

MUNICIPALITY OF LAMBTON SHORES

BY-LAW 27 of 2004

Being a By-law to prohibit and regulate the placing or dumping of fill and the alteration of the grade of land

WHEREAS Section 142 of the Municipal Act, 2001, authorizes the Council of a local Municipality to pass by-laws for prohibiting or regulating the placing or dumping of fill and the alteration of the grade of land in the Municipality;

AND WHEREAS the Municipality of Lambton Shores has identified areas containing natural features, which have been recommended for long-term protection, or more detailed assessment;

AND WHEREAS it is in the interest of the community to protect these important natural features from unnecessary degradation or alteration until such time as a final determination has been made on the need for long-term protection;

THEREFORE the Municipal Council of the Municipality of Lambton Shores enacts as follows:

SHORT TITLE

THE MUNICIPALITY OF LAMBTON SHORES SITE ALTERATION BY-LAW

Part 1 DEFINITIONS

1.0 Definitions

In this by-law:

"Draft Plan of Subdivision" shall mean the draft plan of the proposed subdivision pursuant to section 51 of the *Planning Act*, R.S.O. 1990, as amended.

"Drainage" shall mean 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;

"Dumping" shall mean 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;

"Fill" shall mean any type of material deposited or placed on lands and includes soil, stone, rock, concrete, asphalt, sod or turf;

"Grade, Existing" shall mean the elevation of the existing ground surface of the lands on the date of passage of this by-law;

"Inspector" shall mean a person duly authorized by the Municipality to carry out the administration and enforcement duties described in Parts 8 and 9 of this by-law;

"Municipality" shall mean the Corporation of the Municipality of Lambton Shores

"Owner" shall mean the registered owner of the land, or their agent, or anyone acting under the direction of the owner or their agent;

"Site" shall mean the area of land containing any proposed dumping or alteration; and

"Soil" shall mean material commonly known as earth, topsoil, loam, subsoil, clay, sand, gravel, silt, rock or fill, whether mineral or organic.

Part 2 Application of By-law

2.1 This by-law applies to all lands within the Municipality of Lambton Shores.

Part 3 EXEMPTIONS

3.1 By-law- provisions not applicable – various

The provisions of the by-law do not apply to:

- (a) the construction of a building pursuant to a building permit issued by the building official;
- (b) activities or matters undertaken by the Municipality or a local board of the Municipality;
- (c) the placing or dumping of fill, removal of topsoil or alteration of the grade of land as a condition of the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act, RSO 1990 c. P13*, or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (d) the placing or dumping of fill, removal of topsoil or alteration of the grade of land imposed 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;

(e) the placing or dumping of fill, removal of topsoil or alteration of the grade of land 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;

(f) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land licenced under the *Aggregate Resources Act* as a pit or quarry or where a permit for a wayside pit or wayside quarry applies;

(g) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,

(i) that is subject to the *Aggregate Resources Act* or a predecessor of that Act, and

(ii) on which a pit or quarry is either a legal non-conforming use, or a permitted land use under a by-law passed under section 34 of the *Planning Act*,

(h) the placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act, 2001, c. 25, s. 142 (5); 2002, c. 17, Sched. A, s. 30 (2, 3)*;

(i) routine maintenance activities within established and existing golfcourses; or

(j) minor activities approved by the Municipality as exceptions.

(h) lawful construction of buildings, subject to a building permit being issued.

(k) the restriction regarding the removal of topsoil or the alteration of a grade does not apply to 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 or for the construction and regular maintenance of gardens.

(l) landscaping on lots with existing dwellings.

**Part 4
PROHIBITIONS**

4.1 Grade Alteration – permit required

Unless otherwise exempted by this by-law, no person shall alter the grade of land or place dump fill without having first obtained a permit issued by the Municipality.

4.2 Grade Alteration – in accordance with permit

Where a permit has been issued pursuant to this by-law, no person shall alter the grade of land, or place dump fill except on accordance with the plans, conditions and any other information on the basis of which the permit was issued.

Part 5 REQUIREMENTS FOR AN APPLICATION

5.1 Application requirement – permit

A person applying for a permit to alter the grade of land or dump fill shall submit a completed application form, along with the required plans and information to the Municipality.

5.2 Application – approved form

Applications shall be made on the form approved by the Municipality.

Part 6 REQUIREMENTS FOR ISSUANCE OF A PERMIT

6.1 Permit issuance – requirements – various

The Municipality shall issue a permit where:

- a) the applicant has fulfilled all requirements pursuant to this by-law;
- b) the proposed activity is associated with an existing use of the property;
- c) the Municipality is satisfied that the proposed site alteration (including any protective measures) will not result in:
 - (i) Interference with natural drainage processes or blockage of a watercourse;
 - (ii) Soil erosion, slope instability or siltation in a watercourse;
 - (iii) Pollution of a watercourse;
 - (iv) Flooding, ponding, or other impacts on the natural hydrologic cycle;
 - (v) A significant impact on any healthy vegetation community within, or adjacent to the subject site; and
 - (vi) A significant impact on any fish or wildlife habitat within, or adjacent to the subject land; and
- d) the Owner, if required, enters onto an agreement which may be registered on title to the subject lands containing such conditions as the Municipality considers necessary to ensure that the site alteration and any protective measures will be undertaken in accordance with the

approved plans and information. Such an agreement may contain a provision that the applicant post with the Municipality, security in an amount determined by the Municipality, to ensure performance of the obligations under the agreement.

6.1.1 Permit requirements – draft plan

On land that is subject to an approved draft plan of subdivision or condominium, the Municipality shall issue a permit where:

- a) the applicant has fulfilled all requirements pursuant to this by-law;
- b) the proposed activity is pursuant to meeting the conditions of draft plan of subdivision approval;
- c) the Municipality is satisfied that the proposed site alteration (including any protective measures) will not result in:
 - i) drainage patterns of adjacent properties being adversely disturbed;
 - ii) any other works commencing on site until all pertinent approvals are in place;
 - iii) undue dust problems for adjacent properties;
 - iv) any existing Municipal street being fouled with dirt, mud or debris;
 - v) any existing Municipal street being used for construction access purposes except those routes designated for construction access by the Municipal Engineer;
 - vi) any on site burning of material without prior approval of the area Fire Department;
 - vii) any negative impact on groundwater levels except those which are approved by the Municipal Engineer; and
 - viii) any non compliance with any relevant conditions of subsection 6.1 c) of this by-law;
- d) registration of the subdivision agreement on title is expected within (4) months;
- e) the Municipality is in receipt of at least the first submission of engineering drawings for the area (or a portion thereof) of draft plan of subdivision;
- f) the owner, if required, enters into an agreement which may be registered on title to the subject lands containing such conditions as the Municipality considers necessary to ensure that the site alteration and any protective measures will be undertaken in accordance with the approved plans and information. Such agreement may contain a provision that the applicant post with the Municipality security in an amount determined by the Municipality, to ensure performance of the obligations under the agreement.

6.2 Permit valid – until expiry date

A permit issued pursuant to this by-law shall be valid until (and including) the expiry date as specified on the permit by the Municipality.

6.3 Permit issuance – no exemption from other requirements

A permit issued pursuant to this by-law does not preclude the applicant's responsibility to obtain all other approvals which may be required by any level of government and/or agencies thereof.

6.4 Permit transfer – requirements

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 either;

- a) provide the Municipality 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.

6.5 Municipality – imposition of conditions

The Municipality may impose conditions to a permit as in the opinion of the Municipality are reasonable to ensure that the proposed site alteration is consistent with the provisions of section 5.1 of this by-law.

6.6 Municipality – refer application – comment

The Municipality may refer any application, associated plans and information to municipal staff, public agency, advisory body and/or other qualified professional for comment prior to making a decision.

Part 7

ADMINISTRATION

7.1 Municipality – administers and enforces by-law

The administration and enforcement of this by-law shall be performed by the Municipality and such persons duly authorized by the Municipality.

7.2 Municipality – inspection – before alteration of site

The owner of the lands where the alteration, filling or excavation is proposed, shall request that the Municipality make an inspection before site alteration is permitted and after such site alteration is completed.

7.3 Inspectors – powers – enter and inspect

Each inspector may, during daylight hours and upon producing a certificate of designation, enter and inspect any land to which the by-law applies.

7.4 Inspectors – accompanied by assistant

An inspector may, in carrying out an inspection, be accompanied by an assisting person.

7.5 Notice – contravention – owner

If, after the 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.

7.5.1 Contravention – person to remove fill

Where fill is dumped or placed or grading carried out contrary to this by-law or contrary to a permit issued pursuant to this by-law, it shall be removed by the person who dumped or placed it or who caused or permitted it to be dumped or placed, or the owner of the lands.

7.5.2 Required Actions – Municipality can do

Where anything required to be done in accordance with this by-law is not done, the Municipality or persons appointed by the Municipality may, upon such notice as he/she deems suitable, do such thing at the expense of the person required to do it and, in so doing, may charge an administration fee of 15% of such expense with a minimum fee of \$80.00, and both the expense and the fee may be recovered by action or in like manner as municipal taxes.

7.6 Inspector – powers to make order

After giving any person served with a notice pursuant to this by-law an opportunity to appeal before the inspector and make representations on connection with the notice, 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 specified period, the Municipality may have the work done at the owner's expense.

7.7 Order – method of service

An order, pursuant to this by-law, shall be served personally or by prepaid registered mail sent to the last known address of the owner of the land.

7.8 Inspector – placard – site – constitutes service

An Inspector who is unable to effect service pursuant to section 7.5 of this by-law, shall place a placard containing the notice of order on 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.

7.9 Municipality – entry to do remedial work

If the owner fails to do the work required by the order within the period it specifies, the Municipality, in addition to all other remedies it may have, may do the work and for this purpose, may enter on the lands with its employees and agents.

7.10 Costs – represent a lien

Costs incurred by the Municipality pursuant to this by-law are a lien on the land upon the registration in the proper land registry office of a notice of a lien.

7.11 Costs – interest accrues until payment

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.

7.12 Regulation – Conservation Authorities Act – supersedes By-law

A regulation made under the *Conservation Authorities Act* respecting the placing or dumping of fill in any area of the Municipality supersedes the provisions of this by-law.

**Part 8
ENFORCEMENT**

8.1 Inspector Obstructed – constitutes offence

Any person who obstructs an inspector who is carrying out an inspection or work pursuant to the provisions of this by-law is guilty of an offence.

8.2 Fine for conviction – Provincial Offences Act

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*.

8.3 Court order – continuation or repetition of offence

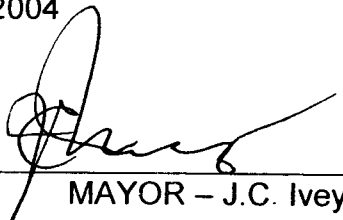
If a person is convicted of an offence under this by-law, in addition to any other remedy or any penalty provided by law, the court in which the conviction has been entered, and any other court of competent jurisdiction thereafter may make an order prohibiting the continuation or the repetition of the offence of any person.

**Part 9
EFFECTIVE DATE**

9.1 Effective Date

This by-law comes into force on the day it is passed.

READ A FIRST AND SECOND TIME THIS 5th DAY OF APRIL 2004

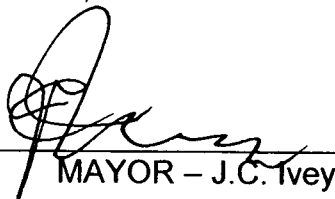


MAYOR – J.C. Ivey



CLERK - Carol McKenzie

READ A THIRD TIME AND FINALLY PASSED THIS 17th DAY OF MAY, 2004



MAYOR – J.C. Ivey



CLERK - Carol McKenzie

**The Corporation of the Municipality of Lambton Shores
Part I Provincial Offences Act
By-law 27 of 2004**

Title: A By-law to prohibit and regulate the placing or dumping of fill and the alteration of the grade of land

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision or Defining Offence	COLUMN 3 Set Fine
1.	Altered grade without a permit	Section 4.1	\$ 200.00
2.	Dumped fill without a permit	Section 4.1	\$ 200.00
3.	Altered grade not in compliance With approved plans	Section 4.2	\$ 200.00
4.	Dumped fill not in compliance With approved plans	Section 4.2	\$ 200.00

The penalty provision for the offence indicated above is Section 8.2 of By-law 27 of 2004, as amended, a certified copy of which has been filed