

THE CORPORATION OF THE TOWN OF WHITCHURCH-STOUFFVILLE

BY-LAW NUMBER 2014-101-RE

BEING A BY-LAW to prohibit or regulate, any alteration to the grade (topography) of land through the movement, removal or placement of topsoil, soil or fill within the Town of Whitchurch-Stouffville.

WHEREAS Section 142 of the Municipal Act, 2001, S.O. 2001, c.25 authorizes the Council of The Corporation of the Town of Whitchurch-Stouffville to pass By-laws for prohibiting or regulating any alteration of the grade (topography) of land through the movement, removal or placement of topsoil, soil or fill within the Town of Whitchurch-Stouffville other than those areas subject to regulations made under Clause 28(1) of the Conservation Authorities Act, R.S.O. 1990, c.27, as amended;

AND WHEREAS it is deemed expedient to pass this By-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WHITCHURCH-STOUFFVILLE ENACTS AS FOLLOWS:

1.0 DEFINITIONS

In this By-law:

- a) "Agreement" means a written agreement that the *Owner* and any contractor of the *Owner* to be engaged in the *Site Alteration* must enter into with the *Corporation*, as approved by Council, for any *Large Site Alterations*.
- b) "Agricultural Lands" includes all lands that are cultivated and/or used for the raising of livestock.
- c) "Conditions" means the mandatory performance requirements outlined in a Permit, *Agreement* or *Order*.
- d) "Conservation Authority" means the Lake Simcoe Region Conservation Authority (LSRCA) and/or the Toronto and Region Conservation Authority (TRCA);
- e) "Corporation" means The Corporation of the Town of Whitchurch-Stouffville.
- f) "Cut" means the excavation of material (such as soil, rock or stone) from an area reducing its grade causing a reduction in the *Existing Grade*.
- g) "Development" means the construction of (i) buildings; (ii) above or underground services such as roads, parking lots, paved storage areas, watermains, storm and sanitary sewers; (iii) and general grading works and similar facilities on any lands in the *Town*.
- h) "Director" means a director of the Corporation designated to have responsibility for this By-law and shall include any person authorized by the *Director* to carry out any of the powers or duties of the *Director* pursuant to this By-law.
- i) "Drainage" means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by an artificial method.

- j) "Existing Grade" means the elevation of the existing ground surface except where a *Site Alteration* has occurred in contravention of this By-law, in which case the *Existing Grade* is the pre-alteration natural *Grade*.
- k) "Fill" means topsoil, *Soil*, rock, stone, clean concrete without coating, free of rebar and free from contamination, sod or turf, either singularly or in combination, and scientifically demonstrated inert material. All Fill must meet the applicable *Site Condition Standards*, must not contain putrescible materials, must be free of termites and invasive species including the eggs and seeds of such species, and must pass a slump test as outlined in the General Waste Management provisions contained in Ontario Regulation (O.Reg.) 347.
- l) "Filling" means the depositing of *Fill* in a location other than where the *Fill* was obtained and includes the movement and depositing of *Fill* from one location on a *Property* to another location on the same *Property*.
- m) "Finished Grade" means the approved elevation of the ground surface of lands which have been altered in accordance with this By-law.
- n) "Garden Supply Establishment" means an establishment primarily for the retail sale of gardening and planting supplies, and may include the accessory growing and cultivating of plants.
- o) "Grade" means the surface topography of land.
- p) "Guidelines" means the information, documentation and material, as determined by the *Director* from time to time, to be used by the *Corporation* for the purpose of permitting the *Corporation* to review any application for a Permit.
- q) "Inspector" means such By-law Enforcement Officers or individuals, including peer review consultants and other technical specialists, as are designated as *Inspectors* by the *Director* under this By-law.
- r) "Large Site Alteration" means any *Site Alteration* where the total volume of *Fill* or *Waste* or any combination of *Fill* or *Waste*, is 5,000 cubic metres or greater on any *Property* in any 12 month period.
- s) "Normal Farm Practice" has the same meaning as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, c.1, as amended, but does not include the removal of topsoil for sale, exchange or disposition.
- t) "Oak Ridges Moraine" means land subject to O.Reg. 140/02 and subject to the requirements of the Provincial Oak Ridges Moraine Conservation Plan and the Corporation's Official Plan.
- u) "Order" means a mandatory requirement for action within a specified time period specifically issued by the *Corporation's* By-law Enforcement Officer to address issues of non-compliance with the Conditions of a Permit and/or *Agreement*.
- v) "O.Reg 153/04, as amended", means the Records of Site Condition regulation under Part XV.I of the Environmental Protection Act, and any subsequent amendments.
- w) "Owner" includes the registered owner of the *Property* to which a *Site Alteration* is proposed and any person, firm or corporation managing or controlling such *Property*.

- x) "Place, Placed or Placing" means the distribution of Fill on lands to establish a *Finished Grade* different from the *Existing Grade*.
- y) "Property" means a single parcel of land legally capable of being conveyed independently of any adjacent land, or, if approved by the *Director*, a combination of two or more such parcels of land that are adjacent to each other.
- z) "Proposed Grade" means the proposed elevation of the ground surface of lands to which a *Site Alteration* is proposed.
- aa) "Record of Site Condition" means the document filed on the Environmental Site Registry for a property in accordance with O.Reg. 153/04, as amended.
- bb) "Site" is the land that is the subject of a *Site Alteration* and may include one or more Properties.
- cc) "Site Alteration" means any alteration to the *Existing Grade* of land through the movement, removal or placement of *Fill* or *Waste*.
- dd) "Site Condition Standards" means the Soil, Ground Water and Sediment Standards for Use under Part XV.I of the Environmental Protection Act published by the Ministry of Environment on April 15, 2011.
- ee) "Soil" means the natural materials commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel.
- ff) "Town" means the Town of Whitchurch-Stouffville and includes the geographical area within the Town.
- gg) "Waste" means any material that is not Fill.

2.0 GENERAL PROHIBITIONS

- a) No person shall conduct any *Site Alteration* of any land within the *Town* without the Owner first receiving a Permit issued under this By-law by the *Director* approving the *Site Alteration*.
- b) No person shall fail to obey an *Order* issued under this By-law.
- c) No person shall undertake, cause, permit or perform any *Site Alteration* within an area designated as an Area of Natural Significance or an Environmentally Sensitive Area or any similar designation under the *Corporation's* Official Plan unless permitted specifically by provincial legislation or regulation.
- d) No person shall undertake, cause, permit or perform any *Site Alteration* on any land unless such *Site Alteration* is in compliance with the *Corporation's* Comprehensive Zoning By-law 2010-001-ZO, as amended.
- e) No person, in the performance of any *Site Alteration*, shall injure or destroy a municipally owned tree or other tree which is subject to tree protection measures except to the extent that such injury or destruction is specifically authorized in writing in accordance with the provisions of this By-law and any other applicable By-laws of the *Corporation* or The Regional Municipality of York for the protection of trees.
- f) No person shall undertake, cause, permit or perform any *Site Alteration* on any land that is subject to an approved Site Plan, Draft Plan of Subdivision or a consent under Sections 41, 51 or 53

respectively of the Planning Act, R.S.O. 1990, c.P.13, as amended, without a Site Plan Agreement, Pre-Servicing Agreement, Subdivision Agreement and Development Agreement, as necessary, entered into in accordance with the requirements of those sections.

- g) No person shall undertake, cause, permit or perform any *Site Alteration* on land that results in the outside storage of *Fill* on any land unless the outside storage of *Fill* on the land is permitted by the *Corporation's* Comprehensive Zoning By-law 2010-001-ZO, as amended.
- h) No person shall undertake, cause, permit or perform any *Site Alteration* on any land unless it is done at the request of, and with the written consent of, the *Owner* of the land.

3.0 EXCLUSIONS

This By-law is not applicable to the following activities:

- a) 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, R.S.O. 1990, c.E.19, as amended.
- b) The construction, extension, alteration, maintenance or operation of works under Section 26 of the Public Transportation and Highway Improvement Act, R.S.O. 1990, c.P.50, as amended.
- c) Activities taking place in areas subject to regulations made under Clause 28(1) of the Conservation Authorities Act, R.S.O. 1990, c.27, as amended.
- d) Activities of the *Corporation*, The Regional Municipality of York, a Conservation Authority, the provincial or federal government.
- e) The placing or dumping of *Fill*, the removal of topsoil or the alteration of the *Grade* of land undertaken on land for which a licence for a pit or quarry or a permit for a wayside pit or wayside quarry has been issued under the Aggregate Resources Act.
- f) *Site Alterations* as part of the approved rehabilitation of a pit or quarry on land for which a licence for a pit or quarry has been issued under the Aggregate Resources Act, and specifically addressed on the MNR approved site plan.
- g) Subject to Subsection 2.0 (f) above, *Site Alterations* undertaken on lands that are subject to any of an approved Site Plan, a Draft Plan of Subdivision or a consent under Sections 41, 51 or 53, respectively, of the Planning Act, and in accordance with the provisions of such approval.
- h) *Site Alterations* undertaken on lands that are subject 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 and in accordance with the provisions of such approval.
- i) Construction of a building or structure pursuant to a valid Building Permit which has been issued for the erection of the building or structure, where the Site Plan accompanying the Building Permit application provides sufficient information to ensure that the *Site Alterations* proposed meet the *Guidelines* established by the *Director* pursuant to this By-law.

- j) Any *Filling* of an excavation to the elevation of *Existing Grade* following the demolition or removal of a building or structure for which a Demolition Permit has been issued, or for which no Demolition Permit is required under the Building Code Act, 1992, S.O. 1992, c.23, as amended.
- k) *Site Alterations* or *Fillings* undertaken as an incidental part of drain construction under the Drainage Act or the Tile Drainage Act.
- l) *Site Alterations* or *Fillings* 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.
- m) *Site Alterations* or *Fillings* that are an incidental part of the construction or reconstruction of any road or underground service where material is removed and replaced to restore the area to its *Existing Grade*.
- n) *Site Alterations* or *Fillings* undertaken as an emergency measure with the approval of the Director or under the direction of the *Corporation*, The Regional Municipality of York, a Conservation Authority, or any other governmental agency with jurisdiction.
- o) *Site Alterations* or *Fillings* undertaken for the purpose of flood or erosion control to establish *Finished Grade* shown on a grading and drainage plan approved by a Conservation Authority or by the *Director* in conjunction with a subdivision approval.
- p) *Site Alterations* or *Fillings* that are incidental to a *Normal Farm Practice*, including the application of topsoil for spreading over Agricultural Lands provided that the *Existing Grade* of the land is not increased by more than two hundred (200) millimetres. This exception does not include the removal of topsoil for sale, exchange or other disposition.
- q) The stockpiling of *Fill* in the ordinary course of the operation of a *Garden Supply Establishment*, provided that such activity does not result in the permanent alteration of the *Existing Grade* of the lands of the *Garden Supply Establishment*. The *Owner* must maintain records from the material source sites indicating that the imported material meets the requirements of the *Site Condition Standards* for Agricultural Property Use.
- r) Any *Site Alteration* and *Filling* in an amount less than 200 cubic metres on a *Property* in a 12 month period.

4.0 REQUIREMENTS FOR ISSUANCE OF A PERMIT

Except as otherwise provided herein, a Permit is required for any *Site Alteration*.

4.1 Application

Any person applying for a Permit shall complete an Application for a Site Alteration and Fill Permit in a form established from time to time by the *Director* and the said Application for Site Alteration and Fill Permit shall be accompanied by such supporting documentation and information as required by the *Director* and identified in the *Guidelines*.

4.2 Additional Requirements for Large Site Alterations

Upon the completion of the Application for a Site Alteration and Fill Permit, including the provision of such supporting documentation and information as required by the *Director* and identified in the *Guidelines*, where such Application

is made in respect of a *Large Site Alteration*, the Applicant shall be required to attend before a public meeting of Council and shall, together with any member of the public expressing an interest in the said Application, be entitled to submit comments to and make representations before Council for the purpose of assisting Council in determining whether such permit shall be issued. Notice of such public meeting shall be provided to such persons and in such manner as Council has established. No Permit shall be issued for the Large Site Alteration until Council has considered the Application at such public meeting.

4.3 Issuance of Permit

No Permit shall be issued by the *Director* until:

- a) a completed Application for Site Alteration and Fill Permit, together with such supporting documentation and information as required by the *Director* and identified in the *Guidelines*, has been submitted to the *Corporation*;
- b) the supporting documentation and information as required by the *Director* and identified in the *Guidelines* satisfactorily addresses the issues for which such supporting documentation and information was submitted; and
- c) where the Permit is sought for a *Large Site Alteration*, Council has approved the issuance of the Permit after a public meeting called to consider same and an *Agreement* has been entered into, setting forth such additional terms and conditions as Council deems appropriate for such *Large Site Alteration*.

5.0 EXPIRY, RENEWAL, REVOCATION AND TRANSFER OF PERMITS AND AGREEMENTS

- a) A Permit for a *Site Alteration* will be issued for the period of one year, provided that where such Permit is issued for a *Large Site Alteration* there shall be no expiry date unless specified by the *Director* as a Condition or set out in the *Agreement*.
- b) Whether or not a Permit issued for a *Large Site Alteration* has an expiry date, such Permit will be subject to an annual review conducted by the *Director* to determine whether such Permit should be varied, extended or revoked.
- c) Where a person has been issued a Permit for a *Large Site Alteration* and an annual expiry date has been specified by the Director, the Permit shall expire one year after the issuance or extension of same, unless such person makes Application to the *Director* in writing at least three months prior to the expiry of the then existing Permit.
- d) Upon receipt of the said Application to extend by the *Director*, the *Director* shall determine:
 - i. Whether there are any substantial changes from the original Application submitted in support of the Permit;
 - ii. Whether there are any outstanding Orders or other items of non-compliance relating to the existing Permit and/or *Agreement*;
 - iii. Whether there are any new requests and/or regulations imposed by Council relating to the issuance of Permits under this By-law;
 - iv. Whether the *Guidelines* established by the *Director* from time-to-time require the provision of further documentation and

information and, if such documentation and information is required, whether same is reasonable and should be submitted to the *Corporation*.

- e) Upon the completion of the reviews contemplated herein by the *Director*, the *Director* shall be entitled to vary, extend or revoke the Permit.
- f) If title to the *Property* for which a Permit has been issued is transferred while the Permit is in effect, the Permit shall be revoked unless the new *Owner*:
 - i. Before or at the time of the transfer, provides the *Corporation* with an undertaking to comply with all Conditions under which the existing Permit and/or *Agreement* was issued; and
 - ii. In the case where there is an *Agreement*, before or at the time of the transfer, enters into an agreement with the *Corporation* to comply with all terms and conditions of the existing *Agreement*.
- g) The *Director* may at any time without notice revoke a Permit for the following reasons:
 - i. It was obtained based on mistaken, false or incorrect information;
 - ii. It was issued in error;
 - iii. The *Owner* requests in writing that it be revoked;
 - iv. Work authorized under the Permit has not commenced within six months of the Permit issue date;
 - v. Work authorized under the Permit has not been performed for any period of six consecutive months;
 - vi. The Permit holder has failed to comply with any of the Conditions of the Permit and/or *Agreement*; and
 - vii. The Permit holder is unwilling or unable to comply with the Conditions of an *Order*.

6.0 ENFORCEMENT AND INSPECTORS

- 6.1 Employees of the Clerk's Department of the *Corporation*, or any successor to that Department that are otherwise authorized to enforce the By-laws of the Corporation are appointed as *Inspectors* for all purposes of this By-law.
- 6.2 The *Director* may appoint the Town's Peer Review Consultant or other engineering, scientific and technical experts to fulfill the role of an *Inspector* for the purposes of this By-law.
- 6.3 *Inspectors* may, at any reasonable time, enter and inspect any land to determine whether the provisions of this By-law, or any Condition of a Permit, *Agreement* or *Order* issued under this By-law, are being complied with. This power of entry does not allow the *Inspector* to enter any building.
- 6.4 *Inspectors* may, at any reasonable time, enter the land for the purpose of collecting information, measurements, readings and samples (air, surface water, groundwater, soil, materials, etc.) for audit and verification of the Conditions of a Permit, *Agreement* or *Order*.
- 6.5 *Inspectors* may, at any reasonable time, request copies of reports, manifests or other documentation for the purposes of auditing compliance with the Conditions of a Permit, *Agreement* or *Order*.

7.0 ORDERS

7.1 If a By-law Enforcement Officer is satisfied that a person has caused or permitted the performance of a *Site Alteration* in contravention of the provisions of this By-law, a Permit issued pursuant to this By-law and/or an *Agreement* entered into pursuant to this By-law, the By-law Enforcement Officer may issue an *Order* requiring work to be done to correct the contravention, which *Order* shall contain the municipal address and/or the legal description of the Property, and shall set out:

- a) The reasonable particulars of the contravention, the work to be done, any action required, and the period within which there must be compliance with the *Order*; and
- b) Notification that if the work is not done in compliance with the *Order* within the period specified, the *Corporation* may have the work done at the expense of the *Owner* and seek penalties as outlined in Section 9.0.

7.2 *Orders* issued by a By-law Enforcement Officer under this By-law shall be served as follows:

- a) *Orders* shall be served personally or by prepaid registered mail to the last known address of the *Owner*, the Permit holder and any other person required to be served; and
- b) If the *Corporation* is unable to effect service on the *Owner*, a placard containing the terms of the *Order* may be placed in a conspicuous place on the *Property* and the placing of the placard shall be deemed to be service of the *Order*.

8.0 WORK DONE BY THE CORPORATION

If the conditions of an *Order* made under this By-law are not complied with within the period specified in the *Order*, in addition to all other remedies it may have, the *Corporation* may undertake any *Site Alteration* to fulfill any of the conditions of a Permit, *Agreement* or *Order* at the *Owner's* expense, and may enter upon land at any reasonable time for this purpose in accordance with the provisions of the Municipal Act, 2001.

9.0 PENALTY AND OFFENCE

9.1 Any person who contravenes the provisions of this By-law or of an *Order* made under this By-law is guilty of an offence, and upon conviction pursuant to the Provincial Offences Act, R.S.O. 1990, c. P. 33, is liable:

- a) On a first conviction, to a fine of not more than \$10,000.00; and
- b) On any subsequent conviction to a fine of not more than \$100,000.00.

9.2 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.

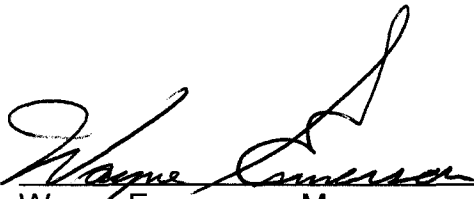
9.3 If any provision of this By-law or the application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or application of this By-law which can be given effect without the invalid provision or application, and to this end the provisions of this By-law are severable.

10.0 EFFECTIVE DATES & REPEAL OF PREDECESSOR BY-LAWS


This By-law shall come into force and effect upon its passage, at which time By-law 2013-007-RE and all amendments thereto shall hereby be repealed.

READ a first and second time this 9th day of September, 2014.

READ a third time and passed this 9th day of September, 2014.



Wayne Emmerson, Mayor



Michele Kennedy, Clerk