



# MUNICIPALITY OF **West Elgin**

## **The Corporation Of The Municipality Of West Elgin**

### **By-Law No. 2023-XX**

#### **Being a By-law to Prohibit or Regulate the removal of Topsoil, the Placing or Dumping of Fill and the Alteration of the Grade of Land in Areas of the Municipality of West Elgin**

**Whereas** Section 142 of the *Municipal Act, S.O. 2001*, as amended provides that the Council of a local municipality may pass a by-law to

- a) Prohibit or regulate the placing or dumping of fill;
- b) Prohibit or regulate the removal of topsoil;
- c) Prohibit or regulate the alteration of the grade of land;
- d) Require that a permit be obtained for the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land; and
- e) Impose conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site.

**And Whereas** the Council of The Corporation of the Municipality of West Elgin is desirous of passing such a By-law;

**And Whereas** Section 425 of the *Municipal Act, S.O. 2001*, as amended provides that a municipality may pass by-laws provide that a person who contravenes a by-law passed under the *Municipal Act, 2001*, is guilty of an offence;

**And Whereas** Section 429 of the *Municipal Act, S.O. 2001*, as amended provides that a municipality may establish a system of fines for offences under a by-law passed under the *Municipal Act, 2001*;

**And Whereas** Section 444 of the *Municipal Act, S.O. 2001*, as amended provides that where a municipality is satisfied that a contravention of a by-law passed under the *Municipal Act, 2001* has occurred, the municipality may make an order requiring the person who contravened the by-law or caused or permitted the contravention or the owner or

occupier of the land on which the contravention occurred to discontinue the contravening activity; do work to correct the contravention;

**And Whereas** Section 445 of the *Municipal Act, S.O. 2001*, as amended provides that if a municipality is satisfied that a contravention of a by-law of the municipality passed under the *Municipal Act, 2001* has occurred, the municipality may make an order requiring the person who contravened the by-law or caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to do work to correct the contravention;

**And Whereas** Section 444 of the *Municipal Act, S.O. 2001*, as amended provides that if a municipality has the authority under a by-law under the *Municipal Act, 2001* or any other Act, to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense and that the municipality may recover the costs of doing a matter or thing from the person directed or required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**Now therefore** the Council of the Municipality of West Elgin enacts as follows:

## **1. Short Title**

1.1. This By-law may be referred to as the "Site Alteration By-Law"

## **2. Application**

2.1. This By-law applies to all the lands within the Municipality of West Elgin

## **3. Definitions**

3.1. "Alteration" means the placing or dumping of fill, causing or permitting the placing or dumping of fill, removal of soil, causing or permitting the removal of soil, altering the grade of land, or causing or permitting the grade of the land to be altered.

3.2. "Council" means the Council of The Corporation of the Municipality of West Elgin

3.3. "County" means The Corporation of the County of Elgin

3.4. "Conservation Authority" means the Lower Thames Valley Conservation Authority.

3.5. "Drainage" means the movement of water for the purposes of achieving non-harmful water levels.

3.6. "Dumping" or "Dump" shall be broadly interpreted for the purposes of this By-Law to include stripping, removing, moving, transporting, importing, exporting or placing of any fill or topsoil into, out of or upon lands within any single or different properties within the Municipality.

- 3.7. "Fill" means any material placed on land and without limiting the generality of the foregoing, includes soil, rock, concrete and stone.
- 3.8. "Grade" means the elevation of an existing ground surface, except where the placing or dumping of fill, removal of soil, or the alteration of the then existing ground surface has occurred in contravention of this By-law, in which case, grade means the elevation of the ground surface as it existed prior to such placing or dumping of fill on, the removal of soil from, or the alteration of the then existing ground surface prior to the occurrence of the placing or dumping of fill or the removal of Soil.
- 3.9. "Municipal Act" means the Municipal Act, 2001, S.O. 2001, Chapter 25, as amended or replaced.
- 3.10. "Municipality" means the Municipality of West Elgin
- 3.11. "Officer" means a By-law Enforcement Officer, Chief Building Official or Deputy Chief Building Official as appointed or authorized by the Council of the Municipality to enforce this By-Law and/or any "provincial offences officer" as defined in the Provincial Offences Act.
- 3.12. "Order to Discontinue Activity" means an order made pursuant to section 7.9 of this Bylaw.
- 3.13. "Owner" is a Person and means the registered owner(s) of the land or anyone acting under authorization or direction of the registered owner(s).
- 3.14. "Permit" means a permit issued by the Municipality pursuant to the provisions of this Site Alteration By-law.
- 3.15. "Person" included:
- a) Natural individuals and their heirs, executors, administrators, agents, successors and representatives;
  - b) Corporations, partnerships, other forms of business associations and their respective officers, employees, agents, successors, consultants, assignees and representatives.
- 3.16. "Place" or "Placement" means the distribution of fill on lands to establish a finished ground surface higher or lower than the existing grade and "placing" and "placed" in relation to fill have the same meaning.
- 3.17. "Planning Act" means the Planning Act, RSO 1990 c P .13, as amended or replaced.
- 3.18. "Provincial Offences Act" means the Provincial Offences Act, R.S.O. 1990, c. P.33; as amended or replaced.
- 3.19. "Site" means the area of land subject to the proposed grade alteration, placement or dumping of fill or removal of soil.

3.20. "Site Alteration Agreement" means an agreement entered into, in accordance with section 5.9 of this By-Law.

3.21. "Soil" means material consisting of a mixture or any one or all of organic remains, clay and rock particles.

3.22. "Topsoil" shall have the same meaning as the definition of "topsoil" under section 142(1) of the Municipal Act. For reference purposes only and subject to amendments to the Municipal Act, the term as of the date of the passing of this By-Law is defined as "those horizons in a soil profile, commonly known as the "O" and the "A" horizons, containing organic material and includes deposits of partially decomposed organic matter such as peat."

3.23. "Work Order" means an order made pursuant to section 7.13 of this By-Law.

3.24. "Zoning By-law" means an in-force by-law passed by the Municipality pursuant to section 34 of the Planning Act.

#### **4. Prohibition**

4.1. No Person shall place or dump fill or cause or permit the placing or dumping of fill without obtaining a Permit for such purpose from the Municipality.

4.2. No Person may remove soil or cause or permit the removal of soil without obtaining a permit for such purpose from the Municipality.

4.3. No Person shall alter the grade of land or cause or permit the grade of the land to be altered without obtaining a permit for such purpose from the Municipality.

4.4. No Person shall place or dump fill, cause or permit the placing or dumping of fill, remove soil, alter the grade of land, or cause or permit the grade of the land to be altered in a manner that is not in compliance with the terms of a permit issued for such purpose by the Municipality.

4.5. No Person shall fail to comply with an Order to Discontinue Activity made under this Bylaw.

4.6. No Person shall fail to comply with a Work Order made under this By-Law.

#### **5. Site Alteration Permits and Agreements**

5.1. An application for a Permit to change the Grade of land, Place or Dump fill, or remove Soil must be completed on a form provided by the Municipality,

5.2. Subject to section 5.9 of this By-Law, a Permit shall be issued by the Municipality's Chief Building Official or his or her designate when the following criteria have been fulfilled:

a) The proposed site alteration is related to a use permitted within the Zoning By-law; and

- b) The Owner has addressed the following matters to the satisfaction of the Municipality:
- i. All necessary approvals have been obtained from the Conservation Authority;
  - ii. All necessary approvals have been obtained in accordance with the County of Elgin Woodlands Conversation By-Law;
  - iii. The proposal will not cause any adverse impact on area drainage;
  - iv. The proposal will not adversely impact slope stability or cause soil erosion;
  - v. The proposal will not adversely impact vegetation communities, wildlife habitat or fish habitat in the area;
  - vi. The proposal will not adversely impact the quality or quantity of groundwater in the area;
  - vii. Such other matters related to the proposal which are raised at the absolute discretion of the Director of Infrastructure and Development Services of the Municipality, or his designate, as the context of the proposal requires, which are communicated to the applicant in relation his/her or its application for a Permit.

5.3. It is a condition of each Permit that the Permit may be revoked by the Municipality under the following conditions:

- a) If it was obtained on mistaken, false or incorrect information;
- b) If it was issued in error;
- c) If the Owner requests in writing that it be revoked;
- d) If the terms of a Site Alteration Agreement entered into in accordance with section 5.8 of this By-Law have not been complied with; or
- e) If an Owner fails to comply with the provisions of this By-Law or with an order requiring work to be done to correct any contravention of this By-Law.

5.4. In any Site Alteration Permit, the Municipality may stipulate conditions that are specific to a particular site alteration proposal. Such conditions may include but are not limited to the following:

- a) The Municipality may, from time to time and at the Applicant's expense, require the testing of any fill by a qualified expert retained by the Municipality. Dumping and/or fill removal may be suspended pending test results at the discretion of the Municipality;
- b) The Municipality may require the Applicant to install such site remediation measures, including topsoil, seeding, sodding and installation of berms and landscaping as are necessary to minimize the visual impact of Fill or Grade alteration proposals and to provide for stabilization of altered Grade;
- c) The Municipality may require a lot grading certificate upon completion of the work described in any Permit and may require the Owner or Applicant to post security to ensure delivery of such certificate.

5.5. A Site Alteration Permit shall not exempt the Owner from obtaining any other necessary approvals from governments, boards and/or other approval authorities which have jurisdiction in the area.

5.6. A Site Alteration Permit shall be valid for the length of time detailed by the Municipality.

- 5.7. A Site Alteration Permit shall be transferable to subsequent owners of the Site provided the Municipality is advised in writing of their acknowledgment and commitment to comply with all of the requirements of an existing Site Alteration Permit.
- 5.8. Subject to potential financial conditions which may be required pursuant to section 5.9 of this By-Law, the Site Alteration Permit fee and other fees associated with this By-Law are contained in the Municipality's Fees and Charges By-Law, as amended or replaced.
- 5.9. Notwithstanding sections 5.2 through 5.7 of this By-Law, the Municipality with respect to any application for a Permit, in its sole and absolute discretion, may require the Owner to enter into a Site Alteration Agreement with the Municipality as a condition of Permit approval and such Site Alteration Agreement shall be registerable on title of and run with the lands to ensure the site alteration proposed for the lands occurs in accordance with approved plans, specifications and proper engineering principles. The aforementioned Site Alteration Agreement may require:
- a) The Owner to provide financial security to the Municipality in an amount and form acceptable to the Municipality in its sole and absolute discretion;
  - b) The Owner to provide evidence that he/she/it has sufficient liability insurance coverage to cover the risks associated with the proposed site alternation;
  - c) The Owner or Applicant to release, indemnify and/or agree to defend the Municipality;
  - d) The Owner to certify that the fill contains no contaminants, as defined by the Environmental Protection Act, RSO 1990 c E 19, as amended or replaced, and any Regulations of the aforementioned Act, as amended or replaced;
  - e) Certification by a geotechnical engineer or similarly qualified Person at any time during the Site Alteration project; and/or
  - f) The Owner to address such other safeguards related to the proposal and engineering drawings which are raised at the absolute discretion of the Director of Infrastructure and Development Services of the Municipality, or his designate, as context requires, which are communicated to the applicant.

## **6. Exemptions**

- 6.1. The provisions of this By-Law do not apply to the following:
- a) Activities of a Municipality, County, local board, road authority, or Crown Agency as defined in the Crown Agency Act.
  - b) Activities authorized pursuant to a building permit issued by the Municipality.
  - c) Normal farm practices as defined in section 1.1 of the Farming and Food Production Protection Act, 1998, S.O. 1998, c. 1, as amended or replaced.
  - d) Any placing or dumping of fill, removal of soil, or alteration of the grade of land exempted pursuant to section 142(5) of the Municipal Act.
  - e) Activities pursuant to executed site plan agreement, subdivision agreement, severance agreement or any other development agreement pursuant to the Planning Act.

## **7. Enforcement, Remedies and Penalties**

- 7.1. The administration and enforcement of this By-law is the responsibility of the By-Law Enforcement/Property Standards Officer, the Building Inspector of the Municipality of West Elgin or such other persons as may be appointed to that position by the Council of the Municipality of West Elgin. An Inspector may, at any reasonable time, enter and inspect a property subject to a Permit or otherwise apparently undergoing Site Alteration to determine compliance with this By-law, providing that nothing herein authorizing an Inspector to enter a building that is a residence without permission of the resident:
- 7.2. It shall be an offence for any person to contravene any provision of this By-law.
- 7.3. Any person who contravenes any provision of this bylaw is guilty of an offence and upon conviction shall be liable to a penalty as set out in Section 61 of the *Provincial Offences Act, R.S.O. 1990*, Chapter P.33 or any successor thereof.

## **8. Severability**

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

## **9. Effective Date**

This By-law shall come into force and effect on the day that it is passed.

Read a first, second, and third time and finally passed this XX<sup>th</sup> day of MONTH, 202#

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XXXXX  
Mayor

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Clerk

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