

**TOWNSHIP OF KENNEDY
ALLEGHENY COUNTY, PENNSYLVANIA**

ORDINANCE NO. 469

AN ORDINANCE OF THE TOWNSHIP OF KENNEDY, COUNTY OF ALLEGHENY, PENNSYLVANIA, AMENDING ORDINANCE NO. 156 "REGULATING THE DESIGN, CONSTRUCTION, MAINTENANCE OR ALTERATION OF GRADING, EXCAVATION AND FILLS CONTAINING CERTAIN RELATED PROVISIONS", REPEALING ORDINANCE NO. 213 OF WHICH AMENDED SECTION 21 OF ORDINANCE 156, and TO INCLUDE LOGGING, CONSTRUCTION AND MAINTENANCE OPERATIONS IN SECTION 21, "HOURS OF OPERATION" OF ORDINANCE 156.

WHEREAS, the Township of Kennedy has determined that certain provisions of the Grading Ordinance No. 156 be updated and modified to reflect a current standard, and

WHEREAS, Ordinance No. 213 amending Ordinance 156 shall be repealed to complete this standard.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Commissioners of the Township of Kennedy as follows:

SECTION 1: TITLE AND PURPOSE

1. Title:

This Ordinance shall be known and may be cited as "The Township of Kennedy Grading Ordinance."

2. Purpose:

The purpose of this Ordinance is to provide minimum standards to safeguard persons and property, to protect and to promote the public welfare, by preventing excess erosion, hazardous rock and soil slippage, sediment production and other soil and water management problems, and by regulating and controlling the design, construction, quality of materials, use, location and maintenance of grading, excavation and fill.

SECTION 2: DEFINITIONS

Where used in this Ordinance the following words shall have the meaning indicated:

1. Administrator

Shall mean the person or persons qualified and/or officially appointed by the governing body to manage this Ordinance.

2. Bedrock: Shall mean natural rock layer, hard or soft, in place at ground surface or beneath unconsolidated surface deposits.

3. Engineer, Professional:

Shall mean a person licensed by the Commonwealth of Pennsylvania to practice engineering and who is knowledgeable in the branch of civil engineer.

4. Engineer, Geologist:

Shall mean a person who holds a degree in geology from an accredited college or university and who has training and experience in the field of engineering geology.

5. Erosion:

Shall mean the detachment and movement of soil or rock fragments by water, wind, ice or gravity, including such processes as gravitational creep.

6. Excavation:

Shall mean any act by which earth, sand, gravel, rock or any other similar material is cut into, dug, quarried, uncovered, removed, displaced, relocated or bulldozed and shall include the conditions resulting therefrom.

7. **Fill:**
Shall mean any act by which earth, sand, gravel, rock or any other material is deposited, placed, pushed, dumped, pulled, transported or moved to a new location and shall include the condition resulting.
8. **Governing Body:**
Shall mean the Board of Commissioners of the Township of Kennedy.
9. **Grading:**
Shall mean excavation or fill or any combination thereof and shall include the conditions resulting from any excavation or fill.
10. **Grading Permit:**
Shall mean any permit required under these regulations.
11. **Hazard:**
Shall mean a danger or potential danger to life, limb, or health, or an adverse effect or potential adverse effect to the safety, use or stability of property, waterways, public ways, structures, utilities and storm sewers, including stream pollution.
12. **His:**
Shall mean a person, regardless of gender.
13. **Operations:**
Shall mean any excavation, construction or maintenance activity to include logging.
14. **Person:**
Shall mean a natural person but shall also include a partnership, corporation, trust or association.
15. Shall mean a lot, tract or parcel of land, or a series of lots, tracts, or parcels of land which are adjoining where grading work is continuous and performed at the same time.

SECTION 3: SCOPE

A grading permit will not be required for any of the following situations:

1. Grading is limited to mining, quarrying or stockpiling of coal, rock, sand, aggregate or clay that satisfies requirements of regulations of the Commonwealth of Pennsylvania.
2. Excavation which does not exceed five (5) feet in vertical depth does not result in cut and/or fill slope steeper than three (3) horizontal to one (1) vertical and does not exceed the area of five-thousand (5000) square feet.
3. Fill amount which does not exceed five hundred (500) cubic yards on any one site.
4. Fill which is not intended to support structures and does not exceed feet in vertical depth at its deepest point measured from the top of such fill to the natural ground surface, the area of fill does not exceed five thousand (5,000) square feet, the surface of such fills do not have a slope at any point steeper than four (4) horizontal to one (1) vertical and does not obstruct a drainage course.
5. Grading which does not exceed new construction authorized by a building permit properly issued. Grading under the authorization of building permit should follow the standards and requirements of this Ordinance.
6. Soil excavated under the authorization of a building permit properly issued by the governing body which is temporarily stockpiled on the same site as excavation, provided, however, that if the material from such excavation is thereafter to be used for fill purposes for which a grading permit is required, such permit must be obtained prior to such use in accordance with the requirements of this Ordinance. In addition, if excavated material is stockpiled on a site for a period of longer than one hundred twenty (120) days, then a permit shall be necessary when disposing of the fill material.

SECTION 5: HAZARDOUS CONDITIONS

Whenever the governing body, upon the recommendation of its Administrator, determines that any existing excavation, embankment or fill has become as hazardous as defined in Section 2, the owner of the property upon which the excavation, embankment or fill is located, or other person or agent in control of said property, upon receipt of notice in writing from the Administrator, shall within the reasonable period specified therein,

repair, reconstruct or remove such excavation or remove such excavation, embankment or fill so as to eliminate the hazard.

If, after such notification, the property owner has not made the necessary repairs within the time adopted, then the governing body may direct government employees to make the required repairs and the cost thereof shall be borne by the property owner. The Township may take any necessary act to recover cost of any work done under this section including by a lien filed as provided by law.

SECTION 6: APPLICATION: DUTIES OF ADMINISTRATOR

Every applicant for a grading permit shall file a written application therefore with the Administrator in a form prescribed by the Administrator. Such application shall:

1. Describe the land on which the proposed work is to be done by lot, block, tract or street address, or similar description which will readily identify and definitely locate the proposed work.
2. Be accompanied by plans and specifications prepared, signed and sealed by a professional engineer giving a reasonable picture of the site and proposed soil erosion controls, if any. The Administrator may waive the preparation or approval and signature by the professional engineer, only when it is self-evident that the proposed work is simple, clearly shown on the plans submitted, and creates no potential nuisance to adjacent property or hazard, and does not include the construction of a fill upon which a structure may be erected. Such plans may include a description of the site proposed for grading; accurate location of lot, block, tract, street address; a location map or other similar information; a contour map showing the present contours of the land and the proposed contours of the land after completion of the proposed grading; and a plan showing cross sections of the proposed cut or fill which show the method of benching both cut and/or fill. In addition, a plot plan may show the location of the grading, boundaries, lot lines, neighboring streets or ways, buildings, surface and subsurface utilities and waterways. In addition, plans may include a description of the type and classification of the soil; details and location of any proposed drainage structures and pipes, walls and cribbing; seeding locations and schedules; debris basins, diversion channels; nature of fill material and such other information as the Administrator may need to carry out the purposes of this Ordinance. All plans shall be dated and bear:
 - a. The name and seal of the professional engineer who prepared the same;
 - b. The name of the applicant; and
 - c. The owner of the land

Plans shall be submitted in triplicate, one seal of which shall be of reproducible nature.

3. State the estimated dates for the starting and completion of grading work.
4. State the purpose for which the grading application is filled.

In no case shall the Administrator require more than minimum adequate standards, as recommended by governmental agencies, professional engineers or engineering geologists, and other requirements specified in this Ordinance, for issuing a grading permit.

SECTION 7: COMPLETION AND PERFORMANCE GUARANTEE

Before issuance of a grading permit, the applicant shall post a bond, corporate surety or other approved security in the amount of ten percent (10%) of the estimated cost of the grading work and erosion control facilities proposed for the permit to guarantee said work and facilities in a satisfactory manner and meeting the requirements of this Ordinance, including the street cleaning and maintenance requirements of Section 22. No bonds shall be required if another bond or other approved security is posted for construction and/or site improvements. When all requirements of this Ordinance have been met and the work has been completed in a satisfactory manner, including the street cleaning and maintenance requirements of Section 22, the full amount of security shall be returned to the person posting said security.

SECTION 8: SPECIAL AGREEMENT

A formal agreement may be required by the Board of Township Commissioners stipulating certain agreed upon conditions over and above those required by this grading Ordinance in the event that the permit holder will disturb more than one (1) acres or grade more than 10,000 cubic yards. Said agreement shall be prepared by the permit holder at his own cost and expense and shall be approved as to form by the Township Solicitor and as to content by the Board of Township Commissioners.

SECTION 9: EXPIRATION OF PERMIT

Every grading permit shall expire by limitation and become null and void if the work authorized by such permit has not been commenced within one (1) year or is not completed within three (3) years from the date of issue, provided that the governing body, action upon the recommendation of the Administrator, may, if the permit holder presents satisfactory evidence that unusual difficulties have prevented work being started or completed within the specified time limits, grant a reasonable extension of time; and provided further, that the application for the extension of time is made before the date of expiration of the permit. Any physical changes in the site such as surface water drainage, soil and bedrock dislocations, alteration of groundwater discharge or any other natural or manmade modification which would cause a doubt to be cast upon the feasibility of the contents of the original permit approval, must be reported to the Administrator in the intervening period between approval of permit and completion of the project.

SECTION 10: DENIAL OF PERMIT: APPEAL

When the requirements of this Ordinance for obtaining a permit have been met, the Administrator shall approve the proposed plan and grant a grading permit to the applicant. Approved work may then start. However, when in the opinion of the Administrator, work proposed by the applicant is likely to endanger any property or person, or any street or alley, or create hazardous conditions; the grading permit shall be denied. In determining whether the proposed work is likely to endanger property of streets or alleys, or create hazardous conditions, the Administrator shall give due consideration to: Possible saturation of rains, earth movements, run-off surface waters and subsurface conditions such as the stratification and faulting of rock, aquifers, springs and the nature and type of the soil or rock.

The governing body shall consider within 15 days appeals from the provisions of these regulations or from the denial by the Administrator, and the governing body within 30 days shall consider alternate methods, standards or materials proposed by the developer when in his opinion strict compliance with the provisions of these regulations is unnecessary. Any applicant or permit holder shall have the right to appeal to any court of competent jurisdiction from any decision of the governing body.

SECTION 11: INSPECTION OF GRADING

The Administrator shall make the inspections hereinafter required and shall either approve that portion of the work which has been completed or notify the permit holder wherein the same fails to comply with the provisions of this grading Ordinance.

1. Grading and drainage plans approved by the Administrator shall be maintained at the site during the progress until the work has been approved.
2. The permit holder shall submit to the Township an As Built Drawing of the project before the issuance of a grading certificate of completion.
3. The permit holder shall notify the Administrator in order to obtain inspections in accordance with the following schedule and such notification shall be made by the permit holder at least 24 hours before the inspection is to be made.
 - a. Initial Inspection-When work is about to be commenced.
 - b. Rough Grading-When all rough grading has been completed.
 - c. Drainage Facilities-All drainage facilities that connect to or shall become public drainage facilities shall be continuously inspected during construction.
 - d. Additional Inspection-When in the opinion of the Board of Commissioners other inspections are necessary.

- e. Final Inspection-When all work, including the installation of all drainage, landscaping and other structures has been completed.
4. If at any stage of the work, the Board of Commissioners shall determine by inspection that the nature of the excavation is such that further work as authorized by an existing permit is likely to endanger any property or streets or alleys or create hazardous conditions, the Administrator may require, as a condition to allowing the work to be done, that such reasonable safety precautions be taken as the Administrator considers advisable to avoid such likelihood of danger.
Safety precautions may include, but shall not be limited to, specifying a flatter exposed slope, construction of additional drainage facilities, berms, terraces, compaction, cribbing or walls.

SECTION 12: STANDARD FOR EXCAVATION

1. Maximum slope steepness of a cut should be three (3) horizontal to one (1) vertical for minimizing erosion and landslide hazard. However, a governmental review agency, professional engineer or engineering geologist may recognize the types of soils on the site to be graded. Maximum slopes can then be determined as follows:
 - a. Landslide-prone soils where slopes greater than twenty-five percent (25%) shall have cut slopes no steeper than three (3) horizontal to one (1) vertical.
 - b. Landslide-prone soils where slopes are less than twenty-five percent (25%) shall have cut slopes no steeper than two (2) horizontal to one (1) vertical.
 - c. Soils which are not or have a low probability of being landslide-prone shall have a slope no steeper than one-and one-half (1 ½) horizontal to one (1) vertical.
2. Cut slopes which are steeper than those specified above may be allowed under a grading permit, provided one or both of the following is satisfied:
 - a. The material in which the excavation is made is sufficiently stable for recognized soil conditions on the site. A written statement, signed and sealed by a professional engineer, stating that the steeper slope will have sufficient stability and the risk of creating a hazard will be slight, must be submitted to the Administrator.
 - b. A retaining wall or other approved support, designed by a professional engineer and approved by the Administrator, is provided to support the face of excavation.
3. The top or bottom edge of slopes shall generally be set back from adjacent property lines or street right-of-way lines in order to permit the normal rounding of the edge without encroaching on the abutting property or street.

SECTION 13: STANDARDS FOR FILLS

1. No fill should be placed over trees, stumps or other material which could create a hazard. Instead, such materials may be buried in natural ground where no structures will be build or hazard created. Limbs can be chipped and mixed with the topsoil.
2. All fills should be compacted to provide stability of fill material and to prevent undesirable settlement or slippage.
3. Clean soil or earth should be placed over the top and exposed surfaces of the fill to a depth sufficient to conceal all materials used in the fill other than clean soil or earth. If the filling operation is intermittent, the top and exposed surfaces of the fill should be so covered at the completion of each lift.
4. The top or bottom edge of slopes should generally be set back **three (3) feet** from adjacent property lines or street right-of-way lines in order to permit the normal rounding of the edge without encroaching on the abutting property or street.

SECTION 14: STANDARDS FOR MINIMIZING EROSION AND SEDIMENT

Guidelines for minimizing erosion and sediment in the Pennsylvania Department of Environmental Protection Erosion and Sediment Pollution Control Program Manual, latest edition, should be followed. One or a combination of guidelines should be used to minimize hazard, depending on site conditions and proposed grading. However the Administrator may approve grading plans not meeting guidelines of the Manual if proposed grading

will not constitute a hazard. Government and/or engineering reports should be used as evidence that proposed grading will not constitute a hazard.

SECTION 15: GENERAL REQUIREMENTS

1. A fence not less than four (4) feet in height, of the design approved by the Administrator and meeting requirements of the Zoning Ordinance shall be placed at the top of all new cuts and fills made after the date of enactment of this grading Ordinance when the cuts or fill slopes are steeper than two (2) horizontal to one (1) vertical.
2. The owner of a property shall be responsible to protect and clean up lower properties of silt and debris washing from his property as a result of the grading of his property.
3. In order to prevent the denuding of the landscape, wherever practical, large trees and other natural features constituting important physical or aesthetic and economic assets to existing or impending development shall be preserved.
4. All topsoil shall be removed from the area to be graded and stockpiled and preserved for possible re-use on the site before other excavation is started.

SECTION 16: RETAINING WALLS

1. Definition of Retaining Wall: A structure composed of concrete, steel, or other approved building material constructed for the purpose of supporting a cut or filled embankment.
2. If a retaining wall is constructed to satisfy a requirement of this Ordinance, a building permit, as provided for by other municipal regulations, shall not be required.
3. In general, where a wall is replacing an exposed slope, the vertical face of the wall shall be three (3) feet back from the adjoining property.
 - a. A special exception to this requirement may be applied for and granted by the Administrator if it can be satisfactorily demonstrated that such a variance is necessary to insure normal use of the property, i.e. for a sideline driveway.
 - b. The requirements of this paragraph may also be set aside when the proposed retaining wall is a joint venture between adjacent property owners, and appropriate documents so stating are filed with the application for the permit.
4. Retaining walls shall be designed and constructed in accordance with sound engineering practice by a professional Engineer, registered to practice in the Commonwealth of Pennsylvania.

SECTION 17: DRAINAGE PROVISIONS

- Adequate provisions shall be made to prevent any surface or subsurface waters from damaging:
- a. The cut face of an excavation;
 - b. The sloping surface of a fill; and
 - c. Adjacent property affected by the change in the existing natural run-off pattern.

SECTION 18: MAINTENANCE

1. The owner of any property on which an excavation or fill has been made shall maintain in good condition and repair the excavation or fill permitted, and also all retaining walls, cribbing, drainage structures, fences, ground cover, and any other protective devices as may be a part of the permit requirements.
2. If, at any time subsequent to the completion of the grading work, the cut face of fill slope shall evidence signs of deterioration, erosion or other evidence which might be detrimental to the properties above and below the grading site, the Board of Commissioners, upon the recommendation of its Administrator, may direct the property owner to take necessary remedial steps in accordance with sound engineering practice to restore the grading to a safe condition, and to do so in a reasonable period of time.
3. The grading certificate of completion may, at any time, be revoked by the Board of Township Commissioners, upon the recommendation of the Township Engineer and/or Administrator, where the conditions of the permit are not being observed, the covered by the certificate has been

materially extended or altered without a permit to do so, or conditions exist which prejudice the health, safety and welfare of any person, persons or property. Before such revocation, the Administrator shall first give written notice to the permit holder and to the owner of the property involved, specifying the defect or unsatisfactory condition involved, and advising that unless such defect or unsatisfactory condition is remedied, the certificate shall be revoked. If the defect or unsatisfactory condition is remedied within thirty (30) days of notice to the owner to correct same, the certificate shall not be revoked.

If the permit holder shall fail to correct such defect or unsatisfactory condition within such thirty (30) day period, the Township may undertake the necessary work and the costs thereof shall be borne by the permit holder and collected in any manner authorized by law, including the imposition of a lien against the property. The time limit herein provided may be extended by the Administrator for good cause shown.

SECTION 19: LIABILITY

Neither the issuance of a permit under the provisions of this article, nor the compliance with the provisions hereto of with any condition imposed by the building official hereunder, shall relieve any person from any responsibility for damage to persons or property resulting therefrom, or as otherwise imposed by law, nor impose any liability upon the County for damages to persons or property.

SECTION 20: VIOLATION AND PENALTIES

No person shall construct, enlarge, alter, repair or maintain any grading, excavation or fill, or cause the same to be done contrary to or in violation of any provision of this Ordinance.

When written notice of any of the provisions of this Ordinance has been served by the Administrator or any person, such violation shall be discontinued immediately or within a reasonable time limit specified in such notice. If violation is not discontinued, or extends beyond the specified time limit, the Administrator shall revoke the grading permit and the violation is subject to fine.

Any person violating any of the provisions of this Ordinance shall be liable on conviction thereof to a penalty not exceeding \$300.00 per day for each and every offense. Whenever such person shall have been notified by the Administrator by service of summons in a prosecution or in any other way that he is committing such violation after such notification, shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now by law collected.

SECTION 21: HOURS OF OPERATION

Excavation, construction and maintenance operations of any kind, to include Logging operations are permitted only during the daytime hours from 7:00am to 7:00pm, Monday through Friday; 8:00am to 7:00pm Saturdays between March 15th and October 31st. No operations are permitted on Sunday and Holidays.

Excavation, construction and maintenance operations of any kind, to include Logging operations are permitted only from 8:00am to 5:00pm, Monday through Saturday between November 1st and March 14th. No operations are permitted on Sunday and Holidays. Emergency operations may be authorized and a permit issued by the Administrator at any time.

SECTION 22: STREET CLEANING AND MAINTENANCE

1. In the event that earth, dust, powder, mud, sludge, or any other debris from an operation involved in the permit accumulates in or on any street, catch basin or sewer line, the transporter and/or applicant/ land owner shall be required to remove immediately upon notification by the Township Administrator.
2. Due to various types of construction and weight limits on streets within the Township, restrictions upon the size, type and number of pieces of equipment to be used, including trucks on public streets or thoroughfares will be made by the Administrator.
3. In the event the permit holder causes any damage to any street as a result of its operation, he shall repair same to the satisfaction of the Administrator.

SECTION 23: FEES

1. Inspection Fee

In advance to the issuance of the grading permit, the applicant shall remit to the Administrator an inspection fee for the performance of inspections of the work contemplated by the approved grading plan, in an amount specified by the Administrator in accordance with a schedule of fees, charges and expenses established and adopted by the Board of Commissioners.

2. Fee Schedule

The Board of Commissioners shall determine a schedule of fees, charges and expenses, as well as a collection procedure for permits, inspections, and other matters pertaining to this grading Ordinance. Said schedule of fees shall be posted in the offices of the Township Secretary.

The Board of Commissioners may alter the fee schedule from time to time by Resolution adopted at any public meeting of the Board. All fees collected herewith shall be paid into the Township Treasury.

SECTION 24: REMEDIES

In case any work is performed by any person in violation of the provisions of this Ordinance, the proper officer of the Township of Kennedy Board of Commissioners, in addition to other remedies, may institute in the name of the Township of Kennedy, any appropriate action or proceeding, whether by legal process or otherwise, to prevent such unlawful work and to restrain or abate such violation.

SECTION 25: VALIDITY

The provisions of this Ordinance are severable, and if any of its provisions or any part of any provision shall be held unconstitutional, the decision of the court shall not affect or impair any of the remaining provisions. It is hereby declared to be the intent of the Township Commissioners that this Ordinance would have been enacted had such unconstitutional provisions or parts thereof not been included herein.

SECTION 26: REPEAL

Any ordinance or parts of any ordinance conflicting with the provisions of this Ordinance be and the same are hereby repealed to the extent of such conflict.


ORDAINED AND ENACTED INTO LAW THIS 9TH DAY OF AUGUST 2010

ATTEST:



Gerald G. Orsini, Township Manager

BOARD OF COMMISSIONERS



Anthony Mollica, President

APPROVED AS TO FORM:

Joseph M. Kulik, Solicitor