



THE CORPORATION OF THE TOWN OF WHITBY

Site Alteration By-law

A by-law to prohibit or regulate any alteration to the grade (topography) of land and the use of municipal highways through the movement, removal or placement of topsoil, soil or fill within the Town of Whitby.

By-law Number 7425-18

Consolidated Version

As Amended by By-laws:

By-law Number: Date Passed:

7425-18 May 28, 2019

Site Alteration By-law

Being a By-law to prohibit or regulate any alteration to the grade (topography) of land and the use of municipal highways through the movement, removal or placement of topsoil, soil or fill within the Town of Whitby.

Whereas, section 142 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to prohibit or regulate the dumping of fill, removal of topsoil and alteration of grades;

And Whereas, the Council of The Corporation of the Town of Whitby considers it desirable and necessary to prohibit or regulate the dumping of fill, removal of topsoil and alteration of grades to protect the environment, safeguard infrastructure and mitigate the impact of fill hauling on the Town's residents.

Now Therefore, the Council of the Corporation of the Town of Whitby enacts as follows:

1. Definitions

- 1.1 "applicant" means each person who seeks or obtains a permit;
- 1.2 "contaminated fill" means,
 - a) any fill that does not meet the fill quality standards identified in the Site Alteration Guidelines; or
 - b) fill that contains putrescible material, with the exception of topsoil ; or
 - c) bio-solids created by the paper manufacturing process, either in the form of pure paper fiber bio-solids or as mixed with other material to form products known as, "nitro-sorb", "sound-sorb", or other products with similar composition;
- 1.3 "Commissioner" means the Commissioner of Public Works of the Town or their designate;
- 1.4 "Council" means the Council of The Corporation of the Town of Whitby;
- 1.5 "dumping" shall be broadly interpreted to include stripping, removing, moving, transporting, importing, exporting or placing of any fill into, out of, or upon lands within the Town;
- 1.6 "fill" means any type of material deposited or placed on lands, and includes clean fill, soils and topsoils with any water content and other regulated materials including, stone, concrete, construction materials, asphalt, sod, turf, or debris either singly or in combination;
- 1.7 "grade" means the elevation of an existing ground surface, except where the placing or dumping of fill or the alteration of the then existing ground surface has occurred in contravention of this by-law, in which case grade means the

elevation of the ground surface as it existed prior to such placing or dumping of fill on, or alteration of the existing ground surface occurring;

1.8 "haul" means to move fill and/or topsoil on Town highways;

1.9 "officer" means a police officer or a municipal law enforcement officer appointed by the Town for the purpose of enforcing this by-law;

1.10 "owner" means the registered owner of a property and includes, the owner's representative, a tenant, or the property manager;

1.11 "permit" means a Site Alteration Permit;

1.12 "permit holder" means an applicant for a permit issued under this by-law and/or the owner of a lot to which a permit issued under this by-law applies;

1.13 "person" means any individual, firm, partnership, company or corporation or any trustee, manager or other person, either individually or jointly with others, owning, occupying or having the management or supervision of any building or property, and shall also include any agent, workman, servant, employee, or authorized representative of such individual, firm, partnership, company or corporation;

1.14 "qualified person" has the same meaning as in Section 5 of Ontario Regulation 153/04, or a licensed surveyor (for the purpose of land surveying), possessing expert or special knowledge in regards to matters contained within this by-law;

1.15 "site" means the lands from which it is proposed that material be moved or removed, or subjected to a site alteration and/or land development;

1.16 "site alteration" means dumping, the removal of topsoil from land, or the alteration of the grade of land by any means including placing fill, clearing and grubbing, the compaction of soil or the creation of impervious surfaces, or any combination of these activities;

1.17 "Site Alteration Guidelines" means a document prepared by the Town's Public Works Department which includes design details and requirements for site alteration permits, which may be amended from time to time;

1.18 "Site Alteration Permit" means a permit issued by the Commissioner pursuant to the provisions of this by-law and the Site Alteration Guidelines for the purpose of dumping, removing of topsoil from land, or the alteration of the grade of land by any means including placing fill, clearing and grubbing, the compaction of soil or the creation of impervious surfaces, or any combination of these activities;

1.19 "soil report, on-site" means a soil report prepared by a qualified person attesting to the soil conditions at the location of a site alteration;

1.20 "soil report, source" means a soil report prepared by a qualified person attesting to the soil conditions at the source location(s) of fill for use at the

location of a site alteration;

- 1.21 "topsoil" means those horizons in a soil profile, commonly known as the "O" and the "A" horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat;
- 1.22 "Town" means The Corporation of the Town of Whitby or the geographic jurisdiction of the Town of Whitby as the context requires; and
- 1.24 "Zoning By-law" means a by-law passed by the Town pursuant to section 34 of the Planning Act and includes Zoning By-law 2585, Zoning By-law 1784 and Oak Ridges Moraine Zoning By-law 5581-05, as amended from time to time, whichever is applicable to any land to which this by-law applies.

2. Interpretation

- 2.1. Unless otherwise specified, references in this by-law to parts, sections, subsections, clauses and schedules are references to parts, sections, subsections, clauses and schedules in this by-law.
- 2.2. References in this by-law to any statute or statutory provision include references to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.
- 2.3. This by-law shall be read with all changes in gender or number as the context requires.
- 2.4. References in this by-law to items in the plural include the singular, and references to the singular include the plural, as applicable.
- 2.5. The words "include", "includes" or "including" are not to be read or interpreted as limiting the words, phrases or descriptions that precede them.

Severability

- 2.6. If a court of competent jurisdiction declares any section, or any part of any section, of this by-law to be invalid, or to be of no force or effect, it is the intention of the Town that every other provision of this by-law be applied and enforced in accordance with its terms to the extent possible according to law.

Application

- 2.7. The provisions of this by-law shall apply to all lands and premises within the Town.

Compliance with Other Laws

- 2.8. This by-law and the provisions contained within are intended to be complementary to Provincial statutes and to other by-laws passed by Council,

in the event that any other applicable law requires a higher standard than this by-law requires, the higher standard shall apply.

Delegated Authority – Site Alteration Guidelines

- 2.9. The Commissioner is hereby authorized to amend the provisions of the Site Alteration Guidelines, as required.

3. Exempted Activities

- 3.1. The provisions of this by-law, with respect to the requirement to obtain a Site Alteration Permit, do not apply in instances where the placing, dumping, or removal of fill or topsoil, or the alteration of the grade of land is,
 - 3.1.1. on residential properties for the purpose of swimming pool installations or filling in of swimming pools;
 - 3.1.2. as a result of reconstruction of driveways;
 - 3.1.3. as a result of reconstruction of parking lots provided that an approved, existing site plan is in place;
 - 3.1.4. as a result of reconstruction work, including landscaping activities, in accordance with an approved, existing site plan;
 - 3.1.5. 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 a subdivision agreement executed and in good standing entered into under the afore-mentioned sections;
 - 3.1.6. 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 and in good standing under that regulation;
 - 3.1.7. undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land, that has been designated under the Aggregate Resources Act or a predecessor of that Act, and on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the Planning Act;
 - 3.1.8. undertaken as an incidental part of drain construction under the Drainage Act or the Tile Drainage Act;
 - 3.1.9. undertaken in accordance with a permit issued by the Town's Chief Building Official or designate pursuant to the Building Code Act, 1992, for the erection or demolition of a building or structure, provided that the Commissioner and the Chief Building Official are satisfied that the

permit application provides sufficient information to determine compliance with the provisions of this by-law;

- 3.1.10. associated with the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of Part V of the Environmental Protection Act, or a waste, waste disposal or waste management system that is exempted by regulation from Part V of the Environmental Protection Act;
- 3.1.11. undertaken with the construction, extension, alteration, maintenance or operation of works under Section 26 of the Public Transportation and Highway Improvement Act; or
- 3.1.12. 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.

- 3.2. The provisions of this by-law, with respect to the requirement to obtain a Site Alteration Permit as described in the Site Alteration Guidelines, do not apply to the extent that topsoil is placed on lands with a residential zoning category pursuant to the applicable zoning by-law, for the purpose of lawn dressing, landscaping or gardening.
- 3.3. The provisions of this by-law, with respect to the requirement to obtain a Site Alteration Permit as described in the Site Alteration Guidelines, do not apply in instances where the placing, dumping, or removal of fill or topsoil, or the alteration of the grade of land is undertaken on property owned by the Town, a local board of the Town, any municipal, Provincial, or Federal government or government agency, any school board, or any post-secondary institution accredited by the Ministry of Advanced Education and Skills Development. However, if fill or topsoil is being moved from these properties to a receiver site which is located on private property, then the private property receiver site is required to have in place a valid Site Alteration Permit.
- 3.4. The provisions of this by-law do not apply where there is a business use occurring on a property that is involved in the regular import/export of material such as landscaping suppliers, asphalt producers/processors, or aggregate producers/processors, provided that such business has appropriate land-use zoning permissions to operate from the property and provided that the business and the property is in compliance with all other applicable laws.
- 3.5. The provisions of this by-law, with respect to the requirement to obtain a Site Alteration Permit as described in the Site Alteration Guidelines, do not apply to:

- a) 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; and
- b) the replacement of topsoil for the restoration of lands used for normal agricultural practices as an incidental part of sod-farming, greenhouse operations, and nurseries for horticultural products,

provided that the replacement and/or removal of topsoil is taking place on lands within an agricultural zoning category pursuant to the applicable zoning by-law, and provided that the owner of the land can demonstrate that the replacement and/or removal of topsoil is legitimately and reasonably required for the improvement of the agricultural use of the property.

- 3.6. Every owner of an agricultural property must obtain a Site Alteration Permit prior to altering the grade of land on their property, unless the site alteration is exempt pursuant to subsection 3.5. of this by-law.

4. Restrictions

- 4.1. No person shall place, dump or remove fill or topsoil or cause or permit fill or topsoil to be placed, dumped or removed from land except in accordance with the provisions of this by-law and the Site Alteration Guidelines, including any requirement for a Site Alteration Permit.
- 4.2. No person shall alter the grade of any land or cause or permit the alteration of the grade of any land except in accordance with the provisions of this by-law and the Site Alteration Guidelines, including any requirement for a Site Alteration Permit.
- 4.3. No person shall use the Town's highways for the purpose of moving fill and/or topsoil to or from lands, except in accordance with this by-law and the Site Alteration Guidelines, including any requirement for a Site Alteration Permit.
- 4.4. Where a Site Alteration Permit has been issued pursuant to this by-law, no permit holder shall, except in accordance with the provisions of the Site Alteration Permit,
 - 4.4.1. place, dump or remove fill or cause or permit fill to be placed, dumped or removed; or
 - 4.4.2. alter the grade of any land or cause or permit the alteration of the grade of any land in the Town.
- 4.5. No person shall conduct a site alteration or permit the operation of a site alteration,
 - 4.5.1. outside of the times permitted for the operation of heavy equipment in the Town's Noise By-law, as may be amended from time to time; or

- 4.5.2. during a period in which a wind warning has been issued for the area by Environment Canada and when dust/material is being blown off of the site or off of the external roadways being used to access to the site, as the context requires; or
- 4.5.3. within 24 hours after receiving precipitation, unless the operations being performed during this time are completely within the boundaries

of the site alteration property or do not result in mud tracking onto the external roadways adjacent to the property.

5. Permits

Site Alteration Permits

- 5.1. The Commissioner has the authority to issue a Site Alteration Permit where an applicant has satisfied the requirements of this by-law and the Site Alteration Guidelines.
- 5.2. All applicants for a Site Alteration Permit shall pay the appropriate fees as set out in the Fees and Charges By-law, and shall provide the appropriate securities as set out in the Site Alteration Guidelines, as amended from time to time.
- 5.3. All applicants for a Site Alteration Permit shall submit a completed permit application, including the submission of supporting documents, tests, securities and other requirements as described in the Site Alteration Guidelines within a 6 month timeframe from the date of submission of the application form, failing which, the application is deemed to have expired.
- 5.4. Applicants for a Site Alteration Permit who are unable to comply with the timeframe specified in Section 5.3. of this by-law shall be required to make a new application for a Site Alteration Permit including the payment of applicable fees, and such applicants are not entitled to a refund of any fees paid for with respect to the previous, expired application.
- 5.5. The Commissioner shall not issue a Site Alteration Permit unless all requirements contained in the Oak Ridges Moraine Conservation Plan, and any other regulations made under the Oak Ridges Moraine Conservation Act are complied with within the proposed site alteration.
- 5.6. The Commissioner shall not issue a Site Alteration Permit if the proposed site alteration activity does not comply with the zoning category for the property, pursuant to the applicable zoning by-law.

Site Alteration Permit Conditions

- 5.7. Upon issuance of a Site Alteration Permit, and at any point thereafter until the site alteration project is fully complete, the Commissioner may, from time to time, and at the expense of the permit holder, require source soil reports and/or on-site soil reports prepared by a qualified person retained by the Town.
- 5.8. Should a source soil report and/or on-site soil report referred to in Section 5.7. of this by-law, reveal non-compliance with the approved Site Alteration Permit conditions with respect to fill quality or reveal the presence of contaminated

fill, the Commissioner may, at their discretion, suspend the Site Alteration Permit and prohibit the continued dumping and/or removal of fill until such time as a source soil report and/or on-site soil report, as the context requires, is submitted demonstrating that all contaminated fill has been removed from the site alteration location.

- 5.9. Site Alteration Permit holders shall,
 - 5.9.1. notify the Commissioner a minimum of two (2) business days prior to the commencement of the site alteration; and
 - 5.9.2. obtain permission in writing from the Commissioner prior to modifying any element of the approved Site Alteration Permit conditions, and
 - 5.9.3. maintain a copy of the Site Alteration Permit on the site at all times; and
 - 5.9.4. notify all sub-contractors and suppliers of the approved haul and access routes to the site and ensure compliance with these instructions; and
 - 5.9.5. maintain all roads in the same or better condition than existed prior to the commencement of the work and keep all roads free of any materials or equipment arising from the work; and
 - 5.9.6. following the completion of the work, and prior to the release of any securities or portion thereof, provide an as-built survey for the fill site and a statement from a professional engineer or Ontario land surveyor certifying that,
 - 5.9.6.1 the grading has been completed in accordance with the plans submitted as part of the permit application; and
 - 5.9.6.2 the finished site alteration project does not detrimentally affect drainage on adjacent properties; and
 - 5.9.6.3 the finished site alteration project does not detrimentally affect the quality or quantity of water in wells on adjacent properties.
- 5.10. The Commissioner may designate truck routes and trucking schedules as a condition of a Site Alteration Permit in order to minimize impacts to the public and Town infrastructure.
- 5.11. The Commissioner may require public notification and signage regarding designated truck routes and trucking schedules as a condition of a Site Alteration Permit in order to minimize impacts to the public.

- 5.12. The Commissioner may require an applicant to hold an information meeting at the expense of the applicant, and at a time and location and in a format approved by the Commissioner.
- 5.13. The Commissioner may require a Site Alteration Permit holder to install site remediation measures including topsoil, seeding, sodding and the installation of berms and landscaping, as necessary, to minimize the visual impact of fill or grade alteration works and to provide for stabilization of altered grades.
- 5.14. The Commissioner may bring a report to Council discussing a Site Alteration Permit prior to issuing the permit.

Permit Expiry, Renewal and Transfers

- 5.15. All permits issued under this by-law shall expire or be renewed in accordance with the terms identified in the Site Alteration Guidelines.
- 5.16. Permit conditions may be transferred in accordance with the terms identified in the Site Alteration Guidelines.

Permit Refusal, Suspension and Revocation

- 5.17. The Commissioner may refuse to accept an application for a permit, or may refuse to issue a permit, where in the opinion of the Commissioner, the acceptance of a permit application or the issuance of a permit would not be in the best interests of the Town.
- 5.18. The Commissioner, in determining whether the acceptance of a permit application or the issuance of a permit would not be in the best interests of the Town, shall consider all the relevant circumstances, including (without limitation):
 - 5.18.1. past performance of the applicant in complying with the provisions of this by-law or any applicable legislation;
 - 5.18.2. ongoing or past prosecution of the applicant regarding compliance with this by-law or any applicable legislation;
 - 5.18.3. the number of active permits within the Town or within a geographic area of the Town; and
 - 5.18.4. the condition of public highways which provide access to a proposed area of site alteration, including any planned highway improvements by the Town, the Regional Municipality of Durham, or the Province of Ontario.
- 5.19. Where the Commissioner refuses to issue a permit, the applicant shall be informed of this decision in writing and the reasons for the refusal.

- 5.20. The Commissioner shall revoke a permit if,
 - 5.20.1. the permit was obtained on mistaken, false, incorrect or misleading information;
 - 5.20.2. the permit was issued in error; or
 - 5.20.3. the permit holder requests in writing that the permit be revoked.
- 5.21. The Commissioner may suspend and/or revoke a permit if,
 - 5.21.1. the permit holder or any person acting on behalf of the permit holder fails to comply with the conditions of an issued permit made under this by-law; or
 - 5.21.2. the permit holder or any person acting on behalf of the permit holder fails to comply with the provisions of this by-law or with an order issued pursuant to this by-law.
- 5.31. If a permit is suspended in accordance with the provisions of this by-law, the Commissioner may impose additional conditions on the applicant. Until such time as those conditions are satisfied at the sole discretion of the Commissioner, the permit shall remain suspended.
- 5.32. If a permit is suspended or revoked in accordance with the provisions of this by-law, then any financial security provided by the applicant may be used or drawn upon by the Town to remedy any non-compliance with the provisions of this by-law, without any further notice to the applicant.

6. Enforcement and Penalties

- 6.1. This by-law may be enforced by an officer.
- 6.2. Pursuant to the Municipal Act, 2001, an officer may enter upon any property at any reasonable time without a warrant for the purpose of inspecting a property to determine whether or not there is compliance with the standards prescribed in this by-law.
- 6.3. When conducting an inspection pursuant to Section 6.2. of this by-law and the Municipal Act, 2001, an officer may,
 - 6.3.1. require the production for inspection of documents or things, including drawings or specifications, that may be relevant to the site alteration, the property or any part thereof;
 - 6.3.2. inspect and remove documents or things relevant to the property or part thereof for the purpose of making copies or extracts;
 - 6.3.3. require information from any person concerning a matter related to a property or part thereof;

- 6.3.4. be accompanied by a person who has special or expert knowledge in relation to a property or part thereof;
- 6.3.5. alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs for the purposes of the inspection; and
- 6.3.6. order the owner of the property to take and supply at the owner's expense such tests and samples as are specified in the order.

Orders

- 6.4. Pursuant to the Municipal Act, 2001, an officer who finds that a property does not conform with any of the provisions of this by-law may make an order,
 - 6.4.1. stating the municipal address or the legal description of the property;
 - 6.4.2. giving reasonable particulars of the work, tests, samples required to be completed by the owner, occupant or permit holder, or requiring the discontinuance of the site alteration by the owner, occupant or permit holder; and
 - 6.4.3. indicating the time for complying with the terms and conditions of the order and giving notice that, if the work is not carried out within that time, the Town may carry out the work at the owner's expense.
- 6.5. An order issued pursuant to Section 6.4. of this by-law may be served by personal delivery to the owner or occupant, or by sending it by registered mail to the last known address of the owner or the address of the owner as shown on the most recent assessment roll for the premises, or by sending it by registered mail to the occupant at the last known address of the occupant.
- 6.6. Service of an order pursuant to Section 6.5. of this by-law shall be deemed to have been affected on the date that it is delivered personally or three days after it was mailed as the case may be.
- 6.7. Where an order has been issued and compliance has not been achieved by the date specified in the order, the Town may cause the work set out in the order to be done.
- 6.8. The Town may recover the costs of doing any work undertaken pursuant to Section 6.7. of this by-law, together with an administration charge equal to twenty percent (20%) of the total costs, from the owner or occupant by legal action or by adding the costs and administration charge to the tax roll and collecting them in the same manner as property taxes.
- 6.9. No person shall fail to comply with an order.

Penalties

- 6.10. Every person who fails to comply with an order issued pursuant to this by-law or who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a maximum fine of \$100,000.00, and in the case of a continuing offence, for each day or part of a day that the offence continues, an additional maximum fine of \$10,000.00.
- 6.11. In addition to a fine or any other penalty, any person who is convicted of contravening a provision of this By-law, the terms and conditions of a permit issued pursuant to this By-law, or an Order issued pursuant to this By-law and Section 444(1) or 445(1) of the Municipal Act, 2001, may be ordered by a court of competent jurisdiction at the expense of the person to:
 - 6.11.1. rehabilitate the land;
 - 6.11.2. remove the fill and/or topsoil placed or dumped; and/or
 - 6.11.3. restore the grade of the land to its original condition.
- 6.12. If a person is convicted of an offence for contravening an order to stop the injuring or destruction of trees, the court in which the conviction has been entered, or any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or plant or replant trees in such manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

7. Short Title

- 7.1. This by-law may be referred to as the Site Alteration By-law.

8. Repeal of Existing By-law

- 8.1. By-law # 7267-17 is repealed on the day that this by-law comes into effect.

9. Effective Date

- 9.1. This by-law shall come into full force and effect on the day it is passed.

10. Transition

- 10.1. Any permit that has been issued under By-law # 7267-17 which is in effect and in good standing prior to the passage of this by-law shall be deemed to have continued under the provisions and conditions of By-law # 7267-17 and that existing permit, until such time as that permit has expired.

By-law read and passed this 25th day of June, 2018.

Original Approved and Signed

Don Mitchell, Mayor

Original Approved and Signed

Christopher Harris, Town Clerk