

**THE CORPORATION OF THE TOWNSHIP OF  
NORTH DUMFRIES  
A Consolidated By-law**

**BY-LAW 2612-14,  
as amended by By-law 2938-18 and By-law  
No. 3036-19**

Being a By-law to regulate the placing or dumping of fill,  
alteration of the grade of, or removal of topsoil from land  
within the Township.

**WHEREAS** subsection 142(2) of the *Municipal Act, 2001*, S.O., 2001, c. 25, as amended, authorizes a local municipality to, (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 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 a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

**AND WHEREAS** section 23.1 of the *Municipal Act, 2001* authorizes a municipality to delegate its powers and duties under the *Municipal Act, 2001* to a person or body;

**AND WHEREAS** the Council of The Corporation of the Township of North Dumfries considers it desirable to pass a by-law regulating or prohibiting the placing or dumping of fill on, the removal of topsoil from, and the alteration of the grade of, lands within its jurisdiction;

**NOW THEREFORE** the Council of The Corporation of the Township of North Dumfries enacts as follows:

**1. DEFINITIONS**

1.1. In this By-law,

- a) "Alteration" means the placement or Dumping of Fill on land, the removal of Topsoil from land, and/or the alteration of the Grade of land by any means, and "Alter" and "Altered" shall have a corresponding meaning;
- b) "Applicant" means the person applying for a Permit under this By-law, and "Application" has a corresponding meaning;
- c) "Chief Building Official" means the Chief Building Official of the Township, or his or her designate;
- d) "Council" means the municipal council of the Township
- e) "Dumping" means the deposit of Fill in a location other than the location from which the Fill was obtained and includes moving or depositing Fill from one location to another on the same property;
- f) "Existing Grade" means the Grade as it exists at the time of filing an Application;
- g) "Fees and Charges By-law" means the by-law passed by Council pursuant to section 391 of the *Municipal Act, 2001* establishing the fees and charges for services or activities provided by or on behalf of the Township, as

amended and replaced from time to time;

- h) "Fill" means any type of material or product that has been, or could be, used to Alter the Grade of land, including but not limited to soil, earth, Topsoil, aggregate, sod, turf or any combination thereof;
- i) "Grade" means the elevation of the surface of the land;
- j) "Municipal Law Enforcement Officer" means an individual appointed by the Council of the Township pursuant to s. 15 of the *Police Services Act*, R.S.O. 1990, c. P. 15, as amended;
- k) "Permit" means a permit to Alter land issued by the Township under this By-Law;
- l) "Permit Holder" means the person who has been issued a Permit under this By-law;
- m) "Professional Engineer" means an engineer licensed by the Association of Professional Engineers of Ontario;
- n) "Region" means The Regional Municipality of Waterloo;
- o) "Required Yard" means that portion of a yard abutting the lot line or lines required to fulfil the minimum yard regulations as established by the Zoning By-law;
- p) "Rubbish" includes concrete, brick, rebar, wood, metal, plaster, plastics, asphalt, roof shingles and other like materials;
- q) "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;
- r) "Township" means The Corporation of the Township of North Dumfries, or the geographical area under the jurisdiction of The Corporation of the Township of North Dumfries; and,
- s) "Zoning By-law" means a by-law enacted by Council under section 34 of the *Planning Act*, R.S.O. 1990, c. P. 13 that restricts the use of land.

## **2. GENERAL REGULATIONS**

2.1. No person shall Alter, or permit or cause any Alteration within the Township without a Permit.

2.2. No person shall fail to comply with any term or condition of a Permit.

2.3. No Alteration can be divided into two or more Alterations for the purpose of avoiding the need to apply for a Permit pursuant to this By-Law.

2.4. This By-law shall not apply to Alterations undertaken (section 2.4 inserted by amending By-law No. 2938-18),

- a) By the Township or the Region, or by a local board of either the Township or the Region;

- b) 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) 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) by a *transmitter* or *distributor* for the purpose of constructing and maintaining a *transmission system* or a *distribution system*, as those terms are defined in section 2 of the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A, as amended;
- e) 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*, R.S.O. 1990, c. A.8, as amended;
- f) 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*,
- g) as an incidental part of drain construction under the *Drainage Act*, R.S.O. 1990, c. D.17, as amended, or the *Tile Drainage Act*, R.S.O. 1990, c. T.8, as amended;
- h) for 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;
- i) as part of landscaping that involves less than 60 cubic metres of imported Fill and does not significantly change the elevation or drainage pattern of the land or change the drainage of neighbouring lands;
- j) to place less than 500 cubic metres of Fill per year on agriculturally zoned land that is greater than 2 hectares, provided such Fill is placed a minimum of 10 metres from any property line;
- k) when associated with the stockpiling of soils, aggregate or other like materials within an Industrial Zone as identified in the Zoning By-law; or,
- l) for portions of land where a fill permit has been obtained from the Grand River Conservation Authority to the extent that such Alteration is made in accordance with that fill permit.
- m) in respect of an Alteration for which (item (m) inserted by amending By-law No. 3036-19),
  - i. the owner or occupier of the land has entered into a pre-servicing grading or other development agreement with the Township, in writing, which agreement includes a provision confirming that this By-law does

not apply to the Alteration; and,

- ii. no Fill is imported to or removed from the land which is subject to the agreement referred to clause (m)(i), except for Fill moved from or to land described in the agreement that is not required to cross a public highway.
- 2.5. All Fill used in the Alteration shall be clean and free of Rubbish, glass, garbage, termites, organic materials, liquid and toxic chemicals and other contaminants.
- 2.6. Any person who Alters land in contravention of this By-law or a Permit shall remove the Fill, re-Grade the land, and take any other steps required to restore the land to its original condition and elevation, to the satisfaction of the Township.

### **3. PERMIT**

- 3.1. A person applying for a Permit shall submit the following to the Chief Building Official:
- a) a complete Application in the form prescribed by the Township;
  - b) the applicable fees, in accordance with the Fees and Charges By law; and,
  - c) a lot-grading plan, prepared by an Ontario Land Surveyor or Professional Engineer to the satisfaction of the Chief Building Official, which shall include:
    - i. the property lines of the land subject to the Permit, with dimensions;
    - ii. the existing elevations of the land in the form of contours at 1.0 metre intervals or less, to a point of 3.0 metres beyond the property line, to clearly show the existing drainage patterns on the land and on the abutting lands;
    - iii. the existing storm sewers, ditches, swales, creeks and watercourses on the land and the abutting lands;
    - iv. the proposed storm water control measures, including swales, tile drains, and/or retaining walls to adequately prevent the run-off of storm water onto abutting or adjacent lands;
    - v. the proposed sediment and erosion control measures that will be installed prior to any Alteration;
    - vi. the proposed elevations and drainage system measures to be used upon completion of the Alteration;
    - vii. the proposed dust control, traffic control, noise control and siltation control measures that will be used during the Alteration; and,
    - viii. the proposed hours of operation and vehicle routes for all equipment used in the Alteration.
- 3.2. An Applicant shall submit a soil investigation report for each source of Fill to the satisfaction of the Chief Building Official. Where the source of Fill has not been determined prior to the Application for a Permit, the Chief Building Official may issue a Permit without the soil investigation report on the condition that the Applicant shall provide a soil investigation report to the Chief Building Official prior to the commencement of the Alteration.
- 3.3. Where the intended Alteration includes the use of Fill in a quantity exceeding 1,000 cubic metres:
- a) the Township shall hold a public meeting for the purpose of giving the

public an opportunity to make submissions in respect of the proposed Alteration;

- b) the Township shall send, by ordinary mail, notice of the public meeting to the Properties within 120 metres of the Application land, as identified on the municipal assessment rolls;
- c) the Applicant shall provide the Township with an irrevocable letter of credit in the amount being the greater of: (i) fifty percent (50%) of the total estimated cost of the proposed Alteration as determined by the Township, or (ii) \$5,000.00; and,
- d) subject to section 3.5 below, the irrevocable letter of credit shall be released:  
(1) after a final inspection by the Chief Building Official confirming all aspects of the Alteration have been completed to the satisfaction of the Chief Building Official, or (2) upon the refusal of the Township to issue the Permit.

3.4. In respect to subsection 3.3(c) above, the Chief Building Official may require a Permit Holder to provide the Township with an additional letter of credit, from time to time, where the Chief Building Official determines the sum secured by the letter of credit has become insufficient to adequately complete any work or matter required to be done by the Permit Holder and to bring the land into compliance with this By-law.

3.5. In the event:

- (a) the Permit Holder fails to comply with the provisions of this By-law, or with the terms, conditions or requirements of a Permit or order issued thereunder; or,
- (b) of any deficiency in or a failure to carry out any work or matter required to be done by the Permit Holder, the Township may, in addition to any other remedy, use and draw upon the irrevocable letter of credit, if any, to the extent necessary to complete or correct any work or matter required to be done by the Permit Holder and to bring the land into compliance with the By-law.

3.6. Notwithstanding subsection 3.1(c) above, a person shall be exempt from providing a lot- grading plan in the following circumstance:

- (a) if the purpose of the Alteration is to improve the agricultural land use of the land and the quantity of the Fill being added is less than 1,000 cubic metres.

3.7. To obtain the exemption under section 3.6 above, the person shall submit to the Chief Building Official a statement of exemption, in the form prescribed by the Chief Building Official, and pay the applicable fee pursuant to the Fees and Charges By-law.

3.8. The Chief Building Official shall issue a Permit to any person who meets the requirements of this By-law, except where:

- (a) the past conduct of the Applicant, including the past failure to comply with applicable laws, affords the Chief Building Official reasonable grounds to believe that the Applicant will not carry out the Alteration in accordance with applicable law;
- (b) the Chief Building Official reasonably believes that the issuing of a Permit to the Applicant might be adverse to the public interest;
- (c) the lands that are subject to the Application are located within an environmentally sensitive area;

- (d) the Application lands are subject to an order, or orders, made pursuant to (or by):
  - i. the Township's Property Standards By-Law;
  - ii. the *Building Code Act, 1992* or any regulations made under it, including the *Building Code*;
  - iii. the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, or any regulations made under it, including the *Fire Code*; or,
  - iv. the Medical Officer of Health;
- (e) the lands that are subject to the Application are not in compliance with the Zoning By-law;
- (f) the Applicant is indebted to the Township by way of fines, penalties, judgments or outstanding (past due) property taxes; or,
- (g) the proposed Alteration will likely result in adverse effects either to the Application lands or to the surrounding area, including:
  - i. uncontrolled soil erosion;
  - ii. blockage, siltation or pollution of a watercourse;
  - iii. flooding or ponding caused by a watercourse overflowing its banks;
  - iv. flooding or ponding on neighbouring properties;
  - v. a detrimental effect on the natural environment of the area, including the spread or migrating of contamination in soil, groundwater, sediment or air;
  - vi. unauthorized injury or destruction of any trees which, in the opinion of the Township, could reasonably be avoided;
  - vii. public safety concerns;
  - viii. negative drainage impacts on existing properties; or,
  - ix. disruption to groundwater aquifers, water tables, or flows deemed to be unacceptable by the Township.

3.9. The Chief Building Official shall not issue a Permit where the Applicant proposes to remove a drain, except where the person can demonstrate, to the satisfaction of the Chief Building Official:

- (a) the drain is no longer required; or,
- (b) alternative drainage measures will be constructed to maintain the existing drainage scheme.

3.10. The Chief Building Official may, at any time and in their sole discretion, when issuing a Permit, impose such terms or conditions on the aforementioned Permit as the Chief Building Official considers appropriate, including:

- (a) requiring the construction of a retaining wall;
- (b) restricting the location of access routes or staging and storage areas;
- (c) requiring liability insurance coverage to the satisfaction of the Township; or,
- (d) requiring a Record of Site Condition and supporting documentation for a Phase 1 and 2 Environmental Site Assessment, signed by a Professional Engineer.

3.11. Should the Chief Building Official refuse to issue a Permit or should the Chief Building Official impose terms or conditions on a Permit, the Chief Building Official shall provide written reasons thereafter.

3.12. Every person who receives a Permit shall:

- (a) notify the Chief Building Official within forty-eight (48) hours of commencing any work related to the Alteration;
- (b) install, maintain and repair all control measures imposed in accordance with this By-law and Permit;
- (c) install, maintain and repair all drainage systems, control measures and other facilities identified in the approved lot-grading plan;
- (d) repair any siltation or erosion damage to adjoining lands and drainage pathways resulting from the Alteration;
- (e) maintain a copy of any approved lot-grading plans on site;
- (f) ensure that the finished Grade surface is protected by sod, turf, seeding for grass, greenery, asphalt, concrete or other means, either singly or in combination, in accordance with an approved lot-grading plan; and,
- (g) ensure that the proposed Alteration is not contrary to the requirements of a well-head or drinking water source protection plan administered by the Region.

3.13. A Permit shall be valid for a period of up to 12 months. Upon the expiration of the Permit, a Permit Holder may apply to the Chief Building Official for an extension of the Permit for the purpose of completing the Alteration. The Chief Building Official, in their sole discretion, may deny the extension or grant the extension subject to any conditions the Chief Building Official considers appropriate.

3.14. A Permit shall only be valid for the persons, lands, and uses described in the Permit. A Permit shall not be transferrable.

3.15. No changes shall be permitted to the terms and conditions of the Permit or to the proposed Alterations as approved by the Permit, except as approved in writing by the Chief Building Official in their sole discretion. The Chief Building Official may, in their sole discretion, impose such further terms or conditions to the amended Permit as the Chief Building Official considers appropriate.

3.16. No person shall provide false or misleading information to the Township when applying for a Permit under this By-law or at any other time.

3.17. The Chief Building Official may revoke a Permit where:

- (a) the Chief Building Official is of the opinion that the Alteration has resulted or will likely result in adverse effects to the land subject to the Permit or surrounding area;
- (b) the Permit Holder has violated any of the provisions of this By-law or other applicable law, any of the conditions of its Permit, or any order issued under this By-law;
- (c) the Permit was issued because false or misleading information that was provided to the Township;
- (d) the Permit was issued in error; or,
- (e) otherwise authorized in accordance with the provisions of this By-law.

#### **4. LOT GRADING REGULATIONS**

4.1. All Alterations shall comply with the following:

- (a) the land shall be graded to provide positive drainage away from any building on the land toward the highway;
- (b) the land shall be adequately sloped to conform with the Existing Grade at the property line of the land;
- (c) all Required Yards shall have a maximum slope of eight centimetres per metre (1 inch per foot);
- (d) the Chief Building Official, at their sole discretion, may waive subsections 4.1(a) to (c) above where it can be demonstrated those requirements cannot be met, provided that the waiver of those requirements does not adversely impact the abutting lands;
- (e) the maximum slope of any new embankment shall be 3:1;
- (f) the elevation of the land, where applicable, shall conform with the requirements of the Grand River Conservation Authority, or in the case where there is no minimum elevation established by the Grand River Conservation Authority, to the minimum elevation established by the Chief Building Official, having regard to:
  - i. the elevation of the abutting highway;
  - ii. the elevation of the abutting lands;
  - and,
  - iii. the potential for flooding;
- (g) there shall be a maximum elevation difference of five (5) metres in the Grade of the land; and,
- (h) there shall be a maximum elevation difference of five (5) metres in the Grade of the land; and,
- (i) any Topsoil that is being removed shall only be used to restore the land for which the Permit was issued unless the Chief Building Official approves in writing the removal and relocation of the Topsoil from the land to another site within the Township.

## 5. INSPECTION

- 5.1. A Municipal Law Enforcement Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
  - (a) this By-law;
  - (b) an order of the Township issued under this By-law; (c) a condition of a Permit issued under this By-law; or,
  - (c) an order made under section 431 of the *Municipal Act, 2001*.
- 5.2. For the purposes of an inspection, the Municipal Law Enforcement Officer may:
  - (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;



(c) require information from any person concerning a matter related to the inspection; and,

(d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

5.3. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this By-law.

## **6. ORDER TO DISCONTINUE ACTIVITY**

6.1. Where a Municipal Law Enforcement Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Municipal Law Enforcement Officer may make an order requiring the person who contravened this By-law, or who permitted or caused the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.

6.2. An order under section 6.1 shall set out:

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,

(b) the date by which there must be compliance with the order.

6.3. Any person who contravenes an order under section 6.1 above is guilty of an offence.

## **7. WORK ORDER**

7.1. Where a Municipal Law Enforcement Officer has reasonable grounds to believe that a contravention of this By-law has occurred, the Municipal Law Enforcement Officer may make an order requiring the person who contravened this By-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.

7.2. An order under section 7.1 above shall set out,

(a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,

(b) the work to be done and the date by which the work must be done.

7.3. Any person who contravenes an order under section 7.1 above is guilty of an offence.

## **8. ADMINISTRATION**

8.1. This By-law shall be administered by the Chief Building Official, or his or her designate.

8.2. This By-law shall be enforced by Municipal Law Enforcement Officers and by the Waterloo Regional Police Service.

8.3. All orders and notices pursuant to this By-law shall be made in writing and shall be deemed effective (section 8.3 amended by By-law No. 2938-18):

(a) on the date on which the order or notice is delivered to the person to whom it is addressed; or,

(b) on the fifth day after the order or notice has been sent by registered mail to the person's last known address.

8.4. Subject to section 11.3 below, the provisions of this By-law shall not apply to Alterations undertaken prior to the final passing of this By-law. For greater certainty:

(a) any Alteration carried out following the final passing of this By-law shall be undertaken in compliance with all of the provisions of this By-law, including, for greater particularity, the requirement that a Permit be obtained; and,

(b) any continuation of an Alteration commenced prior to the final passing of this By-law shall require a Permit in respect of that portion or stage of the Alteration carried out following the final passing of this By-law.

## **9. ENFORCEMENT**

9.1. Every person who contravenes any of the provisions of this By-law is guilty of an offence and pursuant to section 429 of the *Municipal Act, 2001*, all contraventions of this By-law are designated as continuing offences.

9.2. Every person, excluding a corporation, who is convicted of an offence, is liable to a minimum fine of Four Hundred and Fifty Dollars (\$450.00) and a maximum fine of Twenty-Five Thousand Dollars (\$25,000.00) for the first offence and a maximum fine of Fifty Thousand Dollars (\$50,000.00) for a subsequent offence.

9.3. Every corporation who is convicted of an offence is liable to a maximum fine of Fifty Thousand Dollars (\$50,000.00) for the first offence and One Hundred Thousand Dollars (\$100,000.00) for a subsequent offence.

9.4. In addition to the fine amounts set out in sections 9.2 and 9.3 of this By-law, for each day or part of a day that an offence continues, the minimum fine shall be Four Hundred Dollars (\$400.00) and the maximum fine shall be Ten Thousand Dollars (\$10,000.00). The total of all daily fines for the offence is not limited to One Hundred Thousand Dollars (\$100,000.00).

## **10. SEVERABILITY**

10.1. If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law and it is hereby declared that the remainder of the By-law shall be valid and remain in full force and effect.

## **11. REPEAL/TRANSITION**

11.1. Except as provided by section 11.2 hereof, By-law No. 2393-09, as amended, is repealed on the date this By-law comes into force and effect.

11.2. Notwithstanding section 11.1, By-law No. 2393-09, as amended, is deemed to continue in force and effect with respect to any and all orders, appeals or prosecutions issued, filed or commenced under that by-law, including those issued, filed or commenced subsequent to this By-law coming into force and effect, and any assessment, rate, charge, tax, fee, liability or penalty outstanding under By-law No. 2393-09 may be collected as if such by-law had not been repealed.

11.3. A permit issued under By-law No. 2393-09, as amended, shall be deemed a Permit under this By-law and shall be subject to all provisions of this By-law.

**12. SHORT TITLE**

12.1. This By-law may be referred to as the “Alteration of Land By-law”.

**13. COMING INTO FORCE**

13.1. This By-law shall come into force and effect on the final passing of this By-law.

**Enacted** this 3rd day of February, 2014.

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Mayor – Robert Deutschmann

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CAO-Clerk – Rodger Mordue