



Report to Council

Department: Development Services
Division: Building and By-law Enforcement
Date: September 8, 2020
Prepared by: Jake Morassut, By-Law Enforcement Officer
Report Number: Building and By-law Enforcement-2020-01
Subject: Fill Permit for Mr. Darrel Dufour on County Road 12
Number of Pages: 8

Recommendation(s)

That Building and By-law Enforcement-2020-01 entitled Fill Permit for Mr. Darrel Dufour prepared by Jake Morassut, By-Law Enforcement Officer dated September 8, 2020 be received, and

That Council provide Administration with direction related to Mr. Darrel Dufour's fill permit matter for the property located on County Road 12.

Purpose

To provide Council with options for Mr. Darrel Dufour's Fill Permit matter, as directed by Council at the August 24, 2020 Regular Meeting.

Background and Discussion

The Town of Essex created the Grading By-Law #843 in 2007 to regulate the properties that bring in fill, as well as the grading that is completed on the properties. Within this By-Law, a permit is required to do work on the property. In order to obtain a permit the property

owner, or representative of the property owner, is to submit an application to the Building Department with the following conditions being satisfied under section 4.5:

- a) That a satisfactory lot-grading plan has been received showing the extent of the works, the maximum elevation of the raised lands and the measures proposed to control storm-water run-off. Changes to the elevations of lands as designed by a professional engineer must be certified by a professional engineer.*
- b) That the Town is satisfied that storm water control measures including swales, tile drains and, or retaining walls are adequate to prevent the run-off of storm-water to adjacent lands.*
- c) That the maximum permitted elevation shall be consistent with the elevation of adjoining lands. Further, the maximum permitted elevation shall not exceed one metre (39 inches) above the crown of the road.*
- d) That all required yards are adequately sloped from the existing grade at the property line. The maximum slope of all required yards shall be eight centimetres per metre (1 inch per foot).*
- e) Where it can be demonstrated that the requirements of c) and d) above cannot be met, an Officer, at the Officer's sole discretion, may waive the requirements as long as the waiving of these requirements does not create an adverse impact on adjoining lands.*
- f) That the minimum elevation conforms to the requirements of the Essex Region Conservation Authority, where applicable. That where a minimum elevation has not been established by the Essex Region Conservation Authority, the minimum elevation shall be established to the satisfaction of the Officer having regard to the elevation of the road, the elevation of abutting lands and the potential for flooding.*
- g) That the topsoil being removed is being used to restore the lands for which the permit is being issued unless it can be shown to the satisfaction of the Officer that the topsoil is not needed to restore the lands in which case the topsoil may be permitted to be removed from the land. Topsoil permitted to be removed may only be relocated within Town limits, and the site where the topsoil is being located to shall be approved by the Officer.*

- h) That satisfactory dust control, traffic control, noise control, hours of operation and vehicle travel routes are established for all equipment involved in the dumping, filling or grading operation.*
- i) The requirements for issuing a permit under Section 5 are satisfied.*

A permit was issued for the property in 2015. In 2019 By-Law Enforcement received complaints regarding properties where fill was being brought in. After reviewing several open permits, it was determined that a number of these permits were issued with deficient information.

The items that were in contravention of By-Law #843 are listed below:

- 4.5 b) That the Town is satisfied that storm water control measures including swales, tile drains and, or retaining walls are adequate to prevent the run-off of storm-water to adjacent lands.*

While a permit was issued to Mr. Dufour in 2015, the permit was issued with deficient information as it did not fulfill the requirements listed above—there were no drawings indicating appropriate water control measures. Upon investigation to the complaints received in July 2019, it was determined that the site did not have appropriate drainage to protect abutting properties from incurring drained water. For this reason, under Section 3.10 the permit was revoked as stated below:

Stop Work Order- If an Officer is satisfied that there is a contravention of this By-Law, the Officer may revoke the permit and may make an order requiring the owner of the land or the person who caused or permitted the placing or dumping of fill, removal of topsoil or alteration of the grade of land in contravention of this By-Law to discontinue the activity and the order shall set out:

- a) the municipal address or the legal description of the land; and*

b) reasonable particulars of the contravention and the period within which there must be compliance.

By-Law Enforcement notified the contractor that the permit was revoked based on the conditions stated above. It was emphasized that the municipality will issue a permit once a completed application is provided and the property has proper drainage control. The municipality does not want to prevent landowners from completing work on their properties; however, we need to ensure that the work is being done in accordance with the by-laws passed by Council.

A further complaint was made by an abutting property owner regarding drainage issues on the property in May 2020. At this time, Mr. Dufour and the contractor worked to ensure drainage was put in to protect the neighboring property owner on the West side; however, nothing was done to protect the neighbour on the East property. It was stated by Mr. Dufour that this property owner is a relative and drainage is not an issue; however, if this property is sold and new owners occupy the residence this could potentially become an issue. For this reason, it is important that we have appropriate drawings to protect current and future property owners.

Over the course of the time period between the enactment of By-Law #843 and the new Grading By-Law #1799, it was determined there were a number of shortcomings that the municipality needed to address. These shortcomings are listed below:

1. Engineered drawings: This was added as a requirement because engineers can ensure their drawings will protect the local property owners and comply with the regulations set forth in the By-Law. In addition, having an engineer review the file will give an estimate of the amount of grade material brought on site and allow for the Chief Building Official to calculate the amount required for a deposit. Without this information, it is merely an estimate.
2. Deposit to protect Town of Essex roads and the County of Essex roads: As the governing body for landowners in the municipality, it is on The Town of Essex to

assist the County of Essex in protecting their roadways. In the event there is damage to the roads through a project that we permitted, the landowner would be responsible for the cost of reparations. This is, in part, reasoning we require financial security so we can repair the roads and not place undue burden on ratepayers.

3. Deposit to repair site specific issues: Should the work not be done in accordance with the approved engineered drawings, the Town of Essex can have contractors bring the property in conformance through use of the deposit. These measures were put in place to protect our ratepayers.
4. Timelines: The new By-Law has a timeline of one year at which time the owner or contractor will have to reapply. This is to ensure site control to prevent properties from being legal dump sites for decades.

Administration determined the below three options as considerations to provide Mr. Dufour with a permit to bring in fill on his agricultural property. Although, the Chief Building Official made a determination to revoke the permit and reapply for a new permit under current By-Law #1799, below are options for this matter as directed by Council:

1. Reinstate the existing permit as is; or
2. Reinstate the existing permit to meet the conditions of the previous Grading By-Law #843; or
3. Reinstate the existing permit to meet the conditions of the previous Grading By-Law #843 with an engineered drawing; or
4. New permit is to be issued under current Grading By-Law #1799

An evaluation of these options was conducted with the results indicated in the below chart:

	Advantages	Disadvantages
Option 1 Reinstate previous permit	<ul style="list-style-type: none"> • Less upfront cost to landowner or contractor 	<ul style="list-style-type: none"> • \$500 deposit (already paid) • If damage to municipal infrastructure, difficult to recoup costs • Drawings do not accurately reflect site plan • No permit expiration timelines • Does not follow current by-law • Sets poor precedent for other revoked permits
Option 2 Reinstate previous permit meeting conditions of previous By-Law	<ul style="list-style-type: none"> • Can ensure work meets drawing specifications • Can protect abutting property owners • Less upfront cost to landowner of contractor 	<ul style="list-style-type: none"> • \$500 deposit (already paid) • If damage to municipal infrastructure, difficult to recoup costs • Drawings are not engineered and may not accurately reflect site plan • No permit expiration timelines • Does not follow current by-law • Sets poor precedent for other revoked permits
Option 3 Reinstate previous permit meeting conditions of previous By-Law with an engineered drawing	<ul style="list-style-type: none"> • Can ensure work meets drawing specifications • Can protect abutting property owners • Less upfront cost to landowner of contractor • Engineered drawings accurately reflect site 	<ul style="list-style-type: none"> • \$500 deposit (already paid) • If damage to municipal infrastructure, difficult to recoup costs • No permit expiration timelines • Does not follow current by-law • Sets poor precedent for other revoked permits
Option 4 Apply for new permit under new By-Law	<ul style="list-style-type: none"> • Engineered drawings accurately reflect site • Final specifications can be verified after work complete • Larger deposit as collateral for damage of infrastructure • Larger deposit as collateral for not completing the work as per engineered specifications • Prevents open dump sites • Follows current municipal by-law approved by Council in July 2019 • Sets important precedent for other revoked permits 	<ul style="list-style-type: none"> • Increased upfront cost to property owner/contractor (will be refunded upon completion)

To re-emphasize, the deposit is fully refunded upon completion of the work according to the approved engineered drawings with no damage to roadways.

It is incumbent on the Town of Essex, in accordance with the Building Code Act, to ensure that landowners do not negatively affect abutting neighbours by permitting work on the properties without having the proper controls in place.

Financial Impact

Indemnity deposits are collected for Building and By-law applications, including grade/fill permit applications, to protect ratepayers from potential additional costs incurred by the municipality from private landowners' projects.

Consultations

Kevin Carter, Chief Building Official

Robert Auger, Town Solicitor, Legal and Legislative Services/Clerk

Lori Chadwick, Director of Development Services

Jeffrey Morrison, Director, Corporate Services/Treasurer

Doug Sweet, Director, Community Services/Deputy CAO

Kevin Girard, Director, Infrastructure Services

Link to Strategic Priorities

- ☒ Manage, invest and plan for sustainable municipal infrastructure which meets current and future needs of the municipality and its citizens.
- ☐ Create a safe, friendly and inclusive community which encourages healthy, active living for people of all ages and abilities.
- ☒ Provide a fiscal stewardship and value for tax dollars to ensure long-term financial health to the municipality.
- ☒ Manage responsible and viable growth while preserving and enhancing the unique rural and small town character of the community.
- ☐ Improve the experiences of individuals, as both citizens and customers, in their interactions with the Town of Essex.
- ☐ Improve the Town's capacity to meet the ongoing and future service needs of its citizens while ensuring the corporation is resilient in the face of unanticipated changes or disruptions.

Report Approval Details

Document Title:	Fill Permit for Mr. Darrel Dufour - Building and By-law Enforcement-2020-01.docx
Attachments:	
Final Approval Date:	Sep 1, 2020

This report and all of its attachments were approved and signed as outlined below:

Kevin Carter, Manager, Building Services/Chief Building Official - Aug 31, 2020 - 4:02 PM



Lori Chadwick, Director, Development Services - Aug 31, 2020 - 4:08 PM

No Signature - Task assigned to Chris Nepszy, Chief Administrative Officer was completed by delegate Doug Sweet, Director, Community Services/Deputy CAO

Chris Nepszy, Chief Administrative Officer - Sep 1, 2020 - 8:41 AM