

By-Law No. 08-59
of The Corporation of the Township of Malahide

being a by-law to control the dumping of fill, removal of topsoil and alteration of grades.

WHEREAS s. 142 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, authorizes a municipality to prohibit or regulate the dumping of fill, removal of topsoil and alteration of grades;

NOW THEREFORE the Council of the Corporation of the Township of Malahide hereby enacts as follows:

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1. Interpretation

1.1 "Applicant" means each Person who seeks or obtains a Permit.

1.2 "Conservation Authority" means the Catfish Creek Conservation Authority, the Kettle Creek Conservation Authority, Long Point Region Conservation Authority or such other conservation authority as may, from time to time, have jurisdiction over the lands in the

Township.

- 1.3 "Dumping" means the movement and depositing of Fill from one location to a different location and includes the movement and deposition of Fill from one location on a property to another location on the same property and "Dump" and "Dumped" in relation to Fill have the same meaning.
- 1.4 "Fill" means any type of material deposited or Placed on lands and includes Soil, stone, concrete, construction materials, asphalt, sod or turf either singly or in combination.
- 1.5 "Director" means the Township's Director of Physical Services or Director of Municipal Services.
- 1.6 "Grade" means the elevation of a ground surface and includes:
- (a) "Existing Grade", meaning the elevation of an existing ground surface, except that where the Placing or Dumping of Fill or the alteration of the ground surface has occurred in contravention of the By-law, "Existing Grade" shall mean the Grade as it existed prior to the Placing or Dumping of Fill or alteration of the Grade;
 - (b) "Finished Grade", meaning the elevation of the ground surface of land upon which Fill has been Placed or Dumped or after alteration of the Grade has occurred; and
 - (c) "Proposed Grade", meaning the proposed elevation of the ground surface of land, upon which any Fill is proposed to be Placed.
- 1.7 "Inspector" means any of the Director, the Township's Road and Construction Manager, Building Inspector, Drainage and Roads Supervisor, Property and Roads Supervisor, and such municipal law enforcement officers as may be appointed by the Township from time to time.

- 1.8 "Normal Agricultural Practice" includes sod-framing, greenhouse operations and nurseries for horticultural products, but does not include the sale, exchange or other disposition of Topsoil.
- 1.9 "Owner" means each registered owner of land
- (a) for which a Permit is sought or obtained; or
 - (b) in respect of which there is or may be contravention of
 - (i) the By-law;
 - (ii) an order made pursuant to section 444 or 445 of the *Municipal Act*, 2001;
or
 - (iii) a court order made pursuant to section 431 of the *Municipal Act*, 2001.
- 1.10 "Permit" means a permit issued by the Director pursuant to the provisions of this By-law.
- 1.11 "Person" includes a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership or other form of business association.
- 1.12 "Placing" means the distribution of Fill on lands to establish a Finished Grade higher or lower than the Existing Grade and "Place" and "Placed" in relation to Fill have the same meaning.
- 1.13 "Ponding" means the accumulation of surface water in an area not having drainage therefrom where the lack of drainage is caused by the Placing or Dumping of Fill or the alteration of the Grade.
- 1.14 "Refuse" means (a) debris, junk or effluent belonging to or associated with a house or household or any industry, trade or business, and without limiting the generality of the

foregoing, includes garbage, special collection materials, recyclable materials, organic materials, yard waste and prohibited waste.;

(b) vehicle parts or accessories;

(c) furniture, appliances, machinery, barbeques or parts thereof;

(d) animal excrement; and

(e) without restricting the foregoing, any unused or unusable material that by reason of its state, condition or excessive accumulation:

- (i) appears to have been cast aside, discarded or abandoned;
- (ii) appears to be worthless, useless or of no particular value; or
- (iii) appears to be used up, expended or worn out in whole or in part.

1.15 "Retaining Wall" means a wall designed to contain and support Fill which has a Finished Grade higher than that of adjacent lands. A retaining wall exceeding 1000 mm in exposed height will require a building permit as required under the Ontario Building Code

1.16 "Soil" means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel or any combination thereof.

1.17 "Swale" means a shallow depression in the ground sloping to a place for disposal for the purpose of providing a method of drainage of surface water.

1.18 "Topsoil" means 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.

1.19 "Township" means The Corporation of the Township of Malahide and includes all areas within its territorial limits.

- 1.20 "Zoning By-Law" means a Township by-law passed pursuant to s. 34 of the Planning Act and includes the Township's Zoning By-law No. 05-27, as amended or superseded.

2. General Prohibitions

- 2.1 No Person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped in the Township except in accordance with this By-law.
- 2.2 No Person may remove Topsoil or cause or permit the removal of Topsoil except in accordance with this By-law.
- 2.3 No Person may alter the Grade or cause or permit the Grade of any land in the Township to be altered except in accordance with this By-law.
- 2.4 Where a Permit has been issued, no Person may, except in accordance with the provisions of that Permit,
- (a) Place or Dump Fill or cause or permit Fill to be Placed or Dumped;
 - (b) remove Topsoil or cause or permit the removal of Topsoil; or
 - (c) alter the Grade of any land or cause or permit the Grade of any land in the Township to be altered.

3. Exceptions

- 3.1 The provisions of this By-law do not apply to the extent that the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land is:
- (a) undertaken by a municipality or a local board of a municipality;
 - (b) imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision

agreement entered into under those sections;

- (c) imposed after December 31, 2002 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;
- (d) 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;
- (e) undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (f) undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*; or
- (g) undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*;
- (h) undertaken in accordance with a licence or permission obtained under applicable provincial or federal legislation;
- (i) undertaken in accordance with a permit issued by the Township's Chief Building Official pursuant to the *Building Code Act*, 1992, for the erection or demolition of a building or structure, provided the Director and the Chief Building Official are satisfied that the permit application provides sufficient information to determine compliance with the provisions of this By-law; or
- (j) undertaken in accordance with an order issued pursuant to the Township's Property Standards By-law as from time to time amended.

3.2 The provisions of this By-law do not apply to the extent that Fill is Placed on lands zoned

for residential use within the meaning of the Zoning By-law for the purpose of lawn dressing, landscaping, adding to flower beds or vegetable gardens, provided that:

- (a) the elevation of the land within 0.6 metres of the property line is not changed;
- (b) 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;
- (c) the functionality of any drainage infrastructure is not impeded; and
- (d) the volume of such Fill does not exceed 10 cubic metres.

3.3 The provisions of this By-law do not apply to the extent that Topsoil is removed as an incidental part of a Normal Agricultural Practice.

3.4 The provisions of this By-law do not apply in an area to the extent of any conflict with a regulation made under section 28 of the *Conservation Authorities Act* respecting the Placing or Dumping of Fill, removal of Topsoil or alteration of the Grade of land in such area.

4. Specific Prohibition and Regulations

4.1 No Person may place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may remove Topsoil or cause or permit the removal of Topsoil and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered within the Township on the following circumstances:

- (a) where the Owner has not consented in writing to the Placing or Dumping of Fill or the removal of Topsoil or to alteration of the Grade;
- (b) where the Fill is Placed or Dumped or the Grade is altered for storage purposes and such storage is not permitted pursuant to the Zoning By-law;
- (c) where the Placing or Dumping of Fill or alteration of the Grade will result in changing any Grade established by a grading and drainage plan approved by the Township including, without limitation, a grading and drainage plan approved by

the Township in relation to any subdivision, re-zoning, site plan or building permit approval, and such Placing or Dumping of Fill or alteration occurs without a Permit;

- (d) where the Fill includes material from the demolition any structure or includes "refuse" as that term is defined within the meaning of the Township's By-law, as amended or includes toxic or hazardous materials, glass or sewage;
- (e) where the Placing or Dumping of Fill or alteration of the Grade would result in Soil erosion or Soil pollution, blockage or siltation of any watercourse, pollution of any watercourse, flooding or Ponding on any land or detrimental effect on any environmentally significant area or wetland complex;
- (f) where the Placing or Dumping of Fill or alteration of the Grade does not accord with Township design standards;
- (g) where the Placing or Dumping of Fill or alteration of the Grade is on any land zoned within any of the Open Space zoning designations pursuant to the Zoning By-law, unless approval therefor has been issued by the Conservation Authority or a Permit has been issued pursuant to this By-law.

4.2 No person may Place or Dump Fill or cause or permit Fill to be Placed or Dumped and no Person may alter the Grade of any land or cause or permit the Grade of any land to be altered in the Township without a Permit where the volume of the Fill being Placed or Dumped or the volume of Fill involved in the alteration exceeds the limits prescribed below:

- (i) for any lands within a residential zone as set out in the Township's Zoning By-Law- 10 cubic metres;
- (ii) for any lands within an agricultural zone as set out in the Township's Zoning By-Law – 75 cubic metres; and
- (iii) for any lands within a industrial/commercial zoning in the in the Township's Zoning By-Law – 25 cubic metres.

5. Issuance of a Permit

5.1 The Director is hereby authorized and directed to issue a Permit where an Applicant has satisfied the requirements of this By-law.

5.2 An Applicant shall submit the following to the Director:

- (a) a completed application in the form prescribed from time to time by the Director in accordance with the information required in this By-law;
- (b) the Permit fee prescribed by the Township's General Fees and Charges By-law as from time to time amended;
- (c) a Fill-control plan prepared by a Professional Engineer, Ontario Land Surveyor, landscape architect or other such professional specifically licensed and insured to undertake grading and drainage design work as per the applicable provincial legislation and the regulations thereunder, which plan shall include any or all of the following as shall be specified by the Director and to the Director's satisfaction:
 - i) a key map showing the location of each lot, including the nearest major intersection and north arrow;
 - ii) the lot boundaries and area (expressed in hectares) of each lot;
 - iii) the existing and proposed use of the land and the location and use of the buildings and other structures adjacent to each lot;
 - iv) the location, dimensions and use of any building and other structures existing or proposed to be erected on each lot;
 - v) the location of lakes, streams, wetlands, channels, ditches, other watercourses and other bodies of water on and within a minimum of 30 metres beyond each lot boundary;
 - vi) the location of all Regulatory Flood Lines and Conservation Authority Fill Regulation lines;

- vii) the location and identification of the predominant existing Soil types;
 - viii) the species, Grade at base and size of all trees greater than 250 millimetres in caliper, all shrubs, trees and hedges within three (3) metre(s) of the property line and driveways on each lot and all easements and rights-of-way over, under, across or through each lot;
 - ix) the location and identification of the predominant existing Soil types;
 - x) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of 30 metres beyond each lot boundary;
 - xi) the existing topography on each lot and extending a minimum of 30 metres beyond each lot boundary;
 - xii) geodetic elevations showing the proposed and existing Grades of each lot;
 - xiii) the location and dimensions of all proposed land disturbance activities, including construction of access roads;
 - xiv) the location and dimensions of all temporary Soil, dirt or Fill stockpiles;
 - xv) the location, dimensions, design details and design calculations of all construction site erosion control measures that may be necessary to minimize the impact of the proposal;
 - xvi) a schedule of the anticipated starting and completion dates of each land disturbance or land development activity;
 - xvii) provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
 - xviii) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
 - xix) an indication on the drawing of directions of overland water flow and overland flow route;
- (d) Proposed Grades and drainage system to be used upon completion of the filling operation;
- (e) a description of the proposed Fill, including a list of the sources and geotechnical reports as to content and quality, prepared by qualified experts in that regard;

- (f) a certificate of the Owner, Applicant and each qualified expert referenced in paragraph (e) certifying that the Fill contains no contaminants as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E.19;
- (g) a plan showing the design details of 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
- (h) security in a form and amount to be determined by the Director to secure performance of the work for which the Permit is being applied.

5.3 The Director may draw upon the security posted pursuant to paragraph 5.2(h) to recover the cost of the Township performing any required work which the Owner or the Applicant has failed to perform.

5.4 The issuance of a Permit does not relieve the Owner or the Applicant from the obligation to secure all other applicable approvals.

6. Permit Requirements

6.1 The Director may, prior to the issuance of a Permit, require the Owner or Applicant or both to enter into an agreement which may be registered on title to the subject lands containing such requirements of this By-law as the Director considers necessary to ensure that the Placing or Dumping or removal of Fill or alteration of the Grade or the removal of Topsoil is done in accordance with the prevailing Township design standards and proper engineering principles, which requirements shall include, but not be limited to a timetable for the completion of the work.

6.2 Requirements contained in an agreement may include the Owner or Applicant releasing and indemnifying the Township, certifying that the Fill contains no contaminants as defined in the *Environmental Protection Act*, posting with the Township the required

security and where, in the opinion of the Director, extensive activities are proposed, certification by a geotechnical engineer or other similarly qualified Person, both prior to the issuance of a Permit and upon completion of the work. All such certification shall state that the Owner or Applicant can and has complied with all of the obligations and conditions contained in the applied for and issued Permit.

- 6.3 The Director may, for time to time and at the Applicant's expense, require the testing of any Fill by a qualified expert retained by the Township.
- 6.4 The Director may require an Applicant to install such site remediation measures, including Topsoil, seeding, sodding and installation berms and landscaping, as are necessary to minimize the visual impact of Fill or Grade alteration proposals.

7. Permit Expiry

- 7.1 A permit shall expire on the earliest of the following dates:
- (a) the expiry date as specified on the Permit by the Director;
 - (b) the date which is twelve (12) months following the date on which the Permit was issued; and
 - (c) the date on which an Owner at the time of issuance of the Permit ceases to be an Owner.
- 7.2 A Permit which expires pursuant to section 7.1 of this By-law may be renewed within a two (2) month period from the date of expiry by making a written application of the Director accompanied by a payment of 50% of the original Permit fee, provided that the proposed work has not been revised.

8. Permit Revocation

8.1 It is a condition of each Permit that the Permit may be revoked by the Director under the following circumstances:

- (a) if it was obtained on mistaken, false or incorrect information;
- (b) if it was issued in error;
- (c) if the Owner or Applicant requests in writing that it be revoked;
- (d) if the terms of an agreement under this By-law have not been complied with; or
- (e) if an Owner or an Applicant fails to comply with the provisions of this By-law or with an order requiring work to be done to correct contraventions of this By-law.

9. Exemption

9.1 The Director may, where it is reasonable in all of the circumstances, and where the Applicant has complied with the provisions of section 5 hereof, grant an exemption from the application of this By-Law, with any such exemption being subject to such terms and conditions as the Director, in its sole discretion deems necessary.

10. Enforcement

10.1 Inspectors are hereby authorized to carry out inspections in relation to his By-law and are delegated such powers as are within the jurisdiction of the Township in order to administer and enforce this By-law including, without limitation, the power to make orders requiring the discontinuance of activities and requiring work to be done to correct contraventions of this By-law.

11. Remedies and Penalties

11.1 Each Person who Places or Dumps Fill or who causes or permits Fill to be Placed or Dumped contrary to this By-law or to a Permit shall forthwith remove such Fill and restore the Existing Grade of the land.

- 11.2 Each Person who removes Topsoil contrary to this By-law or to a Permit shall forthwith rehabilitate the land from which the Topsoil was removed including the replacement on the land of Topsoil and the restoration of the Existing Grade of the land.
- 11.3 Each Person who alters the Grade of land or who causes or permits the alteration of the Grade of land contrary to this By-law to a Permit shall forthwith restore the land to its original condition including the Existing Grade of the land.
- 11.4 Where an Owner fails to do any work required in an order issued pursuant to this By-law within the period specified, the Director may cause the work to be done at the Owner's expense and, for this purpose, the Director, Inspectors and the Township's employees and agents may enter on the Owner's land at any reasonable time.
- 11.5 Each Person who contravenes any provision of this By-law or an order under sections 444 or 444 of the *Municipal Act*, 2001, is guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not more than \$10,000.00; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000.
- 11.6 Despite subsection 10.5, where the Person convicted is a corporation, the maximum fines in paragraphs 10.5(a) and (10.5(b) are \$50,000 and \$100,000, respectively.

12. General Provisions

- 12.1 The provisions of this By-law shall apply to all lands and premises withing the Township.
- 12.2 All references to legislation in this By-law are references to legislation of the Province of Ontario as amended from time to time, including successor legislation, whether enacted prior to or subsequent to the enactment of this By-law.

12.3 Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed from this By-law and the remainder of this By-law shall continue in full force and effect.

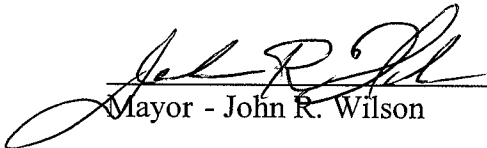
12.4 The short title of this By-law shall be the "Site Alteration By-law".

12.5 This By-law shall be administered by the Director.

12.6 The provisions of this By-law shall come into force and effect on the date of its passing.

Read a first and second time this 9th day of February, 2009.

Read a third time and finally passed this 9th day of February, 2009.



Mayor - John R. Wilson



CAO/Clerk - R. Millard

**THE CORPORATION OF THE TOWNSHIP OF MALAHIDE
APPLICATION FOR A SITE ALTERATION PERMIT
OR TOPSOIL REMOVAL PERMIT**

**THIS APPLICATION IS AUTHORIZED BY BY-LAW NO. 08-59
AND THE PERSONAL INFORMATION ON THIS FORM IS COLLECTED UNDER
THE AUTHORITY OF THE MUNICIPAL ACT.**

1.0 PERMIT NO. _____ 2.0 APPLICATION FOR: ☐ SITE ALTERATION PERMIT
☐ TOPSOIL REMOVAL PERMIT

3.0 ATTACHMENTS – THIS APPLICATION MUST BE ACCOMPANIED BY:

- the application fee
- security in a form and amount acceptable to the Township
- any required external agency permit
- any required report
- engineered plans as per the requirements of the by-law

4.0 PROPERTY LOCATION (including legal description and municipal address): _____

PROPERTY SIZE: _____ acres USE/PROPOSED USE OF PROPERTY: _____

NAME OF REGISTERED OWNER OF PROPERTY: _____

ADDRESS: _____

POSTAL CODE _____

PHONE: _____ FAX: _____ EMAIL: _____

5.0 NAME OF AGENT/SOLICITOR: _____

ADDRESS: _____

POSTAL CODE: _____

PHONE: _____ FAX: _____ EMAIL: _____

6.0 WORK SCHEDULE:

START DATE: _____ END DATE: _____

7.0 NAME OF CONSULTING ENGINEERS: _____

ADDRESS: _____

POSTAL CODE: _____

PHONE: _____ FAX: _____ EMAIL: _____

8.0 NAME OF CONTRACTOR: _____

ADDRESS: _____

POSTAL CODE: _____

PHONE: _____ FAX: _____ EMAIL: _____

9.0 DESCRIBE COMPOSITION OF FILL BEING DUMPED/PLACED or TOPSOIL BEING REMOVED:

Expiry Date: _____