

To Apply for an Excavation IN GENERAL an applicant has standards that must be achieved. The conditions are outlined in the State of NH Excavation Handbook as follows:

With consideration to an excavation in general – NH Laws Prohibits Projects who do not meet the following criteria. In addition to the requirements for operating and reclaiming a site, the law also specifies conditions under which no operation would be permitted; for example:

- a. When the excavation would be unduly hazardous or injurious to the public welfare. This standard, as described in the State of NH Excavation Handbook – applies to the site and operation of the excavation itself. In other words - for example - The excavation site itself is not unsafe and presents a hazard to the immediate surroundings. If the site itself is unsafe or presents any hazard to the public, it is not permitted. In this case Green Acre Woodlands has shown the site itself is not unsafe or injurious to the public.
- b. Where it would substantially damage a known aquifer. (*A body of permeable rock which can contain or transmit groundwater.) I don't recall receiving any type of geological or ground study of the site that would determine no aquifer would be damaged...on the other hand to my knowledge the Town of Hill has not performed any geological research in the area to assert that a "Known Aquifer exists." Therefore, Green Acres Woodlands survives the second condition.
- c. Where the project would violate the operational standards, or could not comply with the reclamation standards. Green Acre Woodlands has met the burden of operational and reclamation standards and therefore survives number 3.
- d. Where existing visual barriers would be removed. Green Acre Woodlands has met the burden to show visual barriers would remain.

It is my opinion that Green Acre Woodlands survives at least the criteria for which an excavation would be considered prohibited under NH State Law.

We then move on to the application for special exception -

NH RSA 674:33 – Special Exception

IV. (a) A local zoning ordinance may provide that the zoning board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance. All special exceptions shall be made in harmony with the general purpose and intent of the zoning ordinance and shall be in accordance with the general or specific rules contained in the ordinance.

No excavation is allowed unless permitted by the zoning ordinance, however, the law makes an exception if the zoning does not permit some opportunity for this activity.

On this subject Members of the Board conferred with Legal Counsel for the Town of Hill. Having the input of Attorney Eggleton and input from Counsel for Green Acre Woodlands, it was determined that Town of Hill Excavation Regulations drafted in 1990 and possibly enacted in other Excavations, however wrongfully, created a circularity that renders the regulations insufficient for use in their current form. For this reason, the ZBA relies on NH RSA 155 E.

ZONING REQUIREMENTS AND EXCEPTIONS:

NH RSA 155-E requires that a local zoning ordinance must address excavations in some manner, i.e., that opportunities for some of these resources must be allowed in at least some, but not necessarily all, areas in town. If this is not the case, excavation shall be considered to be a special exception use in a “non-residential area” of town, upon a finding by the zoning board of adjustment of the following four criteria (all four must be met).

The excavation:

- Š will not cause a diminution in area property values or unreasonably change the character of the neighborhood;
- Š will not unreasonably accelerate the deterioration of highways or create safety hazards in the use of the highways;
- Š will not create any nuisance or create health or safety hazards; and
- Š the excavation complies with any other special exception criteria set forth in the local zoning ordinance.

A question that arises from this provision of the law is: what is meant by "non-residential area". The law does not clarify whether this means a zoning district or simply existing residential development. It seems reasonable to assume that the latter was intended, rather than a zoning district, since many commercial and industrial zoning districts allow some type of residential development. **But, assumptions are not the ideal basis for regulatory policy; thus, it is important that the towns address this use in their zoning ordinances, so that these kinds of land use decisions are not made on an ad hoc basis, but rather through a public planning process. This only emphasizes why the need for the Planning Board to revisit the Excavation Regulations as their earliest opportunity.**

With regard to the four conditions of RSA 155 E –

Diminution in area property value - dim·i·nu·tion / ,dimə'n(y)ooSH(ə)n / *noun*

a reduction in the size, extent, or importance of something: "a permanent diminution in value"

Using the examples of (2) properties within close proximity of the proposed site –

- On Currier Rd. Assessed Value \$201,800. @ the current tax rate equates to a semi-annual property tax bill of \$2,585. A 10% abated discount as provided by the Town of Hill Assessor's Office equates to \$258.50 semi-annually or \$517.00 annually.
- Currier Rd. Assessed Value \$271,300. @ the current tax rate equates to a semi-annual property tax of \$3,476. A 10% abated discount as provided by the Town of Hill Assessor's Office equates to \$347. semi-annually or \$694 annually. These are two of the approximately 47 properties effected by the stated route for transportation of materials.

The applicant's statement of benefits to the Town of Hill was the realization of approx. \$800 - \$1,000 in gross revenues in taxation from materials removed by the excavation annually. Using the examples above, at a median of \$645 annually multiplied by approx. 47 properties equates to a loss in tax revenues of approx. **(\$30,315.00)** a year.

Will Not unreasonably change the character of the neighborhood. I believe it would further alter the character of the neighborhood...I believe it already has. (Anthony's Picture – First Fish) The site known as the "Culvert" has forever been altered to provide for trucking access to the proposed excavation approx. 200 feet away from this very location.

Will not unreasonably accelerate the deterioration of highways - The roads in the Town of Hill are not the responsibility of the applicant, its agents or associates, saved for one section which is the section previously spoken of as the Culvert. This section of Class VI Road is the responsibility of the applicant who sought approval to upgrade and did perform substantial upgrade to the Class VI Road having the verbal authorization or approval of the 2019 Selectmen and the current department head of the Town of Hill Streets and Highways Department.

Unfortunately - What was overlooked apparently in the approval process was the Town of Hill Class VI Road Policy and Regulations - specifically article 4 which states:

Notice to be Recorded – Prior to the actual issuance of any building permit (which also implies any work to be performed) the applicant shall produce evidence that a notice has been recorded at the Merrimack County Registry of Deeds to the effect that the Town neither assumes responsibility for maintenance of the Class VI Road, nor liability for damages resulting from the use of the road pursuant to NH RSA 674:41 I (c) (3). Written approval by the authorizing party (the 2019 Selectmen) is also required. Neither the notice of recording nor written authorization appear to be in any files maintained by the Town and neither has been provided to the Board by the applicant. Notwithstanding – The Town of Hill roads in general are not the responsibility of the applicant or its associates. The responsibility of maintenance and upkeep of the Town of Hill streets and highways is shouldered by the tax payers of Hill. Only a small section of Murray Hill Rd is maintained by the State Department of Transportation. Overall our roads are not in sufficient condition for an excavation of this magnitude. The tax payers are not in a position to immediately effect improvements that will result in roads sufficient for this endeavor. Despite the road report submitted by Brown Engineering in favor of approval for the excavation; the current road conditions is poor to fair in the majority of the proposed route. While the previous and ongoing logging operation was mentioned in the report,

the obvious deterioration of the roads as a result of the current logging operation was not mentioned nor was it part of the assessment. The fact is plain. The current condition of the roads is poor to fair in most areas. The Town has not invested in substantial road maintenance in more than 2 decades. The Town has not the resources, nor the intent to expend resources on the current roads which only leaves the possibility that roads will continue to deteriorate. The proposed transportation of materials **will only accelerate** the inevitable deterioration of our poor to fairly maintained roads.

Will not create any nuisance

Nuisance –

Essential Meaning of *nuisance*

: a person, thing, or situation that is annoying or that causes trouble or problems.

I did not delve deeply into the legal definitions of what constitutes a nuisance but the overall factor of the number of trucks, transporting materials through residential neighborhoods with no other means of Ingress or Egress has been met with strong opposition and that opposition has to be considered in our final decision.

Will not create a Health or Safety Hazard -

I did not find the Roadway Report submitted by Brown Engineering satisfied the burden of proof that a Health and Safety Hazard could and would be avoided given the narrow road conditions, having no shoulder to speak of, over miles of steep inclines, declines and many curves that create hazardous conditions under normal passenger vehicle interaction.

Where not all four conditions can be met sufficiently, I must vote to deny the Special Exception.