
WHEREAS, the unregulated and uncontrolled dumping of fill in the Township of Fredon (“Township”) has 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 has further not been able to abate such hazards by working with State agencies; and
WHEREAS, the Mayor and 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 of fill within the Township: and
NOW, THEREFORE, BE IT ORDAINED by the by the Township Committee of the Township of Fredon as follows:

SECTION 1. Chapter 447: Soil Fill Replacement shall be created and added to the Municipal Code of the Township of Fredon as follows:

CHAPTER 447: SOIL FILL PLACEMENT

ARTICLE I Title; Findings; Definitions; Permit Requirements

§ 447-1. Title
This chapter shall be known as the “Soil Fill Ordinance of the Township of Fredon”

§ 447-2. Purpose and Findings
The Township Committee finds that the unregulated and uncontrolled placement and movement of soil and other mineral deposits can 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 sizable soil movement operations and filling operations be reviewed and approved by the Township Zoning Officer. All sizable 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 Fredon, rather than a liability, all such operations shall adhere to the conditions, restrictions and provisions outlined in this chapter.

§ 447-3. 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 fill approved by the Zoning Official (minor permit) or by the Township Land Use Board (major permit) pursuant to the provisions of this chapter.
MAJOR SOIL FILL PERMIT - A permit for the fill of more than 500 cubic yards or more of soil.
MINOR SOIL FILL PERMIT - A permit for the fill of more than 100 cubic yards but less than 500 cubic yards or more of soil.
PERMIT - A soil fill permit.
PERSON - Includes an individual, a partnership, a corporation or any other legal entity.
LAND USE BOARD - The Land Use Board of the Township of Fredon.
SOIL - 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 arable soil within eight inches of the surface.
TOWNSHIP - The Township of Fredon.

§ 447-4. Permit Required
No person shall fill or cause the placement of any soil on any premises in the Township of Fredon whether such fill be for sale, gift or otherwise, unless a permit therefore is first secured from the Township Zoning Officer or the Township Land Use Board as hereinafter provided. A
permit shall not be required for the moving or placement of fill of less than 100 cubic yards of soil.

§ 447-5. Exceptions and Exemptions

A. The provisions of this chapter shall not apply to excavations or fill for building foundations, septic tanks or sanitary installations, provided that no excavation or construction of any kind shall take place until a site plan or permit has been approved by the Construction Official and/or Department of Health as required by law.

B. Nothing in this chapter shall be construed to affect or apply to 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.

C. A separate soil permit under this chapter shall not be required for subdivisions and/or site plans approved pursuant to Chapter 470, Subdivision of Land of the Township of Fredon.

D. Nothing in this chapter 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.

E. The provisions of this chapter 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 and does not require site plan approval pursuant to Chapter 470, Subdivision of Land of the Township of Fredon.

F. This chapter does not regulate the movement and placement of soil fill directly related to agricultural uses on certified commercial farm properties that have filed for Agricultural Management Practice Determination with the Sussex County Agriculture Development Board within the Township of Fredon and does not supersede any rights granted under the Right to Farm Act.
§ 447-6. Application for permit

A. Application for a minor soil fill permit shall be filed with the Township Zoning officer who shall issue the permit based upon substantial compliance with the provisions of this chapter; provided, however, that the Township Zoning Officer 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.

B. Application for a major soil fill permit shall be filed with the Township Land Use Board and shall be accompanied by a fee prescribed in Section 245, Fees and Escrows. Eighteen (18) copies of the application shall be submitted on forms prescribed by the Township Land Use Board and supplied by the Secretary to the Board.

C. The application for minor and major soil fill 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. The description and location of the land in question, including the tax map block and lot numbers.
4. The purpose or reason for placement of soil.
5. The nature and quantity, in cubic yards, of soil to be filled.
6. The source of material to be used as fill and certification that the fill can be considered “clean fill” as regulated by local and state regulations.
7. The location to which the soil is to be placed.
8. The proposed date of completion of the soil fill.
9. Supporting documentation as required to adequately address and comply with the purpose and the provisions of this chapter.
10. An approved soil erosion and sediment control permit (if applicable).

§ 447-7. Supporting documentation for a major soil fill application

The application for a major soil fill 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. Location of any topsoil storage areas.
8. Soil erosion and sediment control measures.
9. Cross sections of the fill areas at fifty-foot intervals.
10. Proof that property taxes are current.
11. List of property owners and others entitled to notice as prepared by tax assessor.

§ 447-8. Referral
Upon receipt of an application for a major soil fill permit, the Land Use Board Secretary shall forthwith send a copy of same to the Zoning Officer, Construction Official, Township Engineer, and the Environmental Commission, who shall submit reports to the Land Use Board. An application for a permit shall be complete for purposes of commencing the applicable time period for action by the Land Use Board when so certified by the Township Engineer or a review committee of the Land Use Board. If the application lacks information required per this section, the Township engineer or review committee shall so notify the applicant in writing within 45 days of submission of the application. Upon issuance of a certificate of completion, a hearing shall be scheduled before the Land Use Board. The applicant shall provide public notice to all parties entitled to notice in the form and manner set forth in the Municipal Land Use Law at N.J.S. 40:55D-12.

§ 447-9. Action by Land Use Board; notice of hearing on major soil fill applications
A. The Township Land Use Board shall grant or deny the application within 45 days after issuance of the certificate of completeness.
B. Five (5) days prior to the hearing, the applicant shall present to the Township Land Use 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.

§ 447-10. Factors to be considered in approving permits
In considering and reviewing the application and arriving at a decision, the Zoning Officer (minor permit) and the Township Lane Use Board (major permit) be guided by and take into consideration the public health, safety and general welfare and the general purposes of municipal planning, and particular consideration shall be given to the following factors:

A. Soil erosion by water and sand.
B. Surface water drainage.
C. Soil fertility.
D. Lateral support of abutting streets and lands.
E. Public health and safety.
F. Land values and uses.
G. Contours, both existing and proposed.
H. 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.
I. 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.
J. The application shall disclose the address and location from which the soil of fill materials will be obtained, the owner of representative of the owner of the premises from which the soil or fill materials is to be obtained and the kind and quality of soil and fill materials to be imported.

§ 447-11. Issuance of permit
A permit shall be issued after the approval of the application by the Zoning Official (minor permit) or by the Township Lane Use Board (major permit). 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.

ARTICLE II Operating Requirements
§ 447-12. Method of operation
If a permit is issued for the placement of soil as provided herein, the owner or person in charge shall so conduct the operations that there shall be no sharp declivities, pits or depressions, and in such 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.

§ 447-13. Hours of Operation
No soil shall be placed or any operation conducted in hours other than 7:00 A.M. to 6:00 P. M., Monday through Friday.

§ 447-14. Regulation of operation
No soil shall be placed nor shall any operation be conducted so as to violate any of the regulations contained in this article after a permit is granted.

§ 447-15. Deposit of soil on adjoining property or public roads
Soil fill shall not be deposited or in any way thrown or 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 there from immediately upon notice to the permittee of such accumulation.

§ 447-16. Compliance with other standards and terms of permit
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.

§ 447-17. 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.

§ 447-18. Restoration of area
A. 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. A final map for all major soil fill permits shall be submitted containing and complying with all requirements as set forth in this chapter.

B. If the Township Engineer, in the course of review, determines that Township roads may sustain meaningful “wear and tear” damage due to the passage of trucks carrying the imported materials, the Township Public Works Supervisor shall review the application. If meaningful
damage is determined to be likely, the Public Works Supervisor shall provide a reasonable estimate of excess costs attributable to truck traffic associated with the importation activity. Such estimates shall fairly apportion and distinguish between the costs associated with the importation activity and those associated with normal usage of the Township’s roadways including occasional passage of heavy trucks. The applicant shall be solely responsible for costs attributable to the importation activity and shall establish an escrow fund in the Township Clerk’s office sufficient to refund the Township for this expense.

C. No trash, junk or debris may be stored in any area, and no safety hazards will be permitted, either during or after the completion of operations.

§ 447-19. Storage limitations
The material stored shall not exceed a height of 20 feet, and the maximum storage slope shall be 45 degrees.

§ 447-20. Enforcing officer; inspections
The Zoning Officer are hereby designated as the officer whose duty it shall be to enforce the provisions of this chapter. He/she shall, from time to time, upon his/her 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 shall have the right to enter upon any lands for the purpose of examination and inspection of the operation without advance notice.

§ 447-21. Use of Streets for soil transportation
In the placement of soil or fill operation, the applicant shall cause such streets to be kept free from dirt and debris resulting from such soil or fill operation.

ARTICLE III Fees; Bonds; Penalties and Miscellaneous Provisions

§ 447-22. Permit fees; inspection fees
A. The fees for a minor or major soil placement permits are set forth in Chapter 245, Fees and Escrows.
B. The obligor shall be responsible for all of the inspection fees of the Township Engineer incurred in making the inspections.

§ 447-23. Revocation of Permit; Violations and Penalties.
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. In addition to the revocation provided for herein, any person who violates 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 shall be considered a separate and specific violation of these provisions and not as a continuing offense.

§ 447-24. Other permits

Nothing contained in this 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 2. Chapter 245: Fees and Escrows of the Municipal Code of the Township of Fredon to amended to include fees and escrows for soil fill permits as follows:

§ 245-16 (O). Soil Fill Placement

1. Minor Soil Fill Permit (100 to 500 cubic yards) Fee: $100 Escrow: $500
2. Major Soil Fill Permit (greater than 500 cubic yards) Fee: $500 Escrow: $2,000

SECTION 3. 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 4. Any ordinances or parts thereof in conflict with the provisions of this Ordinance are hereby repealed as to their inconsistencies only.

SECTION 5. This Ordinance shall take effect immediately upon final passage, approval, and publication by law.

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance passed second reading and was adopted by the Fredon Township Committee at a Regular Meeting of that body held on July 11, 2019.

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Debra Prommel
Acting Municipal Clerk