

THE CORPORATION OF THE TOWN OF TECUMSEH

BY-LAW 2004-29

Being a By-law to provide for the regulation of the placing or dumping of fill, alteration of the grade of, or removal of topsoil from land within the Municipality.

WHEREAS section 142. (1) of the *Municipal Act* S.O., 2001, c.25 states that a local municipality may,

- (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 the 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;
- (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;
- (f) require that fill dumped or placed contrary to a by-law passed or a 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;
- (g) require the rehabilitation of land from which topsoil has been removed contrary to a by-law passed or a permit issued under this section; and
- (h) require that the grade of the land altered contrary to a by-law passed or a permit issued under this section be restored to its original condition by the person who altered it or who caused or permitted it to be altered. 2001, c.25, s.142(2)

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

NOW THEREFORE, the Council of the Corporation of the Town of Tecumseh enacts as follows:

TABLE OF CONTENTS

	PAGE
SECTION 1 – DEFINITIONS	3
SECTION 2 – GENERAL	
2.1 Short title	3
2.2 Application	3
2.3 Conformance to other law	3
2.4 Non Retroactivity	3
2.5 Exemption by agreement	3
2.6 Severability	3

2.7	Effective date	3
2.8	Schedules	3
2.9	English Measurements	3
2.10	Repeal of Existing By-law	4

SECTION 3 – ADMINISTRATION AND ENFORCEMENT

3.1	Administrator	4
3.2	Violations and penalties	4
3.3	Part 1 Violations and penalties	4
3.4	Entry upon lands for inspections	4
3.5	Entry upon lands to do work	4
3.6	Removal of fill and restoration of lands	4
3.7	Restoration of the grade of lands	4
3.8	Recourse by the Town to the Owner	4
3.9	Restoration of land - topsoil	4
3.10	Stop work order	4
3.11	Work order	4
3.12	Service	5
3.13	Service by Placard	5
3.14	Town may do work	5
3.15	Recovery of Costs	5
3.16	Obstruction	5

SECTION 4 – GRADING, FILLING & DUMPING - GENERAL

4.1	Prohibition – requirement for permits	5
4.2	Building permit exemption	5
4.3	Alteration of drainage - requirement for permits	5
4.4	Alteration of designed grades – requirement for permits	5
4.5	Conditions for issuance of a permit	5
4.6	Requirements - alteration of private drains permit	6
4.7	Additional conditions	6
4.8	Rear Yard Drainage required	6
4.9	Rear Yard Drainage exemption	6

SECTION 5 – ADDITIONAL AGRICULTURAL ZONE PROVISIONS

5.1	Prohibition	6
5.2	Exemption	6

SECTION 1 – DEFINITIONS

In this By-law,

- (a) "Crown of the road" means the high portion of a road cross-section, generally associated with the centerline of the road.
- (b) "Dumping" means the placing of any fill material on any lands.
- (c) "Existing grade" means the naturally occurring grade.
- (d) "Filling" means the changing of the existing grade through the addition of fill material.
- (e) "Grading" means the altering of the existing grade.
- (f) "Owner" means that person whose name appears on the latest revised assessment role of the municipality.
- (g) "Professional Engineer" means an engineer licensed by the Association of Professional Engineers of Ontario.
- (h) "Required yard" shall have the same meaning as that found in the applicable zoning by-law.
- (i) "Town" means the Corporation of the Town of Tecumseh.

SECTION 2 - GENERAL

- 2.1 This By-law may be referred to variously as the "Grading, Filling, Dumping and Topsoil removal By-law" or the "By-law".
- 2.2 The provisions of this By-law shall apply to all lands within the boundaries of the Town as are now or hereafter legally constituted.
- 2.3 Nothing in this By-law shall serve to relieve any person from the obligation to comply with all other applicable law.
- 2.4 The provisions of this By-law shall not apply to the placing or dumping of fill, the grading of, or the removal of topsoil from land lawfully conducted prior to the final passing of this By-law.
- 2.5 The Town may by agreement permit the placing or dumping of fill, the grading of, or the removal of topsoil from land that does not otherwise comply with the provisions of this By-law.
- 2.6 If any court of competent jurisdiction finds any provision of this By-law is invalid or is ultra vires of the jurisdiction of the Town, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this By-law.
- 2.7 This By-law shall come into force and effect when it is finally passed.
- 2.8 All schedules affixed to this By-law are included and form part of this By-law by reference thereto.
- 2.9 English measurements, provided in brackets, are shown for convenience only and do not form part of this By-law.

2.10 Town of Tecumseh By-law 2002-32 is hereby repealed.

SECTION 3 - ADMINISTRATION AND ENFORCEMENT

- 3.1 The provisions of this By-law shall be administered by the Town's Chief Building Official and Building Inspectors. The duly appointed Chief Building Official and Building Inspectors of the Town are hereby designated as Officers for the purposes of this By-law.
- 3.2 Every person who contravenes any provision of this By-law, a condition to a permit or an order issued pursuant to this By-law is guilty of an offence and upon conviction thereof is liable to a fine in the maximum amount provided for by Section 144. (16) of the *Municipal Act*, R.S.O. 2001, c.25.
- 3.3 Notwithstanding the provisions of subsection 3.2, every person who contravenes any provision of this By-law is guilty of an offence and can, at the option of the Town be prosecuted pursuant to the provisions of Part 1 of the *Provincial Offences Act*, and upon conviction thereof is liable to a set fine as determined in accordance with the procedure delineated in the Act and regulations passed thereunder.
- 3.4 An Officer may at any reasonable time, enter and inspect any lands for the purpose of determining compliance with any provision of this By-law, a permit issued pursuant to this By-law or an order issued pursuant to this By-law.
- 3.5 An Officer may at any reasonable time enter lands to do work required by an order issued pursuant to this By-law provided the service requirements of subsection 3.12 having been complied with.
- 3.6 Any dumping or placing of fill carried out contrary to this By-law or a permit issued pursuant to this By-law shall be removed and the site restored to its original condition by the person who dumped or placed it or caused or permitted it to be dumped or placed.
- 3.7 Where the grade of land has been altered contrary to this By-law or a permit issued pursuant to this By-law the grade of the land shall be restored to its original condition by the person who altered it or caused or permitted it to be altered.
- 3.8 For the purposes of enforcing the requirements of subsections 3.6 and 3.7 the Town shall have recourse to the owner of the land in accordance with Sections 144(5) and 144(6) of the *Municipal Act*, S.O.2001, c.25.
- 3.9 Where topsoil has been removed contrary to this By-law or a permit issued pursuant to this By-law the land shall be rehabilitated.
- 3.10 Stop Work Order – If an Officer is satisfied that there is a contravention of this By-law, the Officer may make an order requiring the owner of the land or the person who caused or permitted the placing or dumping of fill, removal of topsoil or alteration of the grade of land in contravention of this By-law to discontinue the activity and the order shall set out,
- (a) the municipal address or the legal description of the land; and
 - (b) reasonable particulars of the contravention and the period within which there must be compliance.
- 3.11 Work Order – If an Officer is satisfied that a contravention of this By-law has occurred, the Officer may make an order requiring work to be done to correct the contravention and the order shall set out,
- (a) the municipal address or the legal description of the land; and

- (b) reasonable particulars of the contravention and of the work to be done and the period within which there must be compliance with the order; and
 - (c) a notice stating 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.
- 3.12 An order issued 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.
- 3.13 If an Officer is unable to effect service on the owner under subsection 3.12 the Officer may place a placard containing the terms of the order in a conspicuous place on the land.
- 3.14 If the owner fails to do the work or things required by the order within the period it specifies, the Town, in addition to all other remedies it may have, may do the work or things and for this purpose may enter on the lands with its employees and agents.
- 3.15 Costs incurred by the Town under subsection 3.14 shall be recovered in like manner and with the same priority as Municipal Taxes.
- 3.16 No person shall obstruct an Officer in the performance of his duties or a person carrying out work in accordance with subsection 3.5.

SECTION 4 - DUMPING, FILLING AND GRADING

- 4.1 No person shall dump on, fill, remove topsoil from or grade lands within the Town unless a permit has been issued authorizing the dumping, filling, removal of topsoil or grading (See Section 5). The cost of the permit shall be as provided for in Schedule "A".
- 4.2 Notwithstanding subsection 4.1 where a building permit has been applied for, the provisions of this By-law shall be complied with as a condition to the issuance of the building permit and, as such, the requirement for a separate permit and fee required by this By-law shall be waived.
- 4.3 No person shall change the drainage characteristics of lands without a permit.
- 4.4 No person shall change the grade elevations of lands as designed by a professional engineer without a permit.
- 4.5 An Officer shall issue a permit upon the following conditions being satisfied:
- a) That a satisfactory lot-grading plan has been received showing the extent of the works, the maximum elevation of the raised lands and the measures proposed to control storm-water run-off. Changes to the elevations of lands as designed by a professional engineer must be certified by a professional engineer.
 - b) That the Town is satisfied that storm water control measures including, swales, tile drains and, or retaining walls are adequate to prevent the run-off of storm-water to adjacent lands.
 - c) That the maximum permitted elevation shall be consistent with the elevation of adjoining lands, further, the maximum permitted elevation shall not exceed one metre (39 inches) above the crown of the road.
 - d) That all required yards are adequately sloped from the existing grade at the property line. The maximum slope of all required yards shall be eight centimetres per metre (1 inch per foot).
 - e) Where it can be demonstrated that the requirements of c) and d) above cannot be met, an Officer, at the Officer's sole discretion, may waive the requirements

as long as the waiving of these requirements does not create an adverse impact on adjoining lands.

- f) That the minimum elevation conforms to the requirements of the Conservation Authority, where applicable. That where a minimum elevation has not been established by the Conservation Authority the minimum elevation shall be established to the satisfaction of the Officer having regard to the elevation of the road, the elevation of abutting lands and the potential for flooding.
- g) That the topsoil being removed is being used to restore the lands for which the permit is being issued unless it can be shown to the satisfaction of the Officer that the topsoil is not needed to restore the lands in which case the topsoil may be permitted to be removed from the land. Topsoil permitted to be removed may only be relocated within Town limits, and the site where the topsoil is being located to shall be approved by the Officer.
- h) That satisfactory dust control, traffic control, noise control, hours of operation and vehicle travel routes are established for all equipment involved in the dumping, filling or grading operation.
- i) The requirements for issuing a permit under Section 5 are satisfied.

4.5 No person shall alter a private drain without a permit. In addition to the requirements of subsection 4.4, a permit to alter a private drain shall not be issued unless it can be shown that;

- (a) the drain is no longer required; or
- (b) that alternative drainage measures will be constructed to satisfactorily maintain the existing drainage scheme.
- (a) No person shall fill, dump on, remove topsoil from, alter a private drain or grade lands contrary to the conditions of a permit or contrary to the plans, specifications or drawings upon which the permit was issued.

4.6 A permit issued in accordance with subsections 4.4 and 4.5 may impose any other conditions that are in the opinion of the Officer required to fulfill the requirements of this By-law.

4.7 In addition to any other requirements of this By-law rear-yard drainage shall be provided as a condition to the issuance of a permit on any lands zoned residential a Town Zoning By-law.

4.8 The requirement of subsection 4.7 may be waived, at the sole discretion of an Officer, where an adequate storm sewer outlet cannot be obtained.

SECTION 5 – ADDITIONAL AGRICULTURAL ZONE PROVISIONS

The following provisions shall apply to all lands zoned agricultural in a Town of Tecumseh Zoning By-law in addition to the provisions of Section 4.

5.1 The dumping on, filling of, removal of topsoil from or the grading of lands zoned Agricultural in a Town of Tecumseh Zoning By-law shall be prohibited.

5.2 Notwithstanding subsection 5.1 above an Officer may issue a permit where:

- a) a building permit has been issued for the construction of a structure on the land and the dumping on, filling of, removal of topsoil from or grading of the land is incidental and subordinate to the construction of the structure or;

- b) the dumping on, filling of, removal of topsoil from or grading of the land is an approved farm practice as determined by the Ministry of Agricultural, Food and Rural Affairs or the practice falls within the exemptions contained in Section 142 (6) of the *Municipal Act*, S.O. 2001, c.25.
- c) The dumping on, filling of, removal of topsoil from, or grading is taking place to alter an existing irregular or unusual feature on the land such as the filling of a pond or the grading of a raised mound of earth.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS

18th DAY OF MAY, 2004.



CLERK



MAYOR

SCHEDULE "A" to

BY-LAW NO. 2004-XXX

CORPORATION OF THE TOWN OF TECUMSEH

PERMIT FEES

Permit Fee	\$100.00
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