

BOROUGH OF SEWICKLEY HILLS ORDINANCE NO. 1 of 2006

AN ORDINANCE REGULATING LOGGING IN THE BOROUGH, PROVIDING DEFINITIONS, PERMIT AND APPLICATION INFORMATION AND PROCEDURES. THE PERMIT AND APPLICATION PROCESS REQUIRES THE SUBMISSION OF FEES AND SITE, EROSION AND SEDIMENTATION CONTROL AND HARVEST PLANS, ALONG WITH HEARINGS BEFORE THE PLANNING COMMISSION AND BOROUGH COUNCIL. THE GENERAL REQUIREMENTS SET FORTH THE METHOD, TIMING AND MANNER OF THE TREE HARVEST. ADDITIONAL PROVISIONS REGULATE THE USE OF BOROUGH ROADS, INSURANCE AND BONDING INFORMATION, ADDITIONAL FEES AND PENALTIES FOR VIOLATIONS AS WELL AS MISCELLANEOUS MATTERS.

1-1. Purpose.

In order to preserve woodlands and the environmental and economic benefits they provide, it is the policy of Sewickley Hills Borough to encourage the owners of woodland land to continue to value their land for timber, recreation, and wildlife habitat. This Ordinance is intended to promote good forest stewardship, protect the rights of adjacent property owners, minimize potential for adverse environmental impact. and avoid unreasonable restrictions on the right to practice forestry. This Ordinance shall be referred to as the "Logging Ordinance."

1-2. Definitions.

As used in this Article, the following terms shall have the meanings indicated:

Borough - Sewickley Hills Borough, Allegheny County, Pennsylvania.

Borough Zoning Officer - An individual appointed by the Borough Council.

Borough Engineer - A professional engineer licensed in the Commonwealth of Pennsylvania, duly appointed by the Borough Council to serve as the engineer for the Borough.

Borough Forester - A professional forester who has been appointed as a Borough Forester by Borough Council.

Clear-cutting - Removing all or a majority of the trees from the area logged.

Cutting block - An area of property to be logged, no more than ten (10) acres in size, depicting the phase number, defined by natural boundaries and determined by a professional forester.

Diameter limit cutting - The practice of cutting all and only all trees above a certain diameter within the area logged.

Dominant forest canopy - The upper forest layer of leaves of the trees that have the most influence and are sometimes the most abundant and spacious trees in the area to be logged.

Landslide-prone area - An area which due to its topography and geotechnical conditions is in the opinion of the Borough Engineer or Borough Enforcement Officer susceptible to excessive erosion.

Logging - The act of cutting/harvesting live or dead trees for cordwood, timber, pulp, or any other purpose, excepting there from a landowner and/or any agent of a landowner cutting on the property of the landowner for the use solely of the landowner, any properly approved clearing development of building sites, cutting for right-of-way maintenance along utility or transportation corridors or clearing for commercial farming operations. A landowner who cuts/harvests trees or permits such cutting/harvesting of trees upon the landowner's property for other than the landowner's own use is a person engaging in logging and in a logging operation. A logging operation shall include the construction of roadways, trails and landings and the acts of tree harvesting, site cleanup and site restoration. The removal of individual trees for disease or safety reasons is not logging.

Professional Engineer - A person who has obtained a professional engineer's license in the Commonwealth of Pennsylvania.

Professional Forester - A person who has earned a four-year college degree in forest management and is registered with the Pennsylvania Bureau of Forestry.

Slash - All debris resulting from logging operations, including stems, limbs, and parts thereof. "Tops" shall refer to the upper portion of a felled tree not normally merchantable. Typically, a "top" becomes part of the slash produced by a logging operation.

Staging Area - The designated location where harvested timber, including logs, pulpwood or firewood is assembled for transportation off the site.

1-3. Permit Required.

A. Logging operations within the Borough on any properly where the area to be logged is over one acre in size shall require a permit. The permit shall be issued by the Borough for the entire site but subject to review and approval for each cutting block. The logging operation must be completed to the satisfaction of the Borough in one cutting block prior to commencement of logging operation in the next cutting block. A logging operation which moves from one cutting block to another without first receiving the approval of the Borough is subject to 1-14 penalties and other appropriate legal processes. The cutting block phase numbers shall be shown on the timber harvesting plan as prepared by a professional forester (refer to 1-4 application procedures).

B. A logging permit shall be valid for a period of eight (8) months. A one-time four (4) month extension may be granted when requested in writing by the professional forester hired by the property owner. If logging is conducted without or in violation of a borough permit, the landowner and the logging operator shall each be in violation of this Article, and each shall be fully subject to all applicable fines and penalties.

C. Any logging operation in existence at the time of the enactment of this Article may continue without interruption, provided that application is made within thirty days of said enactment for a logging permit under the provisions of this Article and that such permit is granted.

1-4. Application Procedure.

A. The property owner or logging operator must apply for a permit by submitting an application. The application requires a site plan, harvest plan, erosion and sedimentation ("E&S") plan, Allegheny County Conservation District ("ACCD") approval, insurance and bond certificates or letters, and proof of (i) notification of all property owners adjacent to the parcels to be logged and (ii) posting of the property to be logged. A notice approved by the Borough must be prominently displayed in a conspicuous location on the property to be logged by the property owner or logging operator. Said posting shall remain in place from the time of application until the public hearing on the application. Failure to post the property may result in a postponement of the public hearing. The applicant should submit the application to the Borough along with supporting documents and a non-refundable application fee of Five Hundred Dollars (\$500.00) and a One Thousand Dollar (\$ 1,000.00) refundable deposit to cover Borough costs and expenses including expert and professional fees. Any unused portion of the refundable deposit will be refunded after the completion of all logging operations.

B. The application will be reviewed by the appropriate Borough representatives and considered for

approval by the Borough Planning Commission and the Borough Council at its next public meeting after review of the application has been completed by the Borough Planning Commission. The public hearing shall occur no later than ninety (90) days after receipt of the completed application. If the application is rejected, the Borough shall inform the applicant, in writing, within forty-five (45) days of the hearing before the Borough Council, stating the reasons for such rejection. Upon approval, the property owner and logging operator will coordinate logging operations with the Borough Zoning Officer. The property owner or logging operator must notify the Borough Zoning Officer forty-eight (48) hours prior to the commencement of the logging operations. If the logging operation involves more than one cutting block, the property owner or logging operator must notify the Borough Zoning Officer forty-eight (48) hours prior to commencement of the next cutting block. This allows for the work of each cutting block and proposed cutting block to be inspected according to the approved plan~

C. The site plan will be prepared in accordance with standard architectural and engineering practices and be sealed by an engineer or surveyor of record. The site plan will comply with the following specifications:

- i. The name and address of the property owner.
- ii. A vicinity map, which shows, the property proposed for logging and all adjacent property owners and addresses surrounding the proposed logging operation for every direction within one thousand (1,000) feet of any area to be logged.
- iii. Total acreage and proposed acreage to be disturbed
- iv. IV. North arrow and drawn to scale.
- v. The location and names of streets and roads adjacent to the proposed logging operation.
- vi. Utility rights-of-way and/or easements.
- vii. Topography of the property (USGS contours or more detail if available), including all slopes twenty-five (25%) percent or greater and landslide-prone areas.
- viii. The existing watercourses, floodplains, woodlands, and wetlands.
- ix. The boundary of the site area to be logged as indicated by a heavy line with length of course in feet.
- x. Cutting-block subdivision of the site.
- xi. Areas of trees to be harvested must be depicted.
- xii. The required 50-foot buffer along any logging area, landing site, public road, adjacent property, streams, wetlands, and floodplains.
- xiii. Location of proposed roads or access/egress cart-ways.

D. The harvest plan shall be prepared by a professional forester. It will comply with the following specifications.

- i. A narrative stating the purpose of the proposed operation, the total land area involved in the operation, an estimate of the total number trees selected for harvesting. a chart indicating the quantity of trees, the ranges, and species of trees selected. Said estimate shall be done in accordance with generally accepted forestry practices.
- ii. A narrative stating the storm-water control measures to be utilized, stream crossings and wetland protection measures to be utilized.
- iii. Point of access onto public roadway where aggregate entrance is to be placed, log-landing areas, stream crossings, and logging trails.
- iv. Areas of trees to be harvested must be designated by the cutting block phase numbers. The phase

number shall depict the order of harvesting.

v. Type and rate of seeding/mulching to be used and where it will be placed to stabilize the soil after logging operations.

vi. A narrative stating how the staging area is to be returned to its natural vegetative state after the completion of logging activities.

E. The Erosion and Sediment Control Plan shall be approved by the Allegheny County Conservation District (ACCD). A copy of the agency's review/approval comments shall be attached. Logging cannot commence without ACCD approval.

F. Insurance and bond certificates or letters shall be supplied with the application.

G. Proof of written notification to property owners adjacent to the parcel or parcels to be logged shall be supplied with the application. The application shall be posted on the property in the manner indicated above in Section 1-4 A.

H. Upon approval of the logging application, Borough Council shall issue a Logging Permit, which the property owner or logging operator shall prominently display close to the public right-of-way providing access to the property. The Logging Permit shall remain posted until the completion of logging operations.

1-5. Compliance with Laws, Regulations, and Permits of the Commonwealth of Pennsylvania.

Nothing in this Article is intended to supersede, and nothing does supersede, federal and/or state law relating to clean water, flowing water, fish hatcheries or the pollution of water resources. As part of the application, the logging operator shall address and comply with the requirements of all federal and Commonwealth of Pennsylvania laws, regulations, and permits. Commonwealth of Pennsylvania requirements include, but are not limited to, the following:

A. As regulated by the Allegheny County Conservation District and the Department of Environmental Protection (PA DEP):

i. Erosion and Sedimentation Control Regulations, 25 Pennsylvania Code, Chapter IO2, promulgated pursuant to Clean Streams Law (35 P.S. Section 691.1 et seq.);

ii. Stream crossings and wetland protection regulations issued pursuant to the Storm-water Management Act (32 P.S. Section 691.1 et seq.); and

iii. Storm-water management plans and regulations pursuant to the Storm-water Management Act (32 P.S. Section 691.1 et seq.).

B. As regulated by the Pennsylvania Department of Transportation (DOT). access and use of public roads maintained by DOT.

1-6. General Requirements.

A. The ACCD must approve the E&S plan of the property owner and or logging operator who seeks to operate or cause to operate a logging operation. Proper erosion and sediment control measures as outlined in the ACCD approved plan shall be implemented prior to any commencement of logging activities on the property and throughout the duration of such logging activities to prevent accelerated runoff and erosion. The first logging activities shall be construction of the roadways, trails, landings, and such. The erosion and sedimentation control measures shall be maintained throughout the logging operation and until ground cover has been established after the operation is completed.

B. Logging operations shall be conducted at times of the year when the Borough Zoning Officer or its

professional forester determines that the least amount of environmental damage will occur and are subject to being shut down if they occur at other times. The Borough Zoning Officer shall have the authority to order suspension of any logging operation if adverse weather conditions indicate conditions that will cause excessive soil erosion. A logging operation and its principals shall be subject to Section 1-14 penalties for violation of this requirement.

C. No logging operation or removal or products shall take place between the hours of 7:00 p.m. and 8:00 a.m. or anytime on Sundays or legal holidays.

D. No clear-cutting is allowed. To provide for consistency within the Borough, per Article IV of the Borough Zoning Ordinance "Performance Standards", no more than Forty (40%) percent of the dominant forest canopy shall be cleared.

E. A 50-foot buffer zone, within which no logging operation shall occur, shall be required between the boundary of any logging area or landing area and any public road or the boundary of any adjoining property.

F. No logging operation shall be permitted on slopes greater than twenty-five (25%) percent, unless recommended by the Borough Forester and approved by Borough Council.

G. No logging operation shall be permitted within a floodway or floodplain, unless recommended by the Borough Forester and approved by borough Council.

H. No logging operation shall be permitted on landslide-prone areas, unless recommended by the Borough Forester and approved by Borough Council.

I. No tree may be cut, which is the largest of its species in the Commonwealth of Pennsylvania.

J. No tree greater than thirty-six (36") inch diameter trunks measured at chest height shall be logged, unless recommended by the Borough Forester and approved by Borough Council.

K. Trees selected for harvesting shall be marked, such that the mark is visible on the stump after the tree is removed.

L. Diameter-limit cutting shall not be permitted unless recommended by the Borough Forester and approved of by Borough Council.

M. No on-site retail sale of harvested wood or logs shall be permitted from the property unless the property is located in a commercial zoning district that permits such use. Such retail sale operation shall still be required to meet the ordinance requirements with respect to permits relating to the sale of goods.

N. No portable sawmills are permitted.

O. No tops or slash of the felled trees shall be left on any right-of-way, drainage ditch leading from a culvert., water bar, intercepting dip or break in the berm of a road, or in, on or within fifty (50') feet of a property boundary line, stream, spring seep, dam, lake or public road right-of-way. Burning slash is not permitted.

P. Felling or dragging any debris from the logging operation across any public road or right-of-way is prohibited without the express written consent of the Borough or DOT, whichever is responsible for the maintenance of such public road or right-of-way.

Q. All litter and debris resulting from the logging operation shall be removed from the site before the logging operator vacates it. Once logging operations have been completed, the aggregate base in the Staging Area shall be removed or covered with topsoil sufficient to support regrowth. The Staging Area shall then be planted to return to its original vegetative state.

R. The logging operations' property owner and/or the logging operator will be responsible for any damage, cost. or restoration to any affected adjacent property.

S. As part of the completion of a logging operation, all disturbed areas such as the landings, trails,

roadways, and critical areas must be seeded with vegetative cover and the site must otherwise be restored pursuant to the Erosion and Sedimentation Control plans and the Storm-water Management Plans as approved by the Commonwealth of Pennsylvania's Department of Environmental Protection. Completion of this activity should be performed in conjunction with the approval of the Borough Enforcement Officer.

T. Access roads shall be closed by a locked gate and kept as such except during periods needed for access by the logging operations, to prevent and discourage access for unauthorized uses, i.e. waste dumping, all-terrain vehicles, etc. When the logging operation has been completed, the access road shall be permanently blocked and kept as such.

U. The general requirements of this section may be modified or waived at the judgment of Borough Council during the application process, based upon the advice of the borough Solicitor.

1-7. Use of Borough Roads.

A. For all logging operations, prior to hauling on any borough road, a bond shall be posted in accordance with Section 1-8. The Borough Engineer or Zoning Officer shall prepare a report prior to hauling to establish the existing road condition and for the purpose of establishing reasonable times and conditions for hauling logs so that damage to the road will be minimized. Conditions may include, without limitation, limiting hauling to dry periods. The Borough shall be notified during normal working hours as to when hauling will begin from a cutting block so that the first truck can be followed to determine if the roadway is being damaged. Damage to Borough roads or other improvements shall be done to the satisfaction of the Borough Engineer.

B. A logging operation shall keep any roadway over which it hauls logs, or other logging residue, clean and free of mud and debris to the extent that such roadway mud, debris, or similar material is the result of vehicles traveling to and from the logging operation. In the staging area and at the point of access, the logging operator shall construct an aggregate base to support the roadway edge and to keep the roadway in a clean and mud-free condition. No parking of logging vehicles or storage of logs shall be permitted in the road right-of-way. Water from the logging area shall not be discharged onto the road surface.

C. The property owner or logging operator shall not create a new or utilize an existing access point on a Borough, County or State road without first showing proof that access is permitted by the Borough, County or State.

1-8. Bonds Required.

A. Performance Bond. Prior to the commencement of a logging operation, the permit applicant shall post a bond, written by a surety company authorized to do business in the Commonwealth of Pennsylvania, with the borough identified as the obligee, in an amount of One Thousand Five Hundred (\$1,500.00) Dollars per acre of disturbance, which bond shall guarantee restoration of the property logged or of any other property damage by the logging operation. Determination of the acres of disturbance will be based on the approved site and harvest plans. In lieu of a bond, other security acceptable to the Borough (e.g. cash or irrevocable letter of credit issued by a bank or savings and loan) may be posted with the Borough.

B. Roads Bond. Prior to hauling on any borough road, the permit applicant shall post a separate bond to guarantee restoration of roads damaged by hauling. The amount of the bonus shall be set as follows:

i. Improved roadway (bituminous, bituminous seal coat or concrete surface): Twelve Thousand five Hundred (\$12,500.00) Dollars per mile of hauled road.

ii. Unimproved roadway (earth, slag, or cinder surface): Seven Thousand Five Hundred (\$7,500.00) per mile of hauled road.

C. Vehicles over posted weight shall comply with applicable state or local requirements.

1-9. Additional Fees.

In addition to the application fee, there will be a One Hundred (\$100.00) Dollar fee for any amendment to the original application. In the event that the original refundable deposit is depleted, the applicant will be required to provide additional Five Hundred (\$500.00) Dollar deposits from time to time, with any balance to be returned to the applicant at the completion of logging operations. Any dispute with respect to fees shall be decided in arbitration pursuant to the rules of the American Arbitration Association.

1-10. Insurance.

A. The logging operator will maintain at all times of the logging operation insurance with insurance companies licensed to do business in the Commonwealth of Pennsylvania against such risks, loss, damage and liability (including liability to third parties) in the amount of no less than One Million (\$1,000,000.00) Dollars general liability insurance, no less than Five Hundred Thousand (\$500,000.00) Dollars automobile liability insurance, and no less than One Hundred Thousand (\$100,000.00) Dollars property damage liability insurance, all in favor of the Borough and the property owner.

B. The logging operator will maintain worker's compensation insurance as required by the Commonwealth of Pennsylvania.

1-11. Inspection: Stop-work Orders.

A. To maintain compliance with the approved harvest plan and Borough Logging Ordinance, (m-site inspections shall be performed as deemed necessary by the Borough Zoning Officer or Borough Forester.

B. Whenever the Borough Zoning Officer or Borough Forester find that work under any permit fail to conform to the approved plans, specifications, or timing schedule, the Zoning Officer may, as he deems reasonably necessary in reliance upon the criteria set forth in this Article, by written order, direct suspension of further work until conformance has been achieved or direct such measures that he deems reasonably necessary in the circumstances for control of erosion, sedimentation, adverse environmental impacts, protection of worker safety or protection of rights of adjacent property

owners on the site and for compliance with this Article. After conformance with requirements has been re-established, the Borough's Zoning Officer will provide written notice of approval to resume operations.

C. The Borough shall post orders issued pursuant to this Section at the location where the permit is posted pursuant to Section 1.4.F.

1-12. Appeal of Permitting Decisions and Stop-work Orders.

Any person aggrieved by a permit decision or stop-work order may file a written appeal within thirty (30) days of the date of the decision or order appealed from. The appeal shall be filed, along with the applicable fee, to the Borough office. The Borough Council shall hold a hearing on such appeal and may affirm, reverse, or modify the decision or order appealed from. The Borough Council may impose, as part of its decision, any conditions and safeguards necessary in order to protect the public health, safety and welfare or to protect private or public property and to promote the objectives of this Article. The Borough Council, as part of its decision, may grant relief from any substantive requirement herein where full compliance with the requirement, due to unique physical conditions of the land to be logged, is not reasonably possible and where waiving the requirement will not result in significant adverse environmental consequences or in any violation of applicable laws or regulations.

1-13. Liability.

Neither the issuance of permits under the provisions of this Article nor the compliance with the provisions hereto or with any conditions imposed by the Borough Council or its agents hereunder shall relieve any person from the responsibility for damage to any persons or property otherwise imposed by law, nor impose any liability upon the Borough for damages to persons or property. Nothing in this Article is to be interpreted as eliminating or reducing the immunities enjoyed by the Borough or its elected or appointed officials.

1-14. Penalties.

Any person who violates or fails to comply with any of the provisions of this Article shall, upon being found liable in a civil enforcement action, be subject to a civil fine of not more than One Thousand Five Hundred (\$1500.00) Dollars for each and every violation along with all court costs, plus the Borough's reasonable engineers', foresters', and attorneys' fees incurred in connection with the violation. Each day that the violation continues shall be a separate violation. In addition thereto, the borough may institute injunctive, mandamus or any other appropriate action or proceedings a law or equity for the enforcement of this Article or to correct violations of this Article, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions or mandamus or other appropriate forms of remedy or relief.

1-15. Conflict of Provisions: Severability: Interpretation.

When provisions of this Article conflict with other applicable regulations, codes, or laws, the more stringent of the regulations or legislations shall apply. As is the case with all legislation, this Article is

to be interpreted utilizing a rule of reason that will best allow for the attainment of the balance between the public and private interests the Article seeks to achieve. Furthermore, the Article is to be interpreted and applied, to the extent possible, so that it meets all federal and state constitutional requirements and statutory requirements. If any portion of this Ordinance is deemed to be unconstitutional, unenforceable or contrary to law for any reason, if any aspect of the Article is finally determined to violate constitutional and or statutory requirements, through the process of appellate litigation, that aspect of the Article shall be deemed excised or reformed to the extent necessary to cause the remainder of the Article to remain legally enforceable.

1-16. Effective Date.

This Ordinance becomes effective immediately upon enactment.

DULY ENACTED AND ORDAINED this 10th day of April, 2006

by the Council of the Borough of Sewickley Hills in public session duly assembled.

BOROUGH OF SEWICKLEY HILLS

By

By

Thomas Klixbull

Charles Menzemer

President of Council

Mayor

Renee Musser Borough Secretary

(Borough Seal)