

The Corporation of the Town of Essex

By-Law Number 1799

Being a By-Law to Provide for the Regulation of the Placing and/or Dumping of Fill and the Alteration of Grade and/or removal of topsoil from Land in the Municipality of the Town of Essex

Whereas, Section 142(2) of the Municipal Act, R.S.O. 2001 and amendments thereto, provides that a local municipality may:

- (a) prohibit or regulate the placing or dumping of fill;
- (b) prohibit or regulate the removal of topsoil;
- (c) prohibit or regulate the alteration of the grade of the land;
- (d) require that a Fill Permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and
- (e) impose conditions to the issuance of a Fill Permit , including requiring the provision of satisfactory financial security and requiring the preparation of plans acceptable to the municipality relating to the grading, filling or dumping, the removal of topsoil and the rehabilitation of the site

And whereas, the Council of the Corporation of the Town of Essex considers it desirable to pass such a By-Law;

Now therefore be it resolved that the Council of The Corporation of the Town of Essex enacts as follows:

Section 1-Definitions:

In this By-Law:

- a) "Act" shall mean the Provincial Offences Act, R.S.O. 1990 Chapter P.33
- b) "Crown of the road" means the high portion of a road cross-section, generally associated with the centerline of the road.
- c) "Director" shall mean the Director of Infrastructure Services for the Corporation of the Town of Essex.
- d) "Dumping" means the placing of any fill material on any lands.
- e) "Existing grade" means the naturally occurring grade.
- f) "Fill" means any type of material transported ,deposited or placed on land and/or removed from land and includes but is not limited to soil, earth, topsoil, stone, aggregate, asphalt, sod, turf or any combination thereof.
- g) "Filling" means the changing of the existing grade through the addition of fill material.
- h) "Grading means any altering of the existing grade.
- i) "Officer" means the Chief Building Official, the Ontario Provincial Police and any person designated by by-law of the Corporation of the Town of Essex to issue permits and impose conditions under this by-law or to otherwise enforce this by-law.
- j) "Owner" means the person whose name appears on the latest revised assessment role and/or such person's authorized agent.

- k) "Professional Engineer" means an engineer licensed by the Association of Professional Engineers of Ontario.
- l) "Town" means the Corporation of the Town of Essex.

Section 2-General

- 2.1 This By-Law may be referred to as the "Grading By-Law", "Fill By-Law", "Dumping By-Law", or the "Topsoil By-Law".
- 2.2 The provisions of the By-Law shall apply to all lands within the boundaries of the Town as are now or hereafter legally constituted.
- 2.3 Nothing in this By-Law shall serve to relieve any person from the obligation to comply with all other applicable laws.
- 2.4 The provisions of this By-Law shall not apply to the placing or dumping of fill, the grading of, or the removal of topsoil from land lawfully conducted prior to the final passing of the By-Law.
- 2.5 The Town may by agreement permit the placing of fill, the grading of, or the removal of topsoil from land that does not otherwise comply with the provisions of this By-Law.
- 2.6 If any court of competent jurisdiction finds any portion of this By-Law is invalid or is ultra vires of the jurisdiction of the Town, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this By-Law.
- 2.7 This By-Law shall come into full force and effect upon the passage thereof.
- 2.8 All schedules affixed to this By-Law are included and form part of this By-Law by reference thereto.
- 2.9 English measurements, provided in brackets, are shown of convenience only and do not form part of this By-Law.

Section 3-Administration and Enforcement

- 3.1 The provisions of this By-Law shall be administered by the Town's Chief Building Official (hereinafter "Officer"). The duly appointed Chief Building Official and the Chief Building Official's designates including the Town By-law Enforcement Officer are hereby designated as Officer (s) for the purposes of this By-Law. The Officer (s) together with the Ontario Provincial Police and such other person or persons that may be designated by Council, shall enforce the provisions of this By-Law.
- 3.2 Every person who contravenes any provision of this By-Law, a condition to a issued Fill Permit or an order issued pursuant to this By-Law is guilty of an offence and upon conviction is liable to a fine in the maximum amount provided for by the Act.
- 3.3 Notwithstanding the provisions of Section 3.2, every person who contravenes any provision of this By-Law is guilty of an offence and can, at the option of the Town be prosecuted pursuant to the provisions of Part 1 of the Act, and upon conviction thereof is liable to a set fine as determined in accordance with the procedure

delineated in the Act and Regulations passed there under and as further described in Schedule B to this By-law as may be duly amended from time to time.

- 3.4 An Officer may at any reasonable time, enter and inspect any lands for the purpose of determining compliance with any provision of this By-Law, including compliance with a Fill Permit issued pursuant to this By-Law or an order issued pursuant to this By-Law.
- 3.5 An Officer may at any reasonable time, enter lands to do work required by an order issued pursuant to this By-Law provided the service requirements of Section 3.12 and 3.13 have been complied with.
- 3.6 Any dumping or placing of fill carried out contrary to this By-Law or the Fill Permit issued pursuant to this By-Law shall be removed and the site restored to its original condition by the person who dumped or placed it or caused or permitted it to be dumped or placed.
- 3.7 Where the grade of the land has been altered contrary to this By-Law or a Fill Permit issued pursuant to this By-Law, the grade of the land shall be restored to its original condition by the person who altered it or caused or permitted it to be altered.
- 3.8 For the purpose of enforcing the requirements of subsections 3.6 and 3.7 the Town shall further have recourse to the Owner of the land in accordance with the powers set out in the Act.
- 3.9 Where topsoil has been removed contrary to the provisions of this By-Law or a Fill Permit issued pursuant to this By-Law, the land shall be rehabilitated.
- 3.10 Stop Work Order- If an Officer is satisfied that there is a contravention of this By-Law, an Officer may revoke the Fill 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.
- 3.11 Work Order- If an Officer is satisfied that that a contravention of this By-Law has occurred the Officer may make an order requiring work to be done to correct the contravention 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; and
 - c) a notice stating that if the work is not done in compliance with the order within the period it specifies, the Town may have the work done at the expense of the owner.
- 3.12 An order issued pursuant to this By-Law shall be served personally or by prepaid registered mail sent to the last known address of the owner of the land.

- 3.13 If an Officer is unable to effect service on the owner under subsection 3.12, the Officer may place a placard containing the terms of the order in a conspicuous place on the land.
- 3.14 If the owner fails to do the work or things required by the order within the period it specifies, the Town, in addition to all other remedies it may have, may do the work or thing and for this purpose may enter on the lands with its employees and agents.
- 3.15 Costs incurred by the Town under subsection 3.14 shall be recovered from the Security provided under this By-law and/or in like manner and with the same priority as Municipal Taxes.
- 3.16 No person shall obstruct an Officer in the performance of his/her duties or a person carrying out work in accordance with this By-law.

Section 4-Prohibitions and Requirements for a Fill Permit

- 4.1 No person shall place, transport, dump or remove fill and/or topsoil from or otherwise alter or grade lands or cause the same to occur within the Town unless a Fill Permit has been issued authorizing the said placing, transport, dumping, removal or grading thereof. The requirements, terms and conditions and costs of the Fill Permit shall be as provided for in this by-law which includes Schedule "A" hereto.
- 4.2 No person shall change the grade elevations of lands as designated by a professional engineer without the issuance of a Fill Permit.
- 4.3 An Officer shall issue a Fill Permit upon the Owner or the Owner's authorized agent having filed a completed application in the form and manner as established by the Director and upon the following conditions being satisfied and maintained (where applicable) by the Owner as determined by the Officer :
- a) That a satisfactory lot-grading plan submitted or stamped by an engineer 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 originally designed by a professional engineer must be subsequently certified by a professional engineer.
 - b) That a work schedule and a site map identifying the location, boundaries and number of hectares in the site and the nearest major intersection has been provided with the application for a Fill Permit.

- c) 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.
- d) That at the property lines, 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.
- e) 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).
- f) Where it can be demonstrated that the requirements of d) and e) above cannot be met, an Officer, at the Officer's sole discretion (acting reasonably), may waive the requirements as long as the waiving of these requirements does not create an adverse impact on adjoining lands.
- g) 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 (acting reasonably), having regard to the elevation of the road, the elevation of abutting lands and the potential for flooding.
- h) That the topsoil or fill being removed is being used to restore the lands for which the Fill Permit is being issued unless it can be shown to the satisfaction of the Officer (acting reasonably) that the topsoil is not needed to restore the lands in which case the topsoil may be permitted to be removed from the land.
- i) That satisfactory dust control, traffic control, noise control, hours of operation and vehicle travel routes are established and maintained for all equipment involved in the dumping, filling or grading operation.
- j) That the application for a Fill Permit is accompanied by a non-refundable application fee payable in the amount and manner to be prescribed by Schedule A, as may be amended from time to time, said Application fees to be charged on an event by event basis.
- k) That a Written Authorization, signed by the Owner, stating that the Officer will be allowed to enter the site for the purpose of inspecting for compliance with this by-law or for performing any work necessary to bring the site into conformance with this by-law has been received.
- l) That a Written confirmation from a qualified person stating that the fill or material being placed or removed is not contaminated fill or material, has been received.

m) That if required (pursuant to the sole discretion of the Officer acting reasonably), a Security Deposit or such other satisfactory financial security has been provided to the Town (the "Security") in order to secure performance of the work for which the Fill Permit is to be issued and to secure the estimated cost of site control and other such measures that may be necessary pursuant to this by-law including if required to secure the maintenance of the highways that are used by the trucks delivering the fill to a state of repair that is free from damages, dust and/or mud. The Security may be drawn upon by the Town at its sole discretion (acting reasonably) to remedy any deficiency in work performed and/or remediate any damages resulting under the issued Fill Permit as determined by the Town at its sole discretion. If required the Security shall be provided in accordance with the requirements of Schedule A to this by-law; and

n) That all other information as may be required has been received and that the additional requirements for issuing a Fill Permit pursuant to Schedule A of this by-law have been satisfied, all as determined by the Officer at the Officer's sole discretion (acting reasonably).

4.4 No person shall alter a private drain without the issuance of a Fill Permit. In addition to the other requirements of this By-law, a Fill Permit to alter a private drain shall not be issued until it can be shown that:

- a) the drain is no longer required; or
- b) that alternative drainage measures will be constructed to satisfactorily maintain the existing drainage scheme.
- c) No person shall fill, dump on, remove topsoil from, alter a private drain or grade lands contrary to the conditions of a Fill Permit or contrary to the plans, specifications or drawings upon which the Fill Permit was issued.

4.5 A Fill Permit issued in accordance with subsections 4.3 and 4.4 may impose any other conditions that are in the opinion of the Officer required to fulfill the requirements of this By-Law.

4.6 In addition to any other requirements of this By-Law, rear-yard drainage shall be provided as a condition to the issuance of a Fill Permit on any lands zoned "Residential" in the Town's Zoning By-Law.

4.7 The requirement of subsection 4.6 may be waived, at the sole discretion of an Officer (acting reasonably), where an adequate storm sewer outlet cannot be obtained.

4.8 The provisions of this by-law and the issuance of a Fill Permit by the Officer shall not affect the obligations of the Owner to comply with all other restrictions governing the work imposed under law by any authority having jurisdiction thereof.

Section 5-Exemptions

5.1 Pursuant to the exemptions, exceptions and exclusions specified in Section 142 (5) to Section 142 (7) inclusive of the *Municipal Act*, 2001, This By-law does not apply to,

- (a) Activities or matters undertaken by a municipality or a local board of a municipality;
- (b) the placing or dumping of fill, removal of topsoil or alteration of the grade of land imposed as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (c) the placing or dumping of fill, removal of topsoil or alteration of the grade of land imposed as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under that regulation;
- (d) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (e) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (f) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,

- (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
- (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*; or
- (g) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*.
- (h) the removal of topsoil as an incidental part of a normal agricultural practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products unless the removal of topsoil is for the purposes of the sale, exchange or other disposition of the removed topsoil itself.

5.2 This By-law also does not apply to:

- (i) Land disturbance associated with minor gardening and landscaping incidental to residential uses. Notwithstanding this exemption the Director (acting reasonably), reserves the right to make a determination as to whether any given land disturbance associated with minor gardening or landscaping incidental to residential shall be permissible as an exemption under this By-law.
- (j) The removal of topsoil or placing of fill where the aggregate quantity of such removal or placement on any one lot does not exceed twenty (20) cubic meters in any period of three (3) consecutive months.

5.2 The requirements of Section 4 of this By-law may further be waived in writing, at the sole discretion of the Director (acting reasonably).

Section 6-General

- 6.1 That By-Law 843 and all amendments thereto are hereby repealed as of the first date that Set-Fines for this By-law 1799 have been duly approved pursuant to the *Provincial Offences Act*, R.S.O. 1990, and Chapter P.33 and as further described in Schedule B (as may be duly amended from time to time) to this By-law.
- 6.2 That this by-law shall come into force and take effect on the date of final passing.

Read a first and a second time and provisionally adopted on July 2, 2019.

Mayor

Clerk

Read a third time and finally passed on August 6, 2019.

Mayor

Clerk

Schedule "A" to By-law 1799

A. Fill Permit Additional Requirements:

1. Any person seeking a Fill Permit pursuant to this Part shall apply to the Chief Building Official ("Officer") in the form and manner required as may be amended from time to time.
2. No person shall transport or cause the transportation of topsoil or related material on any municipally owned highways unless and until a Fill Permit or an exemption thereof has been granted under this part by the Officer .
3. Any person seeking a Fill Permit pursuant to this Part shall apply a minimum of ten (10) working days prior to commencing the work and/or of topsoil or materials related to the Fill Permit being applied for (hereinafter the "event").
4. Notwithstanding anything in this by-law, the Officer may grant or refuse to grant any Fill Permit applied for on an event by event basis but in no case shall an event being applied for be longer than one (1) year in duration. The Officer shall make the issuance of any such Fill Permit subject to such terms and conditions as the Officer may designate as being appropriate on an event by event basis. Any breach by the Owner of any of the terms and conditions of the issued Fill Permit shall render the Fill Permit null and void ;
5. Every person seeking a Fill Permit under this part shall (in addition to fulfilling the requirements imposed by Section 4 of this By-law) provide to the Officer for approval a written description and drawing of the proposed daily volumes of proposed movement of fill, the proposed locations and/or routes of truck travel and staging and storage areas as part of the application and upon request, shall further provide a scale drawing of the vehicle illustrating the number of, and dimensions between each axle, and specifying the loading on each axle.
6. Every person issued a Fill Permit under this part, shall, forty-eight (48) hours before commencing movement for which the Fill Permit has been issued, give notice to the departments, companies, agencies and utility companies as noted and set out in the Fill Permit , indicating the route to be traveled and the time of commencement of such movement.

7. In all instances, the application for a Fill Permit described in this By-law shall be accompanied by:
- a) The name and address of the Owner
 - b) The date and period of time for which the Fill Permit is sought (maximum period one (1) year).
 - c) The names of the roads affected by the proposed route of travel for the transportation of Fill.
 - d) The Fill Permit fee and any other applicable fees;
 - e) A road damage undertaking agreement (in the form and manner approved by the Director) signed by the Owner and/or the Owners authorized agent (or such other party that the Director may approve in writing) providing that if a Fill Permit is granted the Owner acknowledges and agrees that it shall be responsible and shall indemnify the Town for any and all damages that may be caused to the Highway(s) by reason of the fill and its movement pursuant to the provisions of this by-law.
 - f) If required by the Officer, a deposit or such other financial security (the "security") to secure performance of the work for which the permit is to be issued and to secure the estimated cost of site control and other such measures that may be necessary pursuant to this by-law including, if required, to secure the maintenance of the highways that are used by the trucks delivering the fill to a state of repair that is free from damages, dust and/or mud. The security may be drawn upon by the Town at its sole discretion (acting reasonably) to remedy any deficiency in work performed and/or remediate any damages resulting under this Fill Permit as determined by the Town at its sole discretion (acting reasonably). The security shall be an amount deemed as appropriate by the Officer based upon his or her reasonable estimate of the costs which may be incurred to reinstate the highway and for other services provided by the Town in connection with the remediation of any and all damages that may be caused to the Highway(s) by reason of the performance of any work under this Fill Permit; and
 - g) Commercial General Liability Coverage or public liability and property damage insurance of not less than \$2,000,000 for bodily injury including death, personal injury and property damage arising from any one accident or occurrence or such other higher amounts as may be reasonably requested, for the entire duration of the Fill Permit.

Schedule "A" to By-law 1799

B Schedule of Fees:

Non-Refundable Fill Permit Application Fee

1. (a) The permit application fee for processing, administration and inspection (s) shall be paid at the time of application for a permit.

(b) The permit application fee shall be:

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| (i) for applications of 1,000 cubic metres or less | \$ 200.00 |
| (ii) for applications of 1,000 to 50,000 cubic metres | \$300.00 |
| (iii) for applications greater than 50,000 cubic metres | \$400.00 |

Non-Refundable Permit Transfer Fee

3. A permit transfer fee of \$250 shall be paid at the time of application for transfer of a permit.

4. Security Deposits

- (a) The Security Deposit shall be provided to the Chief Building Officer ("Officer") prior to a fill permit being issued.

- (b) At the discretion of the Officer (acting reasonably), the Security Deposit shall be the following minimum amounts:
 - (i) for permits of 1,000 cubic metres or less \$ 5 0 0
 - (ii) for permits greater than 1,000 cubic metres \$ 500 plus \$0.50 per cubic metre over 2000 cubic metres

Please note that the Officer has discretion where deemed appropriate to further increase the required amount of the security for items such as, but not limited to : cost of rehabilitation, drainage, erosion protection, tree protection and/or replacement, erosion control fencing etc.

5. Security (additional requirements)

- a) Security shall be in the form of cash, certified cheque, letter of credit or such other form of security acceptable to the Director acting reasonably.
- b) Any letter of credit must remain in effect for the full duration of the permit. Any letter of credit and its subsequent renewal forms shall contain a clause stating that thirty (30) days written notice must be given to the Town prior to its expiry or cancellation.
- c) In the event that the Town receives notice that a letter of credit is expiring and will not be renewed, or if further or additional securities are not provided within the said thirty (30) days, the Town may draw on the current letter of credit at the discretion of the Officer acting reasonably.
- d) Any interest accruing on realized cash security shall belong to the Town and not the fill permit holder.
- e) The general security may be used for:
 - i) clean up of mud tracking of the road or restoration of any municipal works. The owner will be notified of the required cleanup, and if the work is not completed by the owner, the Town will carry out the work using the security to cover the costs.
 - ii) The completion or rectification of any work required under the permit including site control and other such measures that may be necessary pursuant to this by-law;
 - iii) The completion of work required under an order issued under this By-law;
- f) The general security may be reduced from time to time at the discretion of the Officer acting reasonably, but shall otherwise be held pending the

completion of all works required under the permit and any order issued under this by-law.

- g) The permit holder shall provide proof satisfactory to the Officer that the site has been adequately reinstated and stabilized in accordance with this By-law and the plan accompanying the Permit;
- h) The permit holder shall provide a certificate of a consulting engineer or surveyor certifying that the elevations have been completed in accordance with the original plans submitted (as stamped by Engineer) and the finished project does not detrimentally affect drainage on adjacent properties.
- i) The permit holder shall request that the Town carry out a final inspection to confirm that all relevant terms of this by-law have been complied with.
- (j) When the provisions of this by-law and all work required under the permit or under any order have been fully complied with to the satisfaction of the Officer, the Town shall release the Owner's general security. If the lands for which a permit has been issued are transferred to a new or subsequent owner while the issued fill permit remains in effect then all securities will be returned to the original owner provided the new or subsequent owner provides to the Town an undertaking to comply with all the conditions under which the existing permit was issued or the new or subsequent owner applies for and is issued a new fill permit in accordance with the provisions of this by-law.