

THE CORPORATION OF THE MUNICIPALITY OF CLARINGTON

BY-LAW NO. 2008-114

being a By-law to control the dumping of fill, removal of fill and alteration of grades

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 Council has approved Report #EGD-022-08 which recommended that this By-law be passed.

NOW THEREFORE the Council of The Corporation of the Municipality of Clarington hereby enacts as follows:

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**1. Interpretation**

- 1.1 “Applicant” means each Person who seeks or obtains a Permit.
- 1.2 “Conservation Authority” means the Central Lake Ontario Conservation Authority, the Ganaraska Region Conservation Authority or the Kawartha Lakes Conservation Authority, whichever Authority has jurisdiction over land to which the By-law applies.
- 1.3 “Contaminated Fill” means material which contains any solid, liquid, gas, odour, waste product, radioactivity or any combination thereof which is present in a concentration greater than that which naturally occurs in the location of the lot or parcel of land in question and which has the potential to have an adverse effect on the natural environment, human activity, and/or health and safety as defined under the *Environmental Protection Act*, R.S.O. 1990, c.E.19, and includes bio-solids created by the paper manufacturing process, either in the form of pure paper fibre bio-solids or as mixed with other material to form products known as “nitro-sorb”, “sound-sorb”, or other products with similar composition.
- 1.4 “Director” means the Municipality’s Director of Engineering Services.
- 1.5 “Dumping” shall be broadly interpreted for this by-law to include stripping, removing, moving, transporting, importing, exporting or placing of any Fill or Topsoil into, out of or upon lands within any single or adjacent properties within the Municipality.

- 1.6 “Fill” means any type of material deposited or Placed on lands and includes Soil, stone, concrete less than 0.1 cubic metres in size which does not contain steel reinforcement, construction materials, asphalt, sod or turf either singly or in combination.
- 1.7 “Finished Grade”, means the elevation of the ground surface of land upon which Fill has been Placed or Dumped or after alteration of the Grade has occurred.
- 1.8 “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.
- 1.9 “Inspector” means any of the following staff members of the Municipality: Director of Engineering Services, Manager of Transportation and Design, Manager of Construction, Design Engineer in the Municipality’s Department of Engineering Services, Roads Supervisors in the Municipality’s Department of Operations, and such Municipal Law Enforcement officers as may be appointed by the Municipality from time to time.
- 1.10 “Lot” means a lot or block shown on a registered plan of subdivision of land and the land is not within a registered plan of subdivision. Lot means a parcel of land owned by an Owner.
- 1.11 “Municipality” means the Corporation of the Municipality of Clarington and includes all areas within its territorial limits.
- 1.12 “Normal Agricultural Practice” includes sod-farming, greenhouse operations and nurseries for horticultural products but does not include the sale, exchange or other disposition of Topsoil.
- 1.13 “Owner” means each registered owner of land
- (a) for which a Permit is sought or obtained; or
  - (b) in respect of which there is or may be contravention of
    - i) this By-law;
    - ii) an order made pursuant to subsection 144(5) of the *Municipal Act, 2001*; or
    - iii) a court order made pursuant to subsection 144(18) of the *Municipal Act, 2001*.
- 1.14 “Permit” means a permit issued by the Director pursuant to the provisions of this By-law.
- 1.15 “Person” includes a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership or other form of business association.
- 1.16 “Place” means the distribution of Fill on lands to establish a Finished Grade higher or lower than the Existing Grade and “Placing” and “Placed” in relation to Fill have the same meaning.
- 1.17 “Ponding” means the accumulation of surface water in an area not having drainage therefrom where the lack of drainage is caused by the Placing or Dumping of Fill or the alteration of the Grade.

- 1.18 “Proposed Grade” means the proposed elevation of the ground surface of land upon which any Fill is proposed to be Placed.
- 1.19 “Retaining Wall” means a wall designed to contain and support Fill which has a Finished Grade higher than that of adjacent lands.
- 1.20 “Soil” means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel or any combination thereof.
- 1.21 “Swale” means a shallow depression in the ground sloping to a place for disposal for the purpose of providing a method of drainage of surface water.
- 1.22 “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.
- 1.23 “Zoning By-law” means a by-law passed by the Municipality pursuant to section 34 of the *Planning Act* and includes the Municipality’s Zoning By-law 84-63, as amended or superseded from time to time and the Municipality’s Oak Ridges Moraine Zoning By-law 2005-109 whichever is applicable to any land to which this By-law applies.

## **2. General Prohibitions**

- 2.1 No Person may Place or Dump Fill or Topsoil or cause or permit Fill or Topsoil to be Placed or Dumped in the Municipality except in accordance with this By-law.
- 2.2 No Person may remove Soil or cause or permit the removal of Soil except in accordance with this By-law.
- 2.3 No Person may alter the Grade or cause or permit the Grade of any land in the Municipality to be altered except in accordance with this By-law.
- 2.4 Where a Permit has been issued, no Person may, except in accordance with the provisions of that Permit,
  - (a) Place or Dump Fill or cause or permit Fill to be Placed or Dumped;
  - (b) remove Soil or cause or permit the removal of Soil; or
  - (c) alter the Grade of any land or cause or permit the Grade of any land in the Municipality to be altered.

## **3. Exceptions**

- 3.1 The provisions of this By-law do not apply to the extent that the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land is:
  - (a) undertaken by the Municipality or a local board of the Municipality;
  - (b) on residential properties for the purpose of swimming pool installations;
  - (c) imposed after December 31, 2002 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 those sections;

- (d) imposed after December 31, 2002 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;
  - (e) undertaken by 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;
  - (f) undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
  - (g) 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*;
  - (h) undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*;
  - (i) undertaken in accordance with a permit issued by the Municipality's Chief Building Official pursuant to the *Building Code Act, 1992* as amended for the erection or demolition of a building or structure, provided the Director and the Chief Building Official are satisfied that the permit application provides sufficient information to determine compliance with the provisions of this By-law;
  - (j) undertaken in accordance with an order issued pursuant to the Municipality's Property Standards By-law as amended from time to time; or
  - (k) Contractor's Yard which imports, processes, used and/or calls organic or granular material and which complies with the Municipality's Zoning By-law.
- 3.2 The provisions of this By-law do not apply to the extent that Fill is Placed on lands zoned for residential use within the meaning of the Zoning By-law for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
- (a) the elevation of the land within 0.3 metres of the property line is not changed;
  - (b) there is no change in the location, direction or elevation of any natural or artificial watercourse, open channel, Swale or ditch used to drain land;
  - (c) the functionality of any drainage infrastructure is not impeded;
  - (d) the Dumping or Placing of Fill on a Lot which is 0.1 hectares or less, provided that the volume of Fill Dumped or Placed does not exceed 30 cubic metres in any consecutive 12 month period; and
  - (e) the Dumping or Placing of Fill on a Lot which is greater than 0.1 hectares in area, provided that the volume of Dumped or Placed Fill does not exceed 60 cubic metres in any consecutive 12 month period.

- 3.3 The provisions of this By-law do not apply to the extent that Topsoil is removed or placed as an incidental part of bona fide Normal Agricultural Practice.
- 3.4 The provisions of this By-law do not apply in an area to the extent of any conflict with a regulation made under section 28 of the *Conservation Authorities Act* respecting the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land in such area.
- 3.5 The provisions of this By-law do not apply in an area to the extent to any conflict with a regulation made under Ontario Regulation 140/02 – The Oak Ridges Moraine Conservation Plan respecting the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land in such area.

#### **4. Specific Prohibitions and Regulations**

- 4.1 No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may remove Topsoil or cause or permit the removal of Topsoil and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered within the Municipality in any of the following circumstances:
- (a) where the Owner has not consented in writing to the Placing or Dumping of Fill or to the removal of Topsoil or to alteration of the Grade;
  - (b) where the Fill is Placed or Dumped or the Grade is altered for storage purposes and such storage is not permitted pursuant to the Zoning By-law;
  - (c) where the Placing or Dumping of Fill is in contravention of any Federal, Provincial or Municipal laws, by-laws, notices, regulations, permits or agreements;
  - (d) where the Placing or Dumping of Fill or alteration of the Grade will result in changing any Grade established by a grading and drainage plan approved by the Director including, without limitation, a grading and drainage plan approved by the Director in relation to any subdivision, re-zoning, site plan or building permit approval, and such Placing or Dumping or Fill or alteration occurs without a valid Permit therefore;
  - (e) where Municipal pavement, ditches, culverts, sidewalks, facilities or other infrastructure or services are, or may be, in any way impacted. The Municipality may invoke its right to post a No Heavy Trucks route in the event that a hauler is damaging Municipal infrastructure;
  - (f) where the Fill includes material from the demolition of any structure, toxic or hazardous materials, glass, raw sewage, Contaminated Fill, construction refuse or debris; or
  - (g) where the Placing or Dumping of Fill or alteration of the Grade is on or with respect to any land zoned within any of the Open Space or environmental protection zones provided in the Zoning By-law, unless either approval therefore has been issued by the Conservation Authority with jurisdiction over such land, or a Permit has been issued pursuant to this By-law.

#### **5. Issuance of a Permit**

- 5.1 The Director is hereby authorized and directed to issue a Permit where an Applicant has satisfied the requirements of this By-law.
- 5.2 An Applicant shall submit the following to the Director:
- (a) a completed application in the form prescribed from time to time by the Director in accordance with the information required in this By-law. The Director at his sole discretion may require proof of liability insurance showing the Municipality as an additional named insured. The proof of insurance must be submitted in a form satisfactory to the Director of Finance.
  - (b) the Permit fee prescribed by the Municipality from time to time;
  - (c) when required by the Director in order to assess the impact of the Fill or alteration on the environment affected, a Fill-control plan, which shall include any or all of the following as shall be specified by the Director:
    - i) a key map showing the location of each Lot, including the nearest major intersection and north arrow;
    - ii) the Lot's boundaries and area (expressed in hectares) of each such lot or parcel of land;
    - iii) the existing and proposed use of the land and the location and use of the buildings and other structures adjacent to each Lot;
    - iv) the location, dimensions and use of any building and other structures existing or proposed to be erected on each Lot;
    - v) the location of lakes, streams, wetlands, channels, ditches, other watercourses and other bodies of water on and within a minimum of 30 metres beyond each Lot's boundaries;
    - vi) the location of all Regulatory Flood Lines and Conservation Authority Fill Regulation lines;
    - vii) the location and identification of the predominant existing Soil types on the Lot;
    - viii) the species, Grade at base and size of all trees greater than 250 millimetres in calliper, all shrubs, trees and hedges within three (3) metre(s) of the property line and driveways on each Lot and all easements and rights-of-way over, under, across or through the Lot;
    - ix) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within a minimum of 30 metres beyond each Lot's boundaries;
    - x) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of 30 metres beyond each Lot's boundaries;
    - xi) the existing topography on the Lot and extending a minimum of 30 metres beyond the Lot's boundaries;
    - xii) the Proposed Grades of each Lot;

- xiii) the location and dimensions of all proposed land disturbance activities, including construction of access roads;
  - xiv) the location and dimensions of all temporary Soil, dirt or Fill stockpiles;
  - xv) the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal;
  - xvi) a schedule of the anticipated starting and completion dates of each land disturbance or land development activity;
  - xvii) provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
  - xviii) a plan of proposed external haul routes and daily schedule for hauling, including a plan showing signage as required by the Director;
  - xix) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
  - xx) an indication on the drawing of directions of overland water flow and overland flow route;
  - xxi) any information, plans or studies required by Ontario Regulation 140/02.
- (d) Proposed Grades and drainage system to be used upon completion of the Placing or Dumping of Fill on a Lot;
- (e) a description of the proposed Fill, including a list of the sources and geotechnical reports as to content and quality, prepared by qualified experts in that regard;
- (f) a certificate of the Owner, Applicant and each qualified expert referenced in paragraph (e) certifying that the Fill contains no contaminants as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- (g) a plan showing the design details to proper scale of any Retaining Wall that may be required and the dimensions of any materials to be used in construction of such Retaining Wall; and
- (h) security in a form and amount to be determined by the Director to secure performance of the work for which the Permit is being applied.
- 5.3 The Director shall have the Authority to designate all truck routes and trucking schedules, including any revisions, in order to minimize impacts to the public and Municipal infrastructure. Public notification and signage may also be required by the Director.
- 5.4 Any person Dumping Fill or Topsoil or altering grades within the municipality shall implement and maintain an approved mud tracking and dust control program. Such program shall be provided in writing to and be approved by the Director and shall include the provision of mud mats and dust control measures at both the removal and dumping sites, and the

continuous monitoring thereof. Emergency contact names and numbers shall also be provided to the Director. Where mud and dust are not controlled to the satisfaction of the Director, the Director may, without notice, have such mud or dust controlled by Municipal forces or a third party contractor and such costs, including a 30% management and administration charge, shall be paid by the applicant upon invoicing. Any associated Permit may also be considered revoked, until such invoices are fully paid and any additional letters of credit provided, to the sole discretion of the Director.

- 5.5 The Director may draw upon the security posted pursuant to paragraph 5.2(h) to recover the costs incurred by the Municipality in performing any required work which the Owner or the Applicant has failed to perform.
- 5.6 The issuance of a Permit does not relieve the Owner or the Applicant from the obligation to secure all other applicable approvals.

## **6. Permit Requirements**

- 6.1 The Director may, prior to the issuance of a Permit, require the Owner or Applicant or both to enter into an agreement which may be registered on title to the Lot containing such requirements of this By-law as the Director considers necessary to ensure that the alteration of land or the Placing or Dumping or removal of Fill is done in accordance with the prevailing design standards of the Municipality and proper engineering principles, and that prior to the commencement of the Placing or Dumping of Fill, a mud tracking and dust control program containing measures considered to be appropriate by the Director to control mud tracking and dust both on the Lot or other land from which the Fill is proposed to be removed and on the land on which Fill is to be Placed or Dumped and the truck routes proposed to be used by the Applicant, if any, to move the Fill to the Lot on which it is proposed to be Dumped or Placed.
- 6.2 Requirements contained in an agreement may include the Owner or Applicant releasing and indemnifying the Municipality, certifying that the Fill contains no contaminants as defined in the *Environmental Protection Act*, posting with the Municipality the required security and where, in the opinion of the Director, extensive activities are proposed, certification by a geotechnical engineer or other similarly qualified Person, both prior to the issuance of a Permit and upon completion of the work. All such certification shall state that the Owner or Applicant can and has complied with all of the obligations and conditions contained in the applied for and issued Permit.
- 6.3 The Director may, from time to time and at the Applicant's expense, require the testing of any Fill by a qualified expert retained by the Municipality. Dumping and/or Fill Removal may be suspended pending test results at the direction of the Director.
- 6.4 The Director may require the Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation of berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alteration proposals and to provide for stabilization of the altered grades.

## **7. Permit Expiry or Renewal**

- 7.1 A Permit shall expire 90 calendar days after the day on which it is issued pursuant to this By-law.
- 7.2 A Permit may be renewed at any time prior to its expiry for an additional 90 day period by an Applicant making a written application to the Director accompanied by a payment of 50% of the original Permit fee, provided that

the Permit requirements imposed by this By-law and any agreement made pursuant to paragraphs 6.1 and 6.2 respecting the Permit proposed to be renewed are not amended or changed.

## **8. Permit Revocation**

- 8.1 It is a condition of each Permit that the Permit may be revoked by the Director under the following circumstances:
- (a) if it was obtained on mistaken, false or incorrect information;
  - (b) if it was issued in error;
  - (c) if the Owner or Applicant requests in writing that it be revoked;
  - (d) if the terms of an agreement under this By-law have not been complied with; or
  - (e) if an Owner or an Applicant fails to comply with the provisions of this By-law or with an order requiring work to be done to correct any contravention of this By-law.

## **9. Enforcement**

- 9.1 Inspectors are hereby authorized to carry out inspections in relation to this By-law and are delegated such powers as are within the jurisdiction of the Municipality in order to administer and enforce this By-law including, without limitation, the power to make orders requiring the discontinuance of activities and requiring work to be done to correct contraventions of this By-law.

## **10. Remedies and Penalties**

- 10.1 Each person who Places or Dumps Fill or who causes or permits Fill to be Placed or Dumped contrary to this By-law or to a Permit shall forthwith remove such Fill and restore the existing Grade of the land.
- 10.2 Each Person who removes Topsoil contrary to this By-law or to a Permit shall forthwith rehabilitate the land from which the Topsoil was removed including the replacement on the land of Topsoil and the restoration of the Existing Grade of the land.
- 10.3 Each Person who alters the Grade of land or who causes or permits the alteration of the Grade of land contrary to this By-law or to a Permit shall forthwith restore the land to its original condition including the Existing Grade of the land.
- 10.4 Where an Owner fails to do any work required in an order issued pursuant to this By-law within the period specified, the Director may cause the work to be done at the Owner's expense and, for this purpose, the Director, Inspectors and the Municipality's employees and agents may enter on the Owner's land at any reasonable time.
- 10.5 Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction shall be liable to a fine as set out in The *Provincial Offences Act*.
- 10.6 Should any section, clause, or provision of this By-law be declared by a court of competent jurisdiction to be invalid, the same shall not affect the

validity of this By-law as a whole or any part thereof, other than the part so declared to be invalid.

**11. General Provisions**

- 11.1 The provisions of this By-law shall apply to all lands and premises within the Municipality.
- 11.2 All references to legislation in this By-law are references to legislation of the Province of Ontario, as amended from time to time, including successor legislation, whether enacted prior to or subsequent to the enactment of this By-law.
- 11.3 This By-law shall be administered by the Director of Engineering Services.

BY-LAW read a first and second time this 23rd day of June, 2008.

BY-LAW read a third time and finally passed this 23rd day of June, 2008.

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Jim Abernethy, Mayor

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Patti L. Barrie, Municipal Clerk