

## Chapter 87. Building Construction

### Part 2. Regulations

#### Article XII. Grading of Land

[Added 7-25-1972 by Ord. No. 72-CE-14; amended 5-22-2007 by L.L. No. 20-2007]

##### § 87-84. Permit required.

It shall be unlawful to regrade, alter or change the contour or topography of any land, or to fill depressions or excavate land including Hillside Areas, without a grading permit having been issued by the Department of Engineering Services. In no event shall the Department issue a grading permit which will result in a final grade greater than a one (1) on three (3).

##### § 87-85. Exemptions.

The provisions of this article shall not apply to the following:

- A. Excavation or alteration to the topography or contour of land performed in conformance with an approved subdivision or site plan for which a building permit has been issued; and
- B. Emergency situations, as determined by the Director of Engineering Services, on behalf of the Town, where ground disturbance is required to protect persons, wildlife and property from imminent danger. A letter from a licensed professional engineer attesting to the emergency and its nature and extent shall be submitted to the Director prior to such finding, if the action is requested by the property owner or his agent.
- C. Any project or work performed by or on behalf of the Town of Huntington or the State of New York as long as such work is for governmental or municipal purposes.
- D. Removal and piling of earth incidental to the installation, enlargement, repair or maintenance of a cesspool, septic tank or dry well provided a fence or other suitable barrier not less than four (4) feet in height is installed and maintained around the excavation if the area is to be left open and unguarded.
- E. The moving of topsoil or other earth from one part of the premises to the other where incidental to farming or landscaping. For the purpose of this article the term "farming" shall mean the removal of vegetation, topsoil or earth incidental to the harvesting or planting of crops which does not affect the topography or contour of land, and the term "landscaping" shall mean the planting or removal of trees, shrubs, bushes, grass or other vegetation that does not substantially affect the topography or contour of the land as determined by the Director.

##### § 87-86. Permit application; requirements.

Each application for a grading permit shall be signed by the property owner and contain the following information

- A. A site plan showing the existing and proposed topography, the nature and location of existing vegetation, and a stabilization plan for the final grade.
- B. The amount of fill to be added, moved, replaced or excavated.
- C. A work schedule indicating the start date, anticipated number of working days required and the overall duration of the project.
- D. A survey of the property.
- E. A copy of the most recent deed to the property, including the tax map number and street address.
- F. The full names and addresses of all property owners.
- G. The name(s) and address(es) of the contractor(s), license number and proof of workers compensation coverage.
- H. If the owner is a corporation, the full names and addresses of all officers.
- I. A sworn and notarized statement by the property owner attesting that there are no covenants and restrictions or other impediment which would prohibit the proposed change in the contour of the land, and if such covenants and restrictions or impediment exist, a full copy of same shall be provided with the application.
- J. Such other information and documentation requested by the Director.

## § 87-87. Permit application fee.

Each application for a grading permit shall be accompanied by the following fee:

Up to 5,000 cubic yards - Two Hundred and Fifty (\$250.) Dollars.

5,001 to 15,000 cubic yards - Five Hundred (\$500.) Dollars.

15,001 + cubic yards - One Thousand (\$1,000.) Dollars.

## § 87-88. Term of permit.

Any permit issued pursuant to this article shall expire one (1) year of the date of issuance. No more than one (1) permit at a time shall be issued for the same property.

## § 87-89. Bond or other security.

- A. The owner, contractor or applicant shall deposit a performance bond or cash security prior to the issuance of a grading permit to ensure that the work is completed to the satisfaction of the Director and in compliance with the approved plan, the conditions and specifications of the permit, and the site improvement regulations of the Town of Huntington. The bond or security shall also ensure that any damage to public roadways, curbs, drainage facilities or other public property resulting from the performance of the work will be repaired or replaced by the property owner or permit holder to the satisfaction of the Town. Such performance bond shall be issued by a surety company authorized to do business in the State of New York with an AM Best rating of "A-" or better, or cash or certified check on behalf of the owner, contractor or applicant.
- B. All bonds or securities shall be filed with the Department of Engineering Services and shall be for a term of one (1) year as with the permit. If an extension of a bond is necessary, then it shall be in

one (1) year intervals. The bond, cash or security shall be in the following amount:

Up to 5,000 cubic yards - Twenty Thousand (\$20,000.) Dollars.

5,001 - 15,000 cubic yards - Thirty Thousand (\$30,000.) Dollars.

15,001 + cubic yards - Fifty Thousand (\$50,000.) Dollars.

- C. If the amount of material is one thousand (1,000) cubic yards or less, the Director of Engineering Services may waive the posting of a bond or security.

## § 87-90. Permit; prohibited acts.

- A. The acceptance of a grading permit shall constitute an agreement by the property owner and/or permit holder that the work to be performed will comply in all respects with the plans, and conditions and specifications of the permit approved by the Department and that no modification, alteration or deviation from the approved plans or permit will occur without the prior approval of the Department. A property owner or permit holder who performs work, or causes work to be performed, which modifies, alters or deviates from the approved plans or permit in any way shall be in violation of this article. In addition to any other penalty provided for herein, a stop-work order may be issued by the Town and the permit may be revoked by the Director.
- B. Display of permit. The grading permit shall be properly posted in a conspicuous place at the premises for which it was issued so as to be easily inspected. The permit shall be posted at all times during the performance of the work and shall not be removed until the project is completed to the satisfaction of the Director. A property owner or permit holder who fails to post a grading permit shall be in violation of this article.
- C. Nontransferability of permit. No person shall permit or allow a grading permit to be posted at a premises other than the premises for which the permit was issued. The property owner of the property for which the permit was originally issued and the owner of the property on whose property the permit is unlawfully posted shall be strictly liable for a violation of this article. In addition to any other penalty provided for herein, a stop-work order may be issued by the Town and the permit may be revoked by the Director.
- D. Alteration of permit. It shall be unlawful to alter, obscure, deface, change or otherwise tamper with any portion of a permit issued under this article. The property owner and/or permit holder shall be strictly liable for a violation of this section. In addition to any other penalty provided for herein, a stop-work order may be issued by the Town, and the permit may be revoked by the Director.
- E. Assignment of permit. A property owner and/or permit holder may assign a grading permit to the new property owner if the property for which the grading permit was issued is sold or transferred before the work under the permit is completed. A copy of the new deed and the full name, address and phone number of the new owner(s) of the property shall be provided in writing to the Department within ten (10) days of the transfer.

## § 87-91. Standards.

- A. The fill used shall be clean, consisting of topsoil, sand, gravel or stones, and shall be substantially free of degradable or vegetative material. The fill used shall not contain household appliances or motor vehicles, or parts thereof, or construction or demolition debris.
- B. The fill deposited shall be graded in such a manner as to provide that the shape, condition and contour of the site will be in substantial conformity with the approved plan and conditions and specifications of the grading permit.
- C. In order to prevent disturbance or damage to neighboring properties, no grading shall be permitted pursuant to this article along the property lines as follows:

**Lot size**

**(square feet)**

up to 10,000

10,001 - one (1) acre

greater than one (1) acre

**Required Setback**

five (5) feet

ten (10) feet

fifteen (15) feet

- D. Grading shall be accomplished in such a manner as to retain all storm water runoff on site.
- E. No regrading shall be permitted within any wetlands area as defined by the town code or state agency having jurisdiction.

§ 87-92. Reserved.

§ 87-93. Reserved.

§ 87-94. Reserved.

§ 87-95. Reserved.

§ 87-96. Reserved.

§ 87-97. Reserved.

§ 87-98. Inspection of work; issuance of certificate.

- A. Inspections. Work for which a grading permit has been issued shall be subject to inspections by the Department of Engineering Services at appropriate stages of the project. Work shall be inspected prior to covering any portion thereof and upon completion of each stage of the project, including but not limited to, site preparation, excavation and regrading. It shall be the responsibility of the owner, permit holder, or his agent to inform the Department that the work is ready for inspection and to schedule inspections in a timely manner.
- B. Release of Bond. The Director shall release the bond or security upon a finding that the work complies with the plan approved by the Department, the conditions and specifications of the grading permit, the site improvement regulations of the town, and that no damage has been caused to public roadways, curbs, drainage facilities or other public property.
- C. Certificate of Completion. A Certificate of Completion (or Certificate) shall be issued by the Director upon completion of the permit requirements, the approved plan, and upon a showing to the satisfaction of the Director that the site has been sufficiently stabilized in conformance with the site improvement regulations of the town.

§ 87-99. Enforcement and penalties for offenses.

- A. Any person or business entity who violates the provisions of this Article shall be subject to the penalties set forth in § 87-45 of this chapter.

- B. If the work is not completed within the term of the permit or if a dangerous and unsafe condition or nuisance has been created in the opinion of the town, the Director of Engineering Services or of Public Safety, or their designees, shall notify the property owner, permit holder or occupier of the premises in writing to remove, remedy or abate the excavation, accumulation, or unsafe, hazardous or dangerous condition or nuisance within seven (7) days of receipt of such written notice. Such notice shall be mailed by certified or registered mail, return receipt requested, and addressed to the property owner at the last address shown on the most current assessment roll on file in the Office of the Town Assessor, or to the owner's agent at the last known address, the permit holder and/or to the person or business entity occupying the premises at the property location.
- C. Action upon noncompliance. Upon the failure, neglect or refusal of such owner, his agent, permit holder or person or business entity occupying the premises to remove, remedy or abate the accumulation, or the unsafe, hazardous or dangerous condition or nuisance within the specified period of time; or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed, the Director may refer the matter to the Town Board for further action.
- D. Action of the Town Board. The Town Board, by resolution, may direct the property owner, his agent, permit holder and/or person or business entity occupying the premises to remove, remedy or abate the accumulation, or unsafe, hazardous or dangerous condition or nuisance within ten (10) days of receipt of a copy of the resolution, and upon the failure, neglect or refusal of such person or business entity to comply, the Town Board may authorize Town personnel, upon reasonable notice, to enter the premises for the purpose of removing, remedying or abating the accumulation, hazard or nuisance, by whatever means deemed necessary or proper by the Town, at the expense of the property owner, or his agent, permit holder and/or occupier of the land. A copy of the resolution shall be mailed by the Town Attorney's Office by certified or registered mail, return receipt requested, and addressed to the property owner at the last address shown on the most current assessment roll on file in the Office of the Town Assessor, or to the owner's agent at the last known address, and/or to the person or business entity occupying the land at the location of the property.
- E. Removal of the accumulation, hazard or nuisance. Upon the failure, neglect or refusal of the owner, his agent, or person or business entity occupying the premises to remove, remedy or abate such accumulation, hazard or nuisance within the period provided by the Town Board; or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed, Town personnel may enter the property, upon reasonable notice, and take all necessary action to remove or abate the accumulation, hazard or nuisance at the expense of the property owner, his agent, and/or occupier of the land as set forth in this section.
- F. Any person or business entity who resists, obstructs or impedes the agents, servants, officers and/or employees of the Town of Huntington in the remediation or removal process shall be in violation of this article and shall be subject to the fines and penalties provided in § **87-45** of this chapter.
- G. Liability for the costs of removal and/or abatement. The property owner, his agent, and/or person or business entity occupying the land shall be liable for the direct and indirect costs of abating the accumulation, hazard or nuisance and all expenses incidental thereto, including but not limited to, an administrative fee equal to twenty-five (25%) percent of the total cost of said removal and/or remediation process. Said administrative fee is intended to reimburse the Town for the monies and time expended by its employees in abating the accumulation, hazard or nuisance and collecting the sums due, including but not limited to, notifying the appropriate party, certifying the amounts due to the Town, and/or charging same against the property.
- H. The costs incurred by the Town shall be certified by the Director of each town department providing services and the Town Attorney shall mail written notice of such costs by certified or registered mail, return receipt requested, to the owner of the premises at the last address shown on the most current assessment roll on file in the Office of the Town Assessor, or to the owner's agent at the last known address, and/or to the occupier of the premises at the location of the property. Said notice shall further state that the failure of the property owner, his agent, and/or occupier to pay such

sums within ten (10) days of receipt of such written notice by cash, certified or bank check, or money order, shall be sufficient cause to add the amount due to the tax bill without further notice.

- I. Recovery of costs; tax lien. In the event the property owner, his agent and/or the occupier of the land fails, refuses and/or neglects to pay the monies due and owing to the Town within said ten (10) day period, or if the mailing is returned by the Post Office because of the inability to make delivery for any reason, as long as the notice was properly addressed, such certification of costs shall be provided to the Town of Huntington Tax Receiver who shall cause the costs as shown thereon to be charged against such lands without further notice. The amount so charged shall forthwith become a lien against such lands and shall be added to and become part of the taxes next to be assessed and levied upon such lands, the same to bear interest at the same rate as taxes, and shall be collected and enforced by the same officers and in the same manner as taxes.
- J. In the event the sums due and owing to the Town are not charged against such lands as provided for herein, the Town may maintain a civil action to recover such sums against the owner of the land and/or any other responsible party.