted without unnecessary noise

5. Depth limitations. No excavation shall be made below a level which is three (3) feet above the highest groundwater level expected at the active excavation area as established by the applicant's engineer and shown on the application maps

6. There shall be no blasting, unless the operation is a wet mining operation approved by the Town Board of the Town of Camillus, after sundown or before 8:00 A.M. Operations,

other than blasting and primary crushing, may be permitted at other hours where plant and equipment are equipped with enclosures for installation effectively limiting sound, in the discretion of the Town Board

7. All vehicles hauling to and from any operation permitted hereunder shall be loaded in such a manner so as not to spill materials on public highways and shall be equipped with proper muffler and mud reducing equipment. All vehicles shall be required to come to a complete stop before leaving the premises

8. All facilities for crushing, screening, washing or processing shall be located in areas approved by the Town Board

§ 36.11 Standards for restoration

A. Slope
No slope shall be left with a grade steeper than one (1) foot of vertical rise to three (3) feet of horizontal distance

B. Debris
All stumps, boulders and other debris resulting from the excavation, appurtenant activities or related operations shall be disposed of by approved methods. If allowed to be disposed of on-site, such debris shall be covered with a minimum of two (2) feet of topsoil

C. Topsoil
Topsoil shall be respread over the excavated area to a minimum depth of four (4) inches

D. Restoration
The restoration area shall be planted with trees, shrubs, grass or other vegetation so as to provide for screening, natural beauty and soil stability. The planting shall follow conservation practices acceptable to the Town Planning Board

E. Drainage
Restoration shall be undertaken in such a way that natural and storm drainage, where it enters and leaves the premises, shall be altered only to the minimal degree necessary to carry out excavation and appurtenant activities. Any alterations of natural and storm drainage shall not adversely affect public roads or neighboring property owners

§ 36.12 Bond requirements

After the approval of the application and before the issuance of any permit, the applicant and each owner of record of the premises, other than the applicant, shall jointly execute and file with the Town Clerk a bond in form and with surety acceptable to the Town in the amount set by the Town Board, but in an amount of at least Three Thousand Dollars ($3,000.00) per acre for each acre of land within the area to be used for excavation and appurtenant activities. The bond shall guarantee that within one (1) year after termination of either the permit or the operation, whether voluntarily by the operator or by order of the Town Board, whichever may come first, the land shall be restored in conformity with both the permit requirements and the standards set forth in this Chapter.

§ 36.13 Fees

Before the issuance or renewal of any annual permit, the applicant shall pay the Town Clerk a fee of One Hundred Dollars ($100.00) as deposit on the annual permit fee and two cents (2¢) per cubic yard of excavated materials truckled out of the applicant's excavation premises during the previous year according to the applicant's records, which shall be made available to the Town Board for inspection for the purpose of verifying the quantity of materials excavated and truckled away. The permittee will provide the Town of Camillus with an updated topographical map on January 1 of each and every year of the excavation operation.

§ 36.14 Penalties for offenses

A. Any person, firm, company or corporation operating or conducting any excavation in violation of any of the provisions of this Chapter and any person, firm, company or corporation assisting in the commission of any violation of this Chapter or of any conditions imposed by the Town Board pursuant to this Chapter and any person, firm, company or corporation who shall omit, neglect or refuse to do any act required by this Chapter shall be guilty of an offense and shall be subject to a fine not to exceed Two Hundred Fifty Dollars ($250.00) for each violation and, if an individual person, shall be subject to imprisonment not to exceed fifteen (15) days. Each week that such violation, disobedience, omission, neglect or refusal continues or arises shall be deemed a separate offense.

B. In addition to the remedies hereinabove set forth the Town Board may institute any appropriate action or proceeding to prevent and to restrain, correct or abate such violation or to prevent any illegal act, conduct, business or use in and about such premises.

§ 36.15 Stop work orders

The Enforcement Officer shall have the right and authority to issue stop work orders to those excavating or operating in violation of the terms of this Chapter or any permit issued hereunder or contrary to the applicant's maps or plans upon which its permit was issued.

§ 36.16 Revocation of permit

Upon the violation of any provisions of this Chapter, the Town Board, for no more than thirty (30) days, may suspend any permit issued hereunder and, following a public hearing before the Town Board on notice to the applicant and at which the applicant shall have the right to appear and be heard, may revoke any permit issued under this Chapter.

§ 36.17 Inspections

A. The Enforcement Officer shall be authorized, in the performance of his or her duties, to conduct inspections of premises, or parts of premises, at such times and in such manner as the Enforcement Officer may find convenient or necessary, with the consent of the person in possession or occupancy

B. If admission is refused or cannot be obtained from the person in possession or occupancy, the Enforcement Officer shall be authorized to obtain a warrant to make an inspection, provided reasonable or probable cause is shown

C. In case of an emergency, the Enforcement Officer may without a warrant, enter any premises, or parts of premises to inspect the same, at any time, without the permission of the person in possession or occupancy

§ 36.18 Complaints

Any person having knowledge of any violation of this Chapter or any permit issued hereunder may file a complaint in writing with the Town Clerk, and the Enforcement Officer shall thereupon make an investigation and report his or her findings to the Town Board.

Authority: Town L § 130(23); State Loc Govt § 10; Mun HRL § 10.

HISTORICAL NOTE

This Chapter is a codification of Local Law #3 of the year 1980 which was adopted by the Town Board on July 22, 1980. Amended spelling LL#13-94.

Cross-references:

Building Code Enforcement. Chapter 26.
Environmental Quality Review. Chapter 32.
Zoning. Chapter 30.

References:

Inspections.
Coercing person to consent to warrantless search is in derogation of constitutional rights. Camara v Municipal Court, 400 US 309.
New York State Mined Reclamations Law. ECL Title 27.
administration. ECL § 23-2709.
cooperation. ECL § 23-2719.
local laws; effect on. ECL § 23-2703
mined land use plan. ECL § 23-2713
permits. ECL § 23-2711
reclamation plan. ECL § 23-2715.
bond. ECL § 23-2717.
rules and regulations. ECL § 23-2721.
Nonconforming use extends to entire parcel, not merely the part being mined. Syracuse Corp v Weise,
72 AD2d 254