

The Corporation of the Township of Springwater

By-Law 2007 – 053

Being a by-law to prohibit or regulate the removal, placing or dumping of fill or the alteration of the grade of land.

(Cut and Fill Regulation By-law)

Whereas Section 142 of the Municipal Act, 2001, S.O. as amended authorizes the Council of the Corporation of the Township of Springwater to pass by-laws for prohibiting or regulating the removal, placing or dumping of full and for regulating the alteration of the grade of land in any defined area or areas in the Township of Springwater.

Now Therefore the Council of the Corporation of the Township of Springwater enacts as follows:

1 **Definitions:**

- 1.1. **Agricultural Practices:** means an activity consisting of animal husbandry, horticulture, beekeeping, adirying, field crops, fruit farming, fur farming, market gardening, pasturage, poultry keeping, mushroom farming or any other farming activity and may include growing, raising, small scale packing and storage of produce, feeds, seeds in a building, structure or part thereof and other similar related activities.
- 1.2. **Alteration:** means a change, variation or modification to existing grades.
- 1.3. **Applicants:** shall mean 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.
- 1.4. **Clerk:** shall mean the Clerk appointed by By-law for the Township of Springwater, Deputy or designate.
- 1.5. **Council:** shall mean the Council of the Corporation of the Township of Springwater.
- 1.6. **Director of Public Works:** shall mean a person or persons appointed by Council under the Municipal Act to oversee the Township Roads System, Water Systems or Sewer Systems as the context may apply or designate.

- 1.7. **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.
- 1.8. **Drainage Ditch:** means an open channel which is used to carry ground and surface water.
- 1.9. **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.
- 1.10. **Environmentally Protected Lands:** lands zoned environmental protection in accordance with the approved Township of Springwater Zoning By-law as amended.
- 1.11. **Erosion Control:** means human intervention to prevent environmental damage attributed to the detachment, transportation and deposition of soil and related substances and particles related to water action associated with rainfall and surface runoff.
- 1.12. **Fill:** shall mean any type of material deposited or placed on lands and includes soil, topsoil, stone, concrete, asphalt, sod or turf either singly or in combination
- 1.13. **Grade:** shall be defined as follows:
- a) **Existing Grade:** shall mean 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:** shall mean the approved elevation of ground surface of lands upon which fill has been placed in accordance with this by-law;
 - c) **Proposed Grade:** shall mean the proposed elevation of ground surface of land after the fill placement is complete;
- 1.14. **Inspector:** shall mean a person designated as Municipal Law Enforcement Officer for the Township of Springwater for the purpose of enforcing either legislation or by-laws;

- 1.15. **Owner:** shall mean the assessed owner (s) as identified on the Assessment Roll for Taxation Purposed during the current year as amended for which a permit is sought or obtained;
- 1.16. **Permit:** shall mean permission or authorization given in writing by the Director of Public Works to perform work regulated by the By-law or part thereof;
- 1.17. **Permit Holder:** means the owner as defined in this By-law or the person, firm or corporation in possession of the lands and includes a lessee, a mortgagee in possession or a person, firm or corporation managing or controlling such lands;
- 1.18. **Placing:** shall mean the distribution of fill on lands to establish a finished grade higher or lower than the existing grade;
- 1.19. **Ponding:** shall mean the accumulation of surface water in an area not having drainage or where the lack of drainage is caused by the placing or dumping of fill;
- 1.20. **Removal:** shall mean excavation or extraction of any fill which lowers the existing grade, which includes soil stripping;
- 1.21. **Retaining Wall:** shall mean a concrete or concrete product wall or other material approved by the Director of Public Works designed to contain and support fill which has a finished grade higher than that of adjacent lands;
- 1.22. **Soil:** shall mean material commonly known as earth and includes topsoil, loam, subsoil, clay, sand or gravel;
- 1.23. **Swale:** shall mean a shallow depression in the ground sloping to a place of disposal of surface water for the purpose of providing a method of drainage;
- 1.24. **Topsoil:** means those horizons in a soil profile known as the “A” horizon which is commonly mixed with the “E” horizon, containing organic material and includes deposits of partially decomposed organic matter such as peat;
- 1.25. **Township:** shall mean The Corporation of the Township of Springwater;
- 1.26. **Utility:** shall mean any entity of corporation providing public service including electricity, water, natural gas, telephone, television, telecommunication or similar service; and

- 1.27. **Waterbody:** shall mean an identifiable depression in the ground in which a flow of water regularly or continuously occurs which includes river, creek, stream, spring, pond or lake.

2 **Prohibitions**

- 2.1. No person shall remove, place or dump fill or alter the grade of land in the areas of the Township, within the limits of any areas regulated by the Nottawasaga Valley Conservation Authority and/or the Severn Sound Environmental Association or zoned Environmental Protection by the Township of Springwater Zoning By-law 5000 as amended without having obtained a permit from the conservation authority.
- 2.2. No person shall remove, place or dump fill or cause fill to be removed, placed or dumped or alter the grade of land in all other areas of the Township without having first obtained permit issued by the Director of Public Works for the Township of Springwater.

3 **Exceptions**

The provisions of Section 2 do not apply to:

- 3.1. The placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken by the Township of Springwater or a local board of the Township.
- 3.2. The placing or dumping of fill, removal of topsoil or alteration of the grade of land in accordance with plans approved in conjunction with 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.
- 3.3. The placing or dumping of fill, removal of topsoil or alteration of the grade of land in accordance with plans approved in conjunction with 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.
- 3.4. The placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken by a utility.
- a) The placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act.

- 3.5. 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,
- a) that has not been designated under the Aggregate Resources Act or a predecessor of that Act, and
 - b) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the Planning Act; or
- 3.6. 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.
- 3.7. A building permit has been issued by the Chief Building Official of the Township of Springwater for the erection of a building or structure including all swimming pools and the site plan accompanying the building permit application provides sufficient information to determine that the placing or dumping of fill conforms to the provisions of this By-law.
- 3.8. Soil is placed on lands 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 m of the property line is not changed; and
 - 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.
- 3.9. Fill that is placed or dumped in an excavation to the elevation of existing grade following the demolition or removal of a building or structure: or the construction or repair of subsurface portions of a building, structure or utility.
- 3.10. The removal of topsoil that is an incidental part of normal agriculture practices provided that the removal of topsoil for sale, exchange or other disposition shall not be considered a normal agricultural practice.
- 3.11. The placing or dumping of fill, removal of topsoil or alteration of the grade of land is within an area for which a regulation under Section 28 of the Conservation Authorities Act is applicable.
- 3.12. The placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken Crown Agency under the Crown Agency Act.

4 Compliance with Plans

- 4.1. 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.

5 Compliance with By-law

- 5.1. 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 shall be responsible for the removal of such fill.

6 Storage of Fill

- 6.1. No person shall place or dump, or cause to be placed or dump, 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 Springwater.

7 Interference with Grade

- 7.1. Subject to Section 3, 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 Springwater as part of a subdivision, rezoning or site plan approval, without a permit.

8 Other

- 8.1. Subject to Section 3, no person shall remove, place or dump, or cause to be removed, placed or dumped, fill on any land without a Cut and Fill permit 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 demolition materials, stumps, trash, rubbish, glass, liquid or toxic chemicals or garbage materials;
 - c) the drainage system for the lands is provided in accordance with the Township of Springwater's By-laws and the Director of Public Works 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.

9 Requirements for Issuance of a Cut and Fill Permit

Application Requirements

An applicant for a permit to dump or place or remove fill on the lands shall submit the following to the Director of Public Works:

- 9.1. a completed application in the form prescribed by the Director of Public Works;
- 9.2. the applicable permit fee in accordance with Schedule „A“ to this By-law;
- 9.3. when required by the Director of Public Works, a Fill-Control Plan, which shall include any or all of the following as shall be specified by the Director of Public Works:

Fill-Control Plan shall include any or all of the following:

- 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) the location of trees with a diameter greater than 20 cm at grade shall be identified by species;
- i) the grading elevation at the base of any trees with a diameter greater than 20cm;
- j) all trees, shrubs and hedges within one (1) metre of the property line;
- k) driveways on each lot and all easements and rights of way over, under, across or through each lot;
- l) 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;
- m) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of thirty (30) metres beyond each lot boundary;
- n) the existing lot topography extending a minimum of thirty (30) metres beyond each lot boundary;
- o) the location and dimensions of all proposed land disturbing activities, including construction access road;
- p) the location and dimensions of all temporary soil or dirt stockpiles;
- q) the location, dimensions, design details and design calculations of all construction site erosion control measures necessary to meet the requirements this By-law;
- r) 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 this By-law;
- s) provisions for the maintenance of the construction site erosion control and dust control measures during construction and after as required;
- t) the scale of drawing, ranging from 1:250 to 1:1000 as deemed appropriate (each drawing control plan to be in metres);
- u) Geotechnical Engineers review as required by the Director of Public Works;
- v) any other necessary information with respect to each lot as required by the Director of Public Works;

- w) any other information as required by the Director of Public Works;
- x) proposed final grades and drainage system to be used upon completion of the filling operation;
- y) a description of the proposed fill;
- z) 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

10 **Fill Standards**

- 10.1. Every person who removes, places or dumps fill or causes fill to be removed, placed or dumped shall:
- a) When required by the Director of Public Works, 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 Director. The Director may require that a retaining wall be constructed where:
 - i. erosion of fill onto abutting land may occur, or
 - ii. the finished grade of the lands adjacent to the property line is higher than that of the existing grade of the abutting lands;
 - iii. where the resultant slope may not be stable or is greater than 3:1;
 - iv. ensure that fill shall not be placed around the perimeter of any existing building without the approval from the Manager of Building Services 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 Manager of Building Services;
 - v. provide such protection for trees as may be required by the Township of Springwater; and
 - vi. provide for site erosion control measures in accordance with generally accepted engineering and conservation practices prior to commencement of the placing or dumping or removal of fill.

11 **Issuance of a Permit**

When a Permit will be Issued:

- 11.1. The Director of Public Works shall issue a permit where:
- a) the owner and the applicant and the proposed permit holder have fulfilled all requirements pursuant to this By-law;
 - b) the Director of Public Works 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 proper engineering practices;
 - c) the Director of Public Works 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
 - d) the Director of Public Works is satisfied that the placing or dumping or removal of fill will not result in:
 - i. soil erosion;
 - ii. blockage of a water body;
 - iii. siltation in a water body;
 - iv. pollution of a water body;
 - v. flooding or ponding caused by a water body overflowing its banks;

12 Expiry of Permit

- 12.1. The permit issued pursuant to this By-law shall be valid to the expiry date as specified on the permit by the Director of Public Works.
- 12.2. 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 Director of Public Works accompanied by a payment as outlined on Schedule „A” of this By-law.
- 12.3. The issuance of a permit by the Director of Public Works 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.

- 12.4. 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 Director of Public Works 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.

13 Revocation of Permit

- 13.1. A permit may be revoked by the Director 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; or
 - d) If work authorized under the permit has not been commenced prior to its expiry date.

14 Appeals

- 14.1. 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 in accordance with Section 142 of the Municipal Act as amended.

15 Administration and Enforcement

- 15.1. The administration and enforcement of this By-law shall be performed by the Director of Public Works, by such persons authorized by the Director of Public Works, and by the Municipal Enforcement Officers of the Township of Springwater as may be appointed by By-law of the Council of The Corporation of the Township of Springwater.
- 15.2. Upon completion of the work pursuant to a permit, the owner and/or permit holder shall so advise the Director of Public Works.
- 15.3. An inspector may, during daylight hours and upon producing the appropriate identification, enter and inspect any land to which the By-law applies.

- 15.4. No person shall obstruct an inspector who is carrying out an inspection pursuant to this By-law.
- 15.5. 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.
- 15.6. 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:
- a) the municipal address and / 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;
 - c) 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.
- 15.7. An order pursuant to this By-law shall be served personally or by prepaid registered mail;
- 15.8. 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/or permit holder.
- 15.9. An inspector who is unable to effect service pursuant to this By-law shall place a placard containing the terms of the notice or order in 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 and permit holder.
- 15.10. 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.
- 15.11. Costs incurred by the Township pursuant to this By-law may be added to the Tax Roll by the Director of Finance to be collected in the same manner as property taxes.

16 **Penalty**

Penalties for non-compliance with By-law

- 16.1. Any person who contravenes any provision of this By-law or an order is guilty of an offence and on conviction 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 \$25,000.00;
- 16.2. Any corporation which contravenes any provision of this By-law or an order is guilty of an offence and on conviction is liable,
- a) on a first conviction, to a fine of not more than \$50,000.00; and
 - b) on any subsequent conviction, to a fine of not more than \$100,000.00.
- 16.3. Where a person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed by the By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted or any other person.
- 16.4. Where a person is convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to undertake such remediation of the site on which the offence occurred in such manner and within such a period of time as the court considers appropriate.

17 **Severability**

- 17.1. If any part of this By-law or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections of this By-law shall be deemed to be separate and independent, and are to be enacted as such.

18 **Effective Date**

- 18.1. This By-law shall come into effect on the date of the passing hereof.

Short Title

This By-law may be cited as the “Cut and Fill Regulation By-Law”.

Read a First, Second and Third Time and Finally Passed This 22nd Day of May, 2007.

The Corporation of the Township of Springwater

(Original Signed By)

Tony Guergis, Mayor

(Original Signed By)

Carey deGorter, Clerk