

BY-LAW NO. 201-96

BEING A BY-LAW TO REGULATE THE PLACING OF FILL AND SITE ALTERATIONS ON LANDS IN THE TOWN OF FORT ERIE (C01.28)

WHEREAS Section 223.1 of *The Municipal Act*, R.S.O. 1990, Chapter M.45, as amended, provides interalia that the council of a local municipality may pass by-laws,

- (a) prohibiting or regulating the placing or dumping of fill in any defined area or on any class of land;
- (b) prohibiting or regulating the alteration of the grade of land in any defined area or on any class of land;
- (c) requiring that a permit be obtained for the placing or dumping of fill or alteration of the grade of land in any defined area or on any class of land and prescribing fees for the permits;
- (d) requiring grading, filling or dumping plans acceptable to the municipality as a condition of issuing a permit;
- (e) prescribing conditions under which grading or the placing or dumping of fill may be carried out under a permit;
- (f) requiring that fill dumped or placed or grading carried out contrary to a by-law passed or permit issued under this section be removed by the person who dumped or placed it or who caused or permitted it to be dumped or placed

WHEREAS Report No. B-50-96 was approved at the Council-in-Committee meeting of June 10, 1996 to direct staff to proceed with the preparation of a fill and site alteration by-law under Section 223.1 of *The Municipal Act* and

WHEREAS Report No. PPS-84-96 was approved at the Council-in-Committee meeting of October 7, 1996 authorizing a draft by-law be submitted to the next meeting of Council to regulate the placing of fill and site alterations on lands in the Town of Fort Erie.

NOW THEREFORE the Municipal Council of the Town of Fort Erie enacts as follows:

1. In this by-law:

- (a) "Body of water" includes any brook, creek, stream, river, lake, pond, waterway, water course, canal, or other flowing or standing water;

- (b) "Clerk" means of the Clerk of the Corporation of the Town of Fort Erie;
- (c) "Council" means the Council of The Corporation of the Town of Fort Erie;
- (d) "Director" means the Director of Planning and Property Safety of the Town of Fort Erie, 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;
- (e) "Drainage" means the movement of storm water, whether by way of the natural characteristics of the ground surface or by an artificial method;
- (f) "Dumping and Dump" means the depositing of fill in a location other than where the fill was obtained and also includes the movement and depositing of fill from one location on a property to another location on the same property;
- (g) "Engineer" means a Professional Engineer currently licensed to practice in the Province of Ontario;
- (h) "Erosion" means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;
- (i) "Fill" means any type of material deposited or placed on lands and includes but is not limited to earth topsoil, stone, concrete, asphalt, sod or turf, either singly or in combination;
- (j) "Grade" means the elevation of the ground surface of lands and:
 - (i) "Finished Grade" means the Town of Fort Erie approved final elevation of ground surface of lands upon which the site alteration is proposed;
 - (ii) "Existing Grade" means the elevation of the existing ground surface of the lands and of abutting ground surface up to 3 metres wide surrounding such lands, except that where placing or dumping of fill has occurred in contravention of this by-law existing grade shall mean the ground surface of the lands as it existed prior to the placing or dumping of fill;
 - (iii) "Proposed Grade" means all proposed elevations of ground surface of lands upon which site alterations are undertaken;
- (k) "Land" includes lands, tenements and hereditament and any estate or interest therein and any right or easement affecting them and land covered with water;
- (l) "Land Disturbance" means any man-made change of the land surface including, but not limited to, removing vegetative cover, excavating, filling and grading;
- (m) "Owner" includes any person, partnership, sole proprietorship, or corporation legally owning, controlling or in possession of the lands on which fill is to be placed or dumped or which the grade is altered;
- (n) "Permit" means a permit issued under this by-law;
- (o) "Placing or Place" means the distribution of fill on lands to establish a finished grade higher than the existing grade;
- (p) "Ponding" means the accumulation of surface water in an area not having adequate drainage therefrom where the lack of drainage is caused by the placing or dumping of fill;

- (q) "Retaining Wall" means wall designed to contain and support earth fill which has a finished grade higher than that of adjacent lands;
- (r) "Site" means the lands from which it is proposed that soil be removed or moved to;
- (s) "Soil" means any material naturally occurring on the earth's surface, including, but not limited to earth, top soil, loam, subsoil, clay, sand or gravel;
- (t) "Swale" means a shallow depression which provides a conveyance system for surface storm water;
- (u) "Town of Fort Erie" means The Corporation of the Town of Fort Erie;
- (v) "Watercourse" means a natural or man-made channel in which a flow of water occurs, either continuously or intermittently, with some degree of regularity.

2. APPLICATION OF BY-LAW AND EXEMPTION

2.1 No person shall place fill on any land within the boundaries of the Town of Fort Erie unless:

- (a) fill is placed with the consent of the owner of the lands; and
- (b) the fill is placed pursuant to a permit issued under this by-law; or
- (c) the fill is placed pursuant to a subdivision agreement or site plan
agreement entered into between the owner of the land and the Town;

or

- (d) the fill is placed pursuant to Section 2.4 of this by-law;

2.2 No person shall alter the grade or cause the grade of any land to be altered in the Town of Fort Erie without having first obtained a permit issued under this by-law by the Director.

2.3 A regulation made under clause 28(1)(f) of the Conservation Authorities Act, R.S.O., 1990 respecting the placing or dumping of fill in any area of The Town of Fort Erie supersedes the provisions of this by-law.

2.4 This by-law does not apply to or where:

- (a) the placing or dumping of fill, removal of soil, or the alteration of the grade of land by the Town of Fort Erie, the Regional Municipality of Niagara, local board as defined in the Municipal Affairs Act, Crown agency as defined in the Crown Agency Act and Ontario Hydro; or
- (b) activities or matters prescribed by Ontario regulation.

- (c) any lot grading that has been effected pursuant to and in compliance with lot grading plans that are related to or contained in approved subdivision agreements, site plan agreements and development agreements, or which accompany building permit applications, and which also contain sufficient information to determine that the placing or dumping of fill conforms with the provisions of this by-law, failing which this exemption ceases to apply.
- (d) situations where Conservation Authority cut and fill regulations are in effect;
- (e) soil is placed on lands for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that the ground elevation of the lands is not increased by more than 25 centimetres; (10")
- (f) fill is placed or dumped in an excavation to the elevation of existing grade following the demolition or removal of a building or structure;
- (g) properties are being actively farmed in their entirety and are in agricultural production, failing which a permit shall be obtained.

2.5 Where a permit has been issued under this by-law authorizing the altering of the grade of lands, no person shall alter the grade or shall cause the grade to be altered except in accordance with the plans, documents and any other information on the basis of which the permit was issued.

3. PERMIT APPLICATION PROCESS

- 3.1 A person applying for a permit to alter grades on the Lands shall submit the following to the Director:
- (a) a complete application in the form prescribed by the Director;
 - (b) the applicable permit fee calculated in accordance with Schedule "A" which forms part of this by-law;
 - (c) an accurate plan of the lands showing:
 - (i) the property lines of the lands with dimensions;

- (ii) existing elevations in the form of contours at 0.5 metre intervals or less, with spot elevations along the property lines and 3.0 metres beyond the property line at sufficient intervals to clearly show the existing drainage patterns on the lands and on the abutting lands;
 - (iii) all existing storm sewers, ditches, swales, creeks and watercourses on the lands and on abutting lands and public highways;
 - (iv) all existing buildings, the species and size in caliper of all trees greater than 75 mm, the location of all shrubs and driveways on the lands and all easements and rights-of-way over, under, across or through the lands;
 - (v) proposed sediment and erosion controls that will be installed prior to alteration of the lands;
 - (vi) proposed final elevations and drainage system to be used upon completion of the site alteration operation, and
 - (vii) a description of the proposed fill or topsoil removal operation;
- (d) a plan showing the design details, to proper scale, with an Engineer's signature and stamp, of any retaining wall that may be required, and the size, type and location of all material to be used in construction of such retaining wall; and
- (e) security in a form and amount as set out in Schedule "A" to this by-law to secure performance of the work for which the permit was obtained, which security shall be available to recover the cost of the Town of Fort Erie performing any required work which the Owner has failed to perform to the Town's satisfaction.

3.2 In addition to the requirements set out in subsection 3.1, the Director may require a person applying for a permit to provide an environmental audit of the fill material at the applicant's expense.

4. REGISTERED AGREEMENT

- 4.1 The Director may, prior to the issuance of a permit, require the applicant to enter into an agreement which may be registered on title to the lands containing such requirements as the Director considers necessary to ensure that the site alteration is done in accordance with prevailing Town of Fort Erie design standards and proper engineering principles.
- 4.2 The agreement referred to in subsection 4.1 may contain a provision that the applicant post with the Town of Fort Erie security in an amount determined by the Director to ensure performance of the applicant's obligations under the agreement.
- 4.3 When such an agreement is necessary the applicant shall submit a fee of \$200.00 to the Town to cover such administrative costs.

5. ISSUANCE OF PERMIT

- 5.1 The Director may issue a permit where:
- (a) the Director is satisfied that the lands which are the subject of the application for a permit are not within an area where the site alteration is exempted under subsection 2.4 of this by-law;
 - (b) the applicant has fulfilled all requirements of Section 3 of this by-law;
 - (c) the applicant has entered into the agreement referred to in Section 4.1 of this by-law, if required, and has performed all the obligations which the agreement requires to be performed prior to the issuance of a permit;
 - (d) the Director is satisfied that the proposed final elevations and resulting drainage pattern, the design of any retaining wall, the type of fill to be used and the method of grading are all in accordance with prevailing Town of Fort Erie design standards and proper engineering practice;

- (e) the Director is satisfied that if the height of any retaining wall exceeds 0.6m, a guard or fence will be installed on top of the wall, and if the wall is 1 metre in height or greater that an Engineer's stamp of approval is provided on the plan submitted with the application; and
- (f) the Director is satisfied to the best of his/her ability and knowledge that the grading will not result in:
 - (i) soil erosion;
 - (ii) blockage of a watercourse;
 - (iii) siltation in a watercourse;
 - (iv) pollution of a watercourse;
 - (v) flooding or ponding caused by a watercourse overflowing its banks;
 - (vi) a detrimental effect on the natural environment of the area, or
 - (vii) flooding of neighboring properties.

5.2 The permit issued pursuant to Section 5 shall be valid for a period of one year from the date of issuance, but shall expire after six months from the date of issuance if work has not commenced.

5.3 A permit which is no longer valid or which has expired pursuant to subsection 2 of this section may be renewed at the sole discretion of the Director within a six month period from the date of expiry upon the making of written application to the Director accompanied by a payment of one half of the original permit fee, provided that the proposed work has not been revised.

6. The issuance of a permit by the Director does not relieve the applicant's responsibility to obtain all other approvals which may be required by any level of government and agencies thereof.

7. If title to the lands for which a permit has been issued is transferred while the permit remains in effect the new owner of the lands shall within 30 days of the transfer either:

- (a) provide the Town with an undertaking to comply with all the conditions under which the existing permit was issued; or

- (b) apply for and obtain a new permit in accordance with the provisions of this by-law and fee schedule, failing which the original permit may become null and void.

8. PROHIBITION

- 8.1 No person shall alter the grade or cause to be graded any land or cause any fill to be placed or dumped on any site for any purpose, except in compliance with this by-law.
- 8.2 No person shall grade or cause to be graded, place or dump fill on any land unless:
 - (a) it is done with the prior written consent of the owner of the land where the site alteration is to take place;
 - (b) all fill to be used is free of garbage and is reasonably clean;
 - (c) the drainage system for the lands is provided in accordance with the Town's by-laws and the Director is satisfied that provision has been made for surface and storm water drainage where such drainage is not provided by natural gradients or a swale; and
 - (d) the alteration of the site is conducted in such a manner, or the retaining wall containing such fill is erected in such a manner, that no ponding is caused on abutting lands.

9. GRADE REGULATIONS

- 9.1 Every person who alters the grade shall:
 - (a) when required by the Director, provide a retaining wall which does not encroach upon abutting lands, either above or below existing grade, such retaining wall to be constructed to the satisfaction of the Director. The Director may require that a retaining wall be constructed where:
 - (i) erosion of fill onto abutting lands may occur; or
 - (ii) the finished grade of the lands at the property line is higher than that of the existing grade of the abutting lands;

- (b) ensure that the finished grade surface be protected by sod, turf, seeding for grass, greenery, asphalt, concrete or other means, either singly or in combination;
- (c) ensure that fill shall not be placed around the perimeter of any existing building to an elevation higher than 150 millimetres below the ground floor level of such building, unless such building and its foundation walls are raised in a manner satisfactory to the Director;
- (d) provide such protection for trees as may be required by the Director;
- (e) provide such siltration control measures as may be required by the Director; and
- (f) ensure that the altering of the grade will not track mud onto or foul any municipal roadways. A deposit for same is hereby established in accordance with Schedule "A" attached hereto.

10. **INSPECTIONS**

- 10.1 These positions in the Planning and Property Safety Department of the Town are hereby appointed as inspectors for the purposes of this by-law and such positions are set out in Schedule "B" annexed hereto.
- 10.2 The owner of any land upon which grade alteration is undertaken or fill is being dumped, has been dumped, or upon which it is proposed that fill be dumped shall permit the inspectors of the Town to enter upon the land for the purpose of determining compliance with the provisions of this by-law.
- 10.3 Inspectors may, during daylight hours and upon producing a certificate of designation issued by the Clerk, enter and inspect any land upon which fill is being dumped or the grade is being altered, has been dumped, or upon which it is proposed that fill be dumped to determine compliance with the provisions of this by-law. Any inspector may be accompanied by an assisting person.

11. ADMINISTRATION AND ENFORCEMENT

- 11.1 The administration and enforcement of this by-law shall be performed by the Director, by such persons authorized by the Director, and by the inspectors appointed herein.
- 11.2 Where it is revealed or discovered that the holder of a permit issued under this by-law has provided misleading or false information on the application, the said permit may be revoked by the Director and the permit holder under this by-law shall thereafter cease and desist forthwith all operations being conducted under the authority of the revoked permit.
- 11.3 If, after inspection, the inspector is satisfied that there is a contravention of this by-law, he or she shall notify the owner of the land of the particulars of the contravention by personal service or prepaid registered mail, and may, at the same time, provide all occupants with a copy of the notice.
- 11.4 After giving any person served with a notice under Section 11.3 an opportunity to appear before the inspector and make representations in connection with it, the inspector may make an order setting out,
- (a) the municipal address or the legal description of the land;
 - (b) reasonable particulars of the work to be done to correct the contravention and the period in which there must be compliance with the order, and
 - (c) notice that if the work is not done in compliance with the order within the period it specifies, the Town may have the work done at the expense of the owner.
- 11.5 An order under Section 11.4 shall be served personally or by prepaid registered mail.
- 11.6 A notice or order under Section 11.3 or 11.4 when sent by prepaid registered mail shall be sent to the last known address of the owner of the land.

- 11.7 An inspector who is unable to effect service under Section 11.3 or 11.4, shall place a placard containing the terms of the notice or order in a conspicuous place on the property, and the placing of the placard shall be deemed to be sufficient service of the notice or order on the owner.
- 11.8 If the owner fails to do the work required by the order within the period it specifies, the Town, in addition to all other remedies it may have, may do the work and for this purpose, may enter on the land with its employees and agents.
- 11.9 Costs incurred by the Town under Section 11.8 are a lien on the land upon the registration at the proper land registry office of a notice of lien.
- 11.10 The lien referred to in Section 11.8 is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date payment is made.
- 11.11 No person shall obstruct an inspector who is carrying out an inspection under Section 10 or a person carrying out work under Section 11.8 herein.

12. APPEAL TO ONTARIO MUNICIPAL BOARD

- 12.1 An applicant for a permit herein may appeal to the Ontario Municipal Board,
- (a) where the applicant objects to a condition in the permit, within 30 days from the issuance of a permit, and
 - (b) where the municipality refuses to or does not issue a permit within 45 days from the date the application is received by the clerk, within 30 days from the expiration of the 45 days.

13. PENALTIES

- 13.1 Every person or corporation and every director or officer of a corporation who:
- (a) provides misleading or false information in an application under this by-law in any statement or plan required to be produced under this by-law or concurs in such action or omission; or
 - (b) contravenes any provision or requirement of this by-law or concurs in such production, failure or contravention;
 - (i) is guilty of an offence, and

- (ii) every person or corporation who is convicted of an offence is
liable to a fine of not more than \$5,000.00 as provided under the
Provincial Offences Act, R.S.O. 1990, c. P.33, as amended

14. WAIVING REQUIREMENTS

- 14.1 Notwithstanding any other provisions of this by-law, the Director may waive the requirement for a plan and/or reduce or waive the permit fee where he/she considers it appropriate after taking into consideration the proposed works and whether the applicant has conformed with the by-law.

15. SEVERABILITY

- 15.1 In the event that any particular provision or provisions or part of a provision is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or provisions or part of the provision shall be deemed to be severed from the remainder of this by-law and all other provisions shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

16. SCHEDULES

- 16.1 All schedules attached to this by-law form part of this by-law.

READ A FIRST AND SECOND TIME THIS 15TH DAY OF OCTOBER, 1996.

MAYOR

CLERK

READ A THIRD TIME AND FINALLY PASSED THIS 28TH DAY OF OCTOBER, 1996.

MAYOR

CLERK

I, Carolyn J. Booth, Clerk of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 201-96 of the said Town. Given under my hand and the seal of the said Corporation this _____ Day of _____, 19____.

SCHEDULE “A” TO BY-LAW NO. 201-96

1. PERMIT FEES

TYPE	FEE	REFUNDABLE SECURITY (CASH OR LETTER OF CREDIT)
Minor Applications - include infill lots and residential properties	\$100.00	Nil
Major Applications - include commercial, industrial and non-farmed agricultural lands	\$500.00	Amount and form to be determined by Director

2. SECURITY FOR SITE CONTROL MEASURES

- (a) That security deposit money or letter of credit shall be used for mud tracking cleanup of the road or restoration of any municipal works. The owner will be notified of the required cleanup, and if the work is not completed by the owner, within the time specified, the Town shall carry out the work using the security money to cover the cost plus 10% of the value of the work to cover the administration cost.
- (b) The letter of credit must remain in effect for the full duration of the permit. Any letter of credit and its subsequent renewal forms shall contain a clause stating that 30 days written notice must be given to the Town prior to its expiry or cancellation.
- (c) In the event that the Town receives notice that a letter of credit is expiring and will not be renewed, or if further or additional securities are not provided within the said thirty (30) days, the Town may draw on the current letter of credit at the discretion of the Director. The Permit holder agrees that any interest accruing on the realized cash security shall belong to the Town and not to the Permit holder.
- (d) At the Director’s discretion, the Permit holder must give proof of liability insurance of a minimum two (2) million dollars. This must include environmental liability.

3. It is the responsibility of the Permit Holder:

- (i) to provide proof satisfactory to the Director that the site has been adequately reinstated and stabilized in accordance with this by-law and the plan accompanying the permit;
- (ii) to request that the Town carry out a final inspection to confirm that all relevant terms of this by-law have been complied with.

4. When the provisions of subsection (3) have been fully complied with to the satisfaction of the Director, he/she shall release the applicant’s security.

SCHEDULE “B” TO BY-LAW NO. 201-96

Pursuant to Section 10.1 of By-law No. 201-96

Director of Planning and Property Safety

Chief Building Official

Building/Plumbing Inspector

Municipal Law Enforcement Officers (2)

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TOWN OF FORT ERIE

FILL AND SITE ALTERATION BY-LAW NO. 201-96

**FIRST AND SECOND READING
OCTOBER 15, 1996**

**THIRD AND FINAL READING
OCTOBER 28, 1996**