

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW

BY-LAW 02-62

Being a By-law to provide for the regulation of the dumping on, filling of, and grading of lands within the municipality.

WHEREAS section 223.1 of the *Municipal Act* R.S.O., 1990, c.M.45, as amended by section 56, 1994, c.23, provides that By- laws may be passed by the councils of local municipalities;

- (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.

AND WHEREAS section 210.80 of the *Municipal Act*, R.S.O. 1990, c.M.45, provides that Bylaws may be passed by the Councils of local municipalities requiring and regulating the filling up, draining, cleaning and clearing of any grounds, yard and vacant lots and the altering, relaying and repairing of private drains.

AND WHEREAS section 326 of the *Municipal Act*, R.S.O. 1990, c.M.45 provides that where a council has authority to direct or require by By- law or otherwise that any matter or thing be done, the council may by the same or by another By- law direct that, in default of its being done by the person directed or required to do it, such matter or thing shall be done at the person's expense, and the corporation may recover the expense incurred in doing it by action, or the same may be recovered in like manner as municipal taxes,

AND WHEREAS, the Council of the Corporation of the Township of Clearview considers it desirable to pass such a By-law;

NOW THEREFORE, the Council of the Corporation of the Township of Clearview enacts as follows:

THE CORPORATION OF THE TOWNSHIP OF CLEARVIEW BY-LAW 02-62

DEFINITIONS

1. For the purposes of this by-law:

- (1) "applicant" means the owner, where such owner is an individual, or means any individual authorized in writing, by the owner to apply for a permit on the owner's behalf;
- (2) "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;
- (3) "dumping" 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;

- (4) "fill" means any type of material deposited or placed on lands and includes soil, stone, concrete, asphalt, sod or turf either singly or in combination;
- (5) "grade" shall be defined as follows:
- (a) "existing grade" means the elevation of the existing ground surface of the lands upon which dumping and/or placing of fill is proposed and of abutting ground surface up to three (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;
 - (b) "finished grade" means the approved elevation of ground surface of lands upon which fill has been placed in accordance with this by-law;
 - (c) "proposed grade" means the proposed elevation of ground surface of land upon which fill is proposed to be placed;
- (6) "grading" means the alteration of the elevation of the ground surface to lower or raise it
- (7) "inspector" means a person designated by procedural memorandum prepared by the Director of Planning and Development by the Township of Clearview for the purpose of enforcing this by-law and may include employees of the Nottawasaga Valley Conservation Authority.
- (8) "owner" means the registered owner of the land for which a permit is sought or obtained;
- (9) "permit" means permission or authorization given in writing by the Director of Planning and Development to perform work regulated by the by-law or part thereof;
- (10) "permit holder" means the owner as defined in this By-law or the person in possession of the property and includes a lessee, a mortgagee in possession or a person in charge of the property;
- (11) "placing" means the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;
- (12) "ponding" means the accumulation of surface water in an area not having drainage therefrom where the lack of drainage is caused by the placing, removal or dumping of fill;
- (13) "removal" means excavation or extraction of any fill which lowers the existing grade, which includes soil stripping;
- (14) "retaining wall" means a concrete or concrete product wall or other material approved by the Director of Planning and Development and/or chief Building Official designed to contain and support fill which has a finished grade higher than that of adjacent lands;
- (15) "soil" means material commonly known as earth, top soil, loam, subsoil, clay, sand or gravel; and
- (16) "swale" means a shallow depression in the ground sloping to a place of disposal of surface water for the purpose of providing a method of drainage.
- (17) "Township" means the Corporation of the Township of Clearview and its employees, agents, and designates. This by-law shall be administered by the Director of Planning and Development who shall establish staff and process responsibilities by procedural memorandum under the authority of this by-law.

PROHIBITIONS

2. (1) No person shall alter the grade of lands or remove, place or dump fill or cause fill to be removed, placed or dumped in the Township of Clearview without having first obtained a permit issued by the Township.
- (2) The provisions of subsection (1) of this section do not apply in those areas of the Township of Clearview where:
- (a) a regulation under the Conservation Authorities Act, R.S.O. 1990, respecting the placing or dumping of fill is in force;
 - (b) the placing or dumping of fill or alteration of the grade of land by any municipality, local board as defined in the Municipal Affairs Act, Crown agency as defined in the Crown Agency Act and Ontario Hydro;
 - (c) activities or matters prescribed by regulation;
 - (d) fill is being placed on lands shown in a grading and drainage plan approved by the Township of Clearview in conjunction with subdivision, consent, rezoning or site plan approvals;

- (e) a building permit has been issued by the Township for the erection of a building or structure, and the site plan accompanying the building permit application provides sufficient information to determine that the grading or placing or dumping of fill conforms with the provisions of this by-law;
 - (f) soil is placed on lands for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:
 - i) the elevation of the land within 600 mm of the property line is not changed; and
 - ii) 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;
 - (g) fill is placed or dumped in an excavation to the elevation of existing grade following the demolition or removal of a building or structure;
 - (h) fill is dumped or placed on lands zoned "Agricultural" where there is a minor alteration to the grade of land as an incidental part of a commonly accepted or approved agricultural practice as determined by the Ministry of Agricultural, Food and Rural Affairs or Farm Practices Protection Board.
- (3) Where a permit has been issued pursuant to this by-law authorizing the placing or dumping of fill on lands, no person shall remove, place or dump fill or cause fill to be removed, placed or dumped except in accordance with the plans, documents and any other information on the basis of which a permit was issued.
 - (4) Where a person has removed, dumped or placed fill or caused fill to be removed, dumped or placed on lands contrary to this by-law or not in conformity with an issued permit, that person and/or the owner and/or the permit holder will be responsible for the removal of such fill.
 - (5) No person shall place or dump, or cause to be placed or dumped, fill on any land for storage purposes, unless the outside storage of such fill on the land is permitted by the applicable zoning by-law of The Corporation of the Township of Clearview.
 - (6) Subject to subsection 2(2), no person shall remove, place or dump, or cause to be removed, placed or dumped, fill on any land which results in the alteration of any grade established by a grading and drainage plan which has been approved by the Township of Clearview as part of a subdivision, consent, rezoning or site plan approval, without a permit.
 - (7) Subject to s. 2(2), no person shall remove, place or dump, or cause to be removed, placed or dumped, fill on any land unless:
 - (a) it is done at the request of or with the consent of the owner of the land where the fill is to be placed, dumped or removed;
 - (b) all fill to be dumped or placed is clean and free of trash, rubbish, glass, liquid or toxic chemicals, wastes, hazardous wastes or garbage materials;
 - (c) the drainage system for the lands is provided in accordance with the Corporation's by-laws and the Township is satisfied that provision has been made for surface, storm water drainage where such drainage is not provided by natural gradients or a swale; and
 - (d) the fill is placed or dumped or removed in such a manner, or the retaining wall containing such fill is erected in such a manner, that no ponding or alteration of existing flow is caused on abutting lands.

REQUIREMENTS FOR ISSUANCE OF A PERMIT

- 3. An applicant for a permit to dump or place or remove fill on the lands shall submit the following to the Township:
 - (1) a completed application in the form prescribed;
 - (2) the applicable permit fee in accordance with Schedule A to this by-law;
 - (3) when required by the Township, a Fill-Control Plan, which shall include any or all of the following as shall be specified by the Township:
 - (a) a key map showing the location of each lot, including the nearest major intersection and north arrow;

- (b) the lot boundaries and number of hectares of each lot;
 - (c) the use of the land and the location and use of the buildings and other structures adjacent to each lot;
 - (d) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on each lot;
 - (e) the location of lakes, streams, wetlands, channels, ditches, other watercourses and other bodies of water on and within a minimum of thirty (30) metres beyond each lot boundary;
 - (f) the Regional Storm Flood Plain and Conservation Authority Fill Regulation lines;
 - (g) the location of the predominant soil types;
 - (h) all existing buildings, the species, grade at base and size, in caliper, of all trees greater than 250 mm in caliper, all shrubs, trees and hedges within one (1) metre of the property line and driveways on each lot and all easements and rights-of-way over, under, across or through each lot;
 - (i) the location and dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within a minimum of thirty (30) metres beyond each lot boundary;
 - (j) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of thirty (30) metres beyond each lot boundary;
 - (k) the existing lot topography extending a minimum of thirty (30) metres beyond each lot boundary;
 - (l) the proposed final grades of each lot;
 - (m) the location and dimensions of all proposed land disturbing activities, including construction access road;
 - (n) the location and dimensions of all temporary soil or dirt stockpiles;
 - (o) the location, dimensions, design details and design calculations of all construction site erosion control measures necessary to meet the requirements of Schedule 'B' of this by-law;
 - (p) a schedule of the anticipated starting and completion dates of each land disturbing or land developing activity including the installation of construction site erosion control measures needed to meet the requirements of Schedule 'B' to this by-law;
 - (q) provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
 - (r) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
 - (s) any other necessary information with respect to each lot;
 - (t) an indication on the drawing of directions of overland flow and overland flow route;
- (4) proposed final grades and drainage system to be used upon completion of the filling operation;
 - (5) a description of the proposed fill;
 - (6) 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
 - (7) security in a form and amount to be determined by the Township to secure performance of the work for which the permit is being applied. The Township may draw upon the security posted to recover the cost of the Township performing any required work which the owner has failed to perform.
4. An applicant may be required to enter into an agreement and provide securities prior to the issuance of a permit:
- (1) The Township may, prior to the issuance of a permit, require the owner and/or proposed permit holder to enter into an agreement which may be registered on title to the subject lands containing such requirements as the

- Township considers necessary to ensure that the placing or dumping or removal of fill is done in accordance with prevailing Township of Clearview design standards and proper engineering principles.
- (2) Requirements contained in an agreement may include the owner and/or proposed permit holder posting with the Township, the security, in accordance with subsection 3(7), and where in the opinion of the Township, extensive activities are proposed such as landfill operations, certifications by a Geotechnical Engineer or other similarly qualified person, both prior to the issuance of a permit and upon completion of the work. Such certifications shall state that the owner and/or proposed permit holder can and has complied with all of the obligations and conditions contained in the applied for and issued permit.
5. Every person who removes, places or dumps fill or causes fill to be removed, placed or dumped shall:
- (1) when required by the Township, 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 Township. The Township may require that a retaining wall be constructed where:
 - (a) erosion of fill onto abutting lands may occur; or
 - (b) the finished grade of the lands at the property line is higher than that of the existing grade of the abutting lands;
 - (2) 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;
 - (3) 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 Township;
 - (4) ensure that no trench in which piping is laid forming part of the drainage system shall be covered until the work has been inspected by the Township, and authorization is given to back fill the installation;
 - (5) provide such protection for trees as may be required by the Township; and
 - (6) provide the site erosion control measures set out in Schedule B to this by-law prior to commencement of the placing or dumping or removal of fill.

ISSUANCE OF A PERMIT

6. The Township shall issue a permit where:
- (1) the owner and the applicant and the proposed permit holder have fulfilled all requirements pursuant to this by-law;
 - (2) the owner and/or proposed permit holder have entered into the agreement referred to in section 4(1) of this by-law, if required, and have performed all its obligations which the agreement requires to be performed prior to the issuance of a permit;
 - (3) the Township 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 placing or dumping of fill, are all in accordance with prevailing Township of Clearview design standards and proper engineering practice;
 - (4) the Township is satisfied that the height of any retaining wall to be constructed either shall not exceed one metre or that the design and installation of any retaining wall which exceeds 1 metre in height has been certified by an engineer and is in compliance with any applicable legislation or by-law; and
 - (5) the Township is satisfied that the placing or dumping or removal of fill will not result in:
 - (a) soil erosion;
 - (b) blockage of a watercourse;

- (c) siltation in a watercourse;
 - (d) pollution of a watercourse;
 - (e) flooding or ponding caused by a watercourse overflowing its banks;
 - (f) a detrimental effect on any healthy tree greater than 250 mm in caliper located on or adjacent to the lands; or
 - (g) a detrimental effect on any environmentally significant area or areas of natural or scientific interest, wetland or wetland complex, significant wildlife habitat, valley or other greenlands as identified by either the Nottawasaga Valley Conservation Authority or Ministry of Natural Resources or as shown on the land use schedules of the Township of Clearview Official Plan.
 - (h) a detrimental impact on an aquifer, recharge area or discharge area.
- (1) The permit issued pursuant to this by-law shall be valid to the expiry date as specified on the permit by the Township.
 - (2) A permit which is no longer valid or which has expired pursuant to this by-law may be renewed within a six month period from the date of expiry upon the making of written application to the Township accompanied by a payment of one half of the original permit fee, provided that the proposed work has not been revised.
 - (3) The issuance of a permit by the Township does not preclude the owner's and permit holder's responsibility to obtain all other approvals which may be required by any level of government and agencies thereof.
 - (4) If the lands for which a permit has been issued are transferred while the permit remains in effect the new owner of the lands shall forthwith advise the Township of such transfer and either:
 - (a) provide the Township 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.
7. A permit shall be issued for a specified period of time to the applicant, but may be transferred or renewed:
- (1) The permit issued pursuant to this by-law shall be valid to the expiry date as specified on the permit by the Township.
 - (2) A permit which is no longer valid or which has expired pursuant to this by-law may be renewed within a six month period from the date of expiry upon the making of written application to the Township accompanied by a payment of one half of the original permit fee, provided that the proposed work has not been revised.
 - (3) The issuance of a permit by the Township does not preclude the owner's and permit holder's responsibility to obtain all other approvals which may be required by any level of government and agencies thereof.
 - (4) If the lands for which a permit has been issued are transferred while the permit remains in effect the new owner of the lands shall forthwith advise the Township of such transfer and either:
 - (a) provide the Township 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 bylaw.

REVOCATION OF PERMIT

8. A permit may be revoked by Township under the following circumstances:
 - (a) If it was issued on mistaken, false or incorrect information;
 - (b) If it was issued in error;
 - (c) If the owner or permit holder requests in writing, that it be revoked;
 - (d) If the terms of an agreement under this by-law have not been complied with;
 - (e) If work authorized under the permit has not been commenced prior to its expiry date; or

(f) If an owner fails to comply with s. 7(4) of this by-law.

APPEALS

9. Any person applying for a permit pursuant to this by-law, including an owner or proposed permit holder, may appeal to the Ontario Municipal Board:
 - (1) where the owner and/or permit holder objects to a condition in the permit, within thirty (30) days from the issuance of a permit; or
 - (2) where the municipality refuses to or does not issue a permit within forty-five (45) days from the date the application is received by the Township, within thirty (30) days from the expiration of the forty-five (45) days, by filing a letter of appeal with both the Clerk and the Ontario Municipal Board.
10. The Ontario Municipal Board shall then deal with the application for permit:
 - (1) The Ontario Municipal Board may make an order:
 - (i) upholding the decision of the municipality;
 - (ii) requiring the municipality to vary any condition in a permit; or
 - (iii) requiring the municipality to issue a permit on such conditions as the Board considers appropriate.
11. The decision of the Board is final.
12. Sections 43 and 95 of the Ontario Municipal Board Act do not apply to a decision of the Board under Section 10.
13. The Board may, without a hearing, correct an error in a decision made under this section if the error is of a typographical, clerical or similar nature.

ADMINISTRATION AND ENFORCEMENT

14. The administration and enforcement of this by-law shall be performed by the Director of Planning and Development and by such persons authorized by the Director of Planning and Development including the Municipal By-law Enforcement Officer of the Township of Clearview, the Township Engineer and/or the employees of the Nottawasaga Valley Conservation Authority. Inspectors shall receive a "certificate of designation" for the purposes of enforcing this by-law and such certificate will be issued by the Director of Planning and Development.
15. Upon completion of the work pursuant to a permit, the owner and/or permit holder shall so advise the Township.
16. An inspector may, during daylight hours and upon producing the appropriate identification, enter and inspect any land to which the by-law applies. An inspector, in carrying out an inspection, may be accompanied by an assisting person.
17. No person shall obstruct an inspector who is carrying out an inspection pursuant to this by-law.
18. If, after inspection, the inspector is satisfied that there is a contravention of this by-law, he or she shall notify the owner and permit holder 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. An Inspector who is unable to effect notice in this manner shall place a placard containing the terms of notice in a conspicuous place on the property, and the placing of the placard shall be deemed to be sufficient service of the notice on the owner.
19. After giving any person served with a notice pursuant to this by-law an opportunity to appear before the inspector and make representations in connection with it, the inspector may make an order setting out:
 - (1) the municipal address or the legal description of the land;
 - (2) reasonable particulars of the work to be done to correct the contravention and the period in which there must be compliance with the order;
 - (3) notice that if the work is not done in compliance with the order within the period it specifies the Township may have the work done at the expense of the owner.

20. An order pursuant to this by-law shall be served personally or by prepaid registered mail or in accordance with s. 21.
21. A notice or order pursuant to this by-law when sent by prepaid registered mail shall be sent to the last known address of the owner of the land and permit holder.
22. An inspector who is unable to effect service pursuant to this by-law shall place a placard containing the terms of the order in a conspicuous place on the property and the placing of the placard shall be deemed to be sufficient service of the order on the owner and permit holder.
23. If the owner or permit holder fails to do the work required by the order within the period it specifies, the Township, 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.
24. Costs incurred by the Township pursuant to this by-law are a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien 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.
25. Costs incurred by the Township may also be recovered in like manner and with the same priority as Municipal Taxes.
26. No person who, after receiving proper notice, shall disobey an order made pursuant to this by-law.

PENALTY

27. Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Provincial Offences Act.
28. In the event that damage occurs to any township road as a result of any activity or activities regulated by this by-law, the owner shall be fully liable for, and shall bear all the costs for repairing any such damage. Such works shall include, but not be limited to, cleaning of the road surface, curbs, gutters and storm sewers or boulevard and all repairs to damage to the road, boulevard or any signage and services there associated with.

CONFLICT

29. If there is a conflict between a by-law passed under section 223.1 of the Municipal Act, R.S.O., 1990 and a by-law passed by an upper tier municipality, the by-law of the upper tier municipality prevails to the extent of the conflict.
30. In the event that any particular provision or provisions of this by-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or provisions 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.

By-law Number 02-62 READ a FIRST, SECOND and THIRD time and finally passed this 18th day of December, 2002.

Original Signed by:
Mayor
Clerk

SCHEDULE "A"

PERMIT FEES

The following fees shall be paid to the Township of Clearview at the time of application for a fill permit:

- (a) Fill/alteration of grade on property - \$200
- (b) Renewal of (a) - \$100
- (c) Transfer of Permit under s. 7(4) - \$50
- (d) Permit Fees are non-refundable.

SCHEDULE "B" TO BY-LAW SITE EROSION CONTROL MEASURES

The following criteria apply to land disturbing activities caused by the placing or dumping of fill that result in runoff leaving the lot:

- (1) channelized runoff from adjacent areas passing through the lot shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected by silt fences being placed along the channel edges to reduce sediment reaching the channel;
- (2) all activities on the lot shall be conducted in a logical sequence to minimize the area of bare soil exposed at any one time;
- (3) any soil or dirt storage piles containing more than one hundred cubic metres of material shall not be located within a downslope drainage length of less than ten (10) metres to a roadway or drainage channel. If remaining for more than thirty (30) days, said soil or dirt storage piles shall be stabilized by mulching, vegetative cover, tarps or other means. Erosion from soil or dirt storage piles which will be in existence for less than thirty (30) days shall be controlled by silt fence barriers around the pile;
- (4) runoff from the entire disturbed area on the lot shall be controlled as follows:
 - (a) all disturbed ground left inactive shall be stabilized by seeding, sodding, mulching or covering, or other equivalent control measure. The period of time of inactivity shall be at the discretion of the Township, but shall not generally exceed thirty (30) days;
 - (b) for a lot with less than four (4) hectares disturbed at one time and slopes less than twelve (12) per cent grade, silt fences or equivalent control measures shall be placed along all sideslope and downslope sides of the lot;
 - (c) for a lot with four (4) or more hectares disturbed at one time or with slopes greater than twelve (12) per cent grade, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least one (1) per cent of the area draining to the basin and at least one (1) metre of depth and be constructed in accordance with design specifications acceptable to the Township. Sediment shall be removed to maintain a depth of one (1) metre. The basins shall be designed to trap sediment, based on the Township's Engineering Storm Drainage Design Standards. It is not permitted to directly discharge the basin into receiving water streams or bodies or other storm drainage facilities. Basin discharge rate shall be sufficiently low as to not cause erosion along the discharge channel;
 - d) for a lot located adjacent to existing residential areas, a silt fence may be required around the entire perimeter of the lots;
 - e) a three (3) metre wide buffer strip or silt fence shall be provided along the perimeter of the downslope sides of the lot;
 - f) the sediment control guidelines prepared by the Nottawasaga Valley Conservation Authority and Ministry of Natural Resources for the Province of Ontario are to be followed; and
 - g) for a lot with extensive fill requirements, the Township may waive the requirements for stabilization of disturbed land after thirty (30) days of inactivity provided that the sediment control measures have been implemented to the satisfaction of the Director.