

**THE CORPORATION OF THE
TOWN OF NIAGARA-ON-THE-LAKE**

BY-LAW 3941-05

**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 WITHIN THE ENTIRE
TOWN OF NIAGARA-ON-THE-LAKE**

WHEREAS the Town of Niagara-on-the-Lake deems it necessary to enact a by-law to ensure the proper drainage of land, to prevent the removal of topsoil, to protect the environment and to protect the viability of the agricultural industry;

AND WHEREAS Section 142(2) of the Municipal Act, S.O. 2001, c. 25, as amended, provides that the Council of a local municipality may pass by-laws 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 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.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF NIAGARA-ON-THE-LAKE ENACTS AS FOLLOWS.

DEFINITIONS

1. In this By-law:
 - (a) "Applicant" means an owner, or an owner's agent who is authorized by the owner to act on behalf of the owner.
 - (b) "Building Permit" means a permit issued pursuant to the Ontario Building Code.
 - (c) "Chief Building Official" means the Chief Building Official of the Town of Niagara-on-the-Lake.

- (d) "Contaminants" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that may cause an adverse effect.
- (e) "Council" means the Council of the Corporation of the Town of Niagara-on-the-Lake.
- (f) "Drainage" means the movement of water to a place of discharge, whether by way of the natural characteristics of the ground surface or by an artificial method.
- (g) "Dump", "Dumped" and "Dumping" means 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.
- (h) "Dust" includes loose or blowing earth, sand, or soil that may be transported from the site.
- (i) "Erosion" means the wearing away; detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity.
- (j) "Existing Grade" means the elevation of the existing ground surface of the lands upon which dumping or placing of fill, or both, 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.
- (k) "Fill" means any type of material deposited or placed on lands and includes soil, stone, concrete, asphalt, sod or turf either singly or in combination.
- (l) "Finished Grade" means the approved elevation of the ground surface of lands upon which fill has been placed or dumped, or the grade altered in accordance with this By-law.
- (m) "Incompatible soil" means, for example, clay or loam when placed on top of sandy or gravelly soils or impervious clay subsoil when placed on top of topsoil.
- (n) "Inspector" means the person or persons appointed by Council for the purposes of enforcing this By-law.
- (o) "Litter and debris" includes building materials, garbage, waste, vegetation or any other loose material that may be transported from the site by wind, persons, vehicles or other means.
- (p) "Mud tracking" means the obstruction, encumbering, injuring or fouling of roads, boulevards as a result of the throwing, placing or depositing of fill or other debris.

- (q) "Normal Agricultural Practices" means any activity performed on private lands by the owner or owner's agent that is considered by the Normal Farm Practices Protection Board to be routine or common procedure for the type of crop, soil type or general climatic conditions related to the subject property, and
 - (i) Is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar circumstances, or
 - (ii) Makes use of innovative technology in a manner consistent with proper advanced farm management practices."
- (r) "Owner" includes the registered owner of the lands on which fill is proposed to be placed or dumped or which lands are to be re-graded and any person, firm or corporation, whether alone or with others, that has the right to possess or occupy the lands or actually does occupy or possess the lands, including a lessee.
- (s) "Permit" means a permit issued pursuant to this By-law.
- (t) "Place of Discharge" means a municipally-owned storm drainage sewer, roadside ditch, a natural watercourse, or an outlet for storm drainage approved by the Town.
- (u) "Placing" or "Place" means the distribution of fill on lands to establish a finished grade different from the existing grade.
- (v) "Ponding" means the accumulation of surface water in an area not having drainage, where the lack of drainage is caused by the placing or dumping of fill.
- (w) "Proposed Grade" means the proposed elevation of ground surface of land upon which fill is proposed to be placed or dumped or the grade altered.
- (x) "Retaining Wall" means a wall designed to contain and support fill which has a finished grade higher than that of adjacent lands.
- (y) "Riparian Vegetation" means plants growing in a naturalized state on stream, creek and river banks excluding man-made drainage systems.
- (z) "Site" means the lands which are the subject of an application for a permit pursuant to this by-law.
- (aa) "Site alteration" means site grading, or the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.
- (bb) "Site Alteration Plans" means two sets of drawings – one that clearly shows the features of the existing site and one that shows the intended changes to the property.
- (cc) "Soil" means material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel.

- (dd) "Swale" means a shallow depression in the ground sloping to a place of discharge of surface water for the purpose of providing a method of drainage.
- (ee) "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.
- (ff) "Town", means the Corporation of the Town of Niagara-on-the-Lake.
- (gg) "Town Clerk" means the Town Clerk of the Town of Niagara-on-the-Lake.
- (hh) "Treasurer" means the Treasurer of the Town of Niagara-on-the-Lake.
- (ii) "Wetland" means land that is seasonally or permanently covered in shallow water or has a water table close to or at its surface, directly contributes to the hydrological function of a watershed through connection with a surface watercourse, has hydraulic soils, has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water, but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic as referred to in this section.

PURPOSE OF THE BY-LAW

- 2. No person shall remove topsoil, riparian vegetation, place or dump, or cause to be placed or dumped, fill on land or alter the grade of land or cause the grade to be altered within the Town, unless they are exempt from the provisions of this By-law, or a permit has been issued pursuant to this By-law.

APPLICATION OF BY-LAW

- 3. This By-law applies to the entire Town other than those areas which are subject to regulations made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, or governed by the Niagara Escarpment Plan or its policies.

EXEMPTIONS

- 4. This By-law is not applicable to the following activities:
 - (a) The placing or dumping of fill, removal of topsoil or alteration of the grade of land 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;

- (b) 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, S.O. 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (c) The placing or dumping of fill, removal of topsoil or alteration of the grade of land 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, R.S.O. 1990;
- (d) 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 has not been designated under the Aggregate Resources Act, R.S.O. 1990 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, R.S.O. 1990;
- (e) 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, R.S.O. 1990, or the Tile Drainage Act, R.S.O. 1990;
- (f) The removal of topsoil as an incidental part of normal agricultural practice does not include the removal of topsoil for sale, exchange or other disposition;
- (g) Any work pursuant to normal agricultural practices with a setback of 7.62 m (25 ft) or greater from all property lines that does not change the direction, rate or quality of runoff that results in a detrimental effect on neighbouring properties;
- (h) The use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of Part V of the Environmental Protection Act, R.S.O. 1990, as amended, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
- (i) The construction, extension, alteration, maintenance or operation of works under Section 28 of the Public Transportation and Highway Improvement Act, R.S.O. 1990, as amended;
- (j) Emergency measures taken by the Town to mitigate erosion, soil failure or damage of trees;
- (k) The activities of a Ministry of the Provincial government, the Regional Municipality of Niagara, the Niagara Peninsula Conservation Authority, the Niagara Parks Commission, related to the establishment or maintenance of utilities and services, roads, ditches or drains, bridges, flood and erosion control facilities,

walkways, bicycle paths, fences, retaining walls, steps and lighting providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;

- (l) To activities or matters undertaken by the Town or by any local board as defined in the Municipal Act, 2001, S.O. 2001, having jurisdiction within the Town providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
- (m) To any action by any Crown agency as defined in the Crown Agency Act providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
- (n) To any action by Niagara-on-the-Lake Hydro Inc. providing that there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
- (o) To any action by any person implementing a grading control plan or lot grading plan approved on behalf of the Town pursuant to a registered site plan agreement, subdivision agreement, or development agreement pursuant to the provisions of the Planning Act duly executed by the Town and affecting the lands;
- (p) To any action by any person implementing a grading control plan or lot grading plan pursuant to the Niagara Escarpment Plan and its policies;
- (q) Any work with a setback of 1.52 m (5 ft) or greater from any property line where soil is placed or dumped on lands for the purpose of lawn dressing, landscaping or adding to flower beds or vegetable gardens, land disturbance associated with the installation of swimming pools incidental to a residential use, provided there is no change in the direction, rate or quality of runoff that causes a detrimental affect to neighbouring properties;
- (r) The removal of soil as an incidental part of the building repair where the soil is removed and held for subsequent replacement;
- (s) Where the placing, dumping or removal of fill or topsoil, or the alteration of grade is in conjunction with the construction of a building or structure for which a building permit has been issued in conjunction with a lot grading plan prepared by an Ontario Land Surveyor or professional engineer or where a building permit for the construction of a building or structure has been issued in compliance with the Town's Policy on lot grading plans.

BY-LAW CEASES TO HAVE EFFECT

5. If a regulation is made under Section 28 of the Conservation Authorities Act, R.S.O. 1990, c. C.27, respecting the placing or dumping of fill, removal of topsoil or alteration of the grade of land in any area of the Town, this By-law is of no effect in respect of that area.

PERMIT APPLICATION

6. A person applying for a permit shall submit to the Chief Building Official:
- (a) A complete application in the form attached hereto as Schedule "B", which form may be amended from time to time by the Chief Building Official;
 - (b) Plans showing the information detailed in Schedule "A";
 - (c) The fee prescribed for a permit as set out in Schedule "C";
 - (d) Securities in accordance with Schedule "C" to secure the performance of the applicant's obligation under this By-law and any permit issued hereunder;
 - (e) A Work Schedule;
 - (f) A description of the measures proposed to control off-site movement of dust, litter and debris and related off-site maintenance;
 - (g) A description of the mud tracking control and road maintenance program;
 - (h) A description of the vegetative measures to be used, including, but not limited to mulches, types of seeds and fertilizers and their application rates;
 - (i) A written authorization, signed by the owner, stating that the Chief Building Official and his or her designates and/or any person in their company will be allowed to enter the site for the purpose of inspecting for compliance with the approved permit or for performing any work necessary to bring the site into compliance with the approved permit.
 - (j) All other information as may be required.
7. An applicant for a permit pursuant to this By-law shall:
- (a) Certify that the fill contains no contaminants within the meaning of the Environmental Protection Act, R.S.O. 1990, as amended; and
 - (b) Forever and unconditionally release and indemnify the Town with respect to any and all liability which may arise in the event that the fill contains contaminants within the meaning of the Environmental Protection Act, and any successor legislation.
8. The certificate and release and indemnity required by subsections 7(a) and (b), respectively, shall be in the form prescribed by Schedule "B" attached hereto and forming part of this By-law.

ISSUANCE OF PERMITS

9. The Chief Building Official may issue a permit for site alteration on land within the limits of the Town, where it meets the requirements of Section 14. In all cases, the Town will inspect and evaluate the need for a site alteration permit within ten (10) working days of receipt of the application form.
10. The provisions of this by-law and the issuance of a permit does not absolve the applicant from the responsibility to obtain other required approvals and to comply with all other restrictions governing the work imposed under laws by any authority having jurisdiction including areas identified as having archaeological resource potential as shown in the Town Official Plan. The applicant is advised that should deeply buried archaeological material be found the Ontario Ministry of Culture in London (519-675-7742) should be contacted immediately. In the event that human remains are encountered, the applicant should immediately contact both the Ministry of Culture and the Cemeteries regulation unit of the Ontario Ministry of Consumer and Commercial Relations in Toronto (416-326-8392), as well as the municipal police and the local coroner.
11. To obtain a permit a complete application form and Site Alteration Plans are required, one plan showing the site before and one plan showing the intended alterations. These Site Alteration Plans should include or note the criteria listed in Schedule "A". Site Alteration Plans accompanying a permit must be certified by a professional engineer or Ontario Land Surveyor and approved by the Chief Building Official.
12. The Chief Building Official may issue a permit, imposing such conditions as he or she feels are appropriate, when:
 - (a) The Chief Building Official is satisfied that the lands which are the subject of the application for a permit are not within an area where the placing or dumping of fill is prohibited under this By-law, the Conservation Authorities Act or other applicable law;
 - (b) The Chief Building Official is satisfied that the proposed final elevations, the resulting drainage patterns, 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 and environmental practices;
 - (c) The Chief Building Official is satisfied that the placing or dumping of fill will not result in:
 - (i) Soil erosion,
 - (ii) Blockage of a watercourse,
 - (iii) Siltation in a watercourse,
 - (iv) Pollution of a watercourse,
 - (v) Flooding or ponding on abutting lands,

- (vi) Flooding or ponding caused by a watercourse overflowing its banks,
 - (vii) A detrimental effect on any trees of a caliper of 7.5 cm (2.9 in) or more, located on the lands. Caliper of a tree shall be measured at 15 cm (6 in) above ground level for trees up to and including 10 cm (4 in) caliper size, and 32 cm (12 in) above ground level for trees of larger size.
 - (viii) A detrimental effect on sensitive ground or surface water features or on significant natural features or ecological functions,
 - (ix) Any contravention of regulations, standards or guidelines established pursuant to the Environmental Protection Act, or
 - (x) The fouling of, or physical damage to, the adjacent roadway or other municipal infrastructure.
- (e) The Chief Building Official is satisfied that the existing topsoil is not removed from the site, destroyed or buried by the placement of incompatible soils;
 - (f) The Chief Building Official is satisfied that the existing topsoil or riparian vegetation will only be removed from the site of man-made facilities such as buildings or parking lots;
 - (g) The Chief Building Official is satisfied that the issue of erosion has been satisfactorily addressed. An Erosion Control Plan may be required. It would include:
 - (i) The location and dimensions of all proposed site alteration activities,
 - (ii) The location and dimensions of all temporary soil and dirt stockpiles,
 - (iii) The location and dimensions of all required construction site management control measures, and
 - (iv) A schedule of anticipated starting and completion dates for each site alteration or land developing activity including the installation of construction site management control measures needed to meet the requirements of this By-law.
 - (h) Any security or letter of credit as prescribed in Schedule "C" to this By-law that is required to be deposited with or paid to the municipality to ensure that conditions are satisfied has been deposited or paid and that any agreement required to implement conditions imposed by the Chief Building Official has been signed;
 - (i) All other concerns of the Chief Building Official have been satisfied.

13. The Chief Building Official shall not issue a permit unless;
 - (a) Where applicable, all requirements contained in the Greenbelt Act, S.O. 2005, and regulations are complied with respecting to the proposed work, and
 - (b) The land use to which the proposed work pertains is permitted by the applicable by-laws passed under the Planning Act, R.S.O. 1990.
 - (c) The work proposed under the permit does not involve the contravention of the Environmental Protection Act, R.S.O. 1990, the Ontario Heritage Act, R.S.O. 1990 as amended, the Building Code Act, S.O. 1992, the Drainage Act, R.S.O. 1990, the Lakes and Rivers Improvement Act, R.S.O. 1990 and the Federal Fisheries Act, R.S. 1985, and any other applicable legislation.

AGREEMENTS WITH THE TOWN

14. Wherever the Chief Building Official requires, as a condition of a permit, that there be a written agreement concerning the work contemplated by the permit of this By-law, such agreement shall be executed by the registered owner of the site and the Town in a form determined by the Chief Building Official in accordance with Schedule "D"; such agreement shall be executed on behalf of the Town by the Town Clerk and may require that a letter of credit as prescribed in Schedule "C" be lodged with the Town for the work authorized by the permit as approved by the Chief Building Official to guarantee that the work is completed in accordance with the permit and any related plans and documents and that the owner may be required to pay the Town's costs of reviewing and approving the plans and work referred to in the permit.

CONDITION FOR PERMITS

15. All permits will require the applicant to:
 - (a) Notify the Chief Building Official twenty-one (21) working days prior to commencing any site alteration activity;
 - (b) Provide the Chief Building Official with the name, phone number and fax number of an emergency contact person;
 - (c) Notify the Chief Building Official of completion of any control measures within two (2) days after their installation;
 - (d) Obtain permission in writing from the Chief Building Official prior to modifying the control plan;
 - (e) Maintain all road drainage systems, stormwater drainage systems, control measures and other facilities identified in the control plan;

- (f) Repair any siltation or erosion damage to adjoining surfaces and drainageways and watercourses which have resulted from the site alteration activities;
- (g) Inspect the construction control measures after each rain of 1 centimetre or more and at least once a week and undertake needed repairs;
- (h) Ensure that during site activity a copy of the permit and site alteration plan and erosion control plan (if required) is on site;
- (i) Notify all sub contractors and suppliers of approved access routes to the site and ensure compliance;
- (j) Maintain all roads in same or better condition than existed prior to the commencement of the work and keep all roads free from any materials or equipment arising from the work set out in the permit; and
- (k) Ensure that no construction machinery is operated in contravention of the Noise By-law.

TIME LIMIT FOR PERMITS

16. A permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance. A permit may be extended once, upon written application to the Chief Building Official, prior to the date of expiry. A permit shall expire upon the transfer of ownership of the site unless the new owner provides written commitment to comply with all conditions under which the permit was issued, prior to the transfer of ownership of the site, and provide any required letter of credit.

COMPLIANCE WITH PLANS AND CONDITIONS

17. Where a permit has been issued under this By-law, no person shall move or remove topsoil or place or dump fill or alter the grade of land except in accordance with the plans, documents and any other information on the basis of which the permit was issued and in compliance with any conditions imposed by the Chief Building Official.

MINIMUM STANDARDS

18. Every person who places or dumps fill, or causes fill to be placed or dumped, or alters the grade of land, shall:
- (a) If required by the Chief Building Official, construct a retaining wall to the satisfaction of the Chief Building Official which does not encroach upon abutting lands, either above or below existing grade, and which is not so high as to have a significant negative impact on abutting lands. The Chief Building Official may require that a retaining wall be constructed where:
 - (i) Erosion of fill onto abutting lands may occur,
 - (ii) The finished grade of the lands at the property line is higher than that of the existing grade of the abutting land,
 - (b) Ensure that the finished grade surface is protected by sod, turf, seeding of grass, greenery, asphalt, concrete or such other material as the Chief Building Official may approve, either singly or in combination;
 - (c) Ensure that fill is not placed around the perimeter of any existing building to an elevation higher than 150 millimeters (6 inches), or 200 millimeters (8 inches) for stucco and wood siding, below the top of foundation of such building, unless such building and its foundation walls are raised in a manner satisfactory to the Chief Building Official;
 - (d) Ensure that no piped connection to (Municipal or Regional) culverts, ditches or sewer system is covered and backfilled until the work has been inspected and approved by the Chief Building Official;
 - (e) Ensure such protection for trees as may be required by the Chief Building Official;
 - (f) Ensure that all fill used is clean and free of rubbish, glass, garbage, termites, organic materials, liquid and toxic chemicals and other contaminants; and
 - (g) Ensure that fill is placed or dumped in such a manner and any retaining wall containing such fill is erected in such a manner that no ponding is caused on the subject lands or abutting lands and that adequate provision is made for proper surface stormwater drainage.

REMEDIES FOR CONTRAVENTION

19. Where the owner of the land or the person who caused or permitted the placing, dumping of fill, removal of topsoil or alteration of grade in contravention of any permit given pursuant to this By-law, without a permit where a permit is required under this By-law, or contrary to any other provision of this By-law, the Chief Building Official may make an order directing the person to do any or all of the following:
- (a) Comply with the conditions of the permit and this By-law;
 - (b) Cease the placing or dumping of fill or the movement or removal of topsoil;
 - (c) Remove the fill that has been placed or dumped within forty-eight (48) hours after service of the order, or such other length of time as may be specified in the order;
 - (d) Reparation or rehabilitation may be required in a specified time period and take the form of:
 - (i) Leveling and regrading of affected lands;
 - (ii) Planting of trees and native riparian vegetation
 - (iii) The replacement of topsoil (minimum of 50 mm depth) and stabilization by either sodding, hydroseeding, mulching or such other methods as may be directed.

CONSENT OF OWNER

20. No person shall remove topsoil or place or dump, or cause to be placed or dumped, fill on any land or alter the grade of land unless it is done at the request of, or with the consent of, the owner of the land affected.

CONSENT FOR STORAGE

21. No person shall place or dump, or cause to be placed or dumped, fill on any land for storage purposes unless the outside storage of such fill on the land is permitted by a written agreement between the landowner and the Town.

ENFORCEMENT

22. The administration and enforcement of this By-law shall be performed by the Chief Building Official, or his or her designates, or by those persons designated as Inspectors under Schedule "E" to this By-law or as may be designated for the purposes of this By-law under other by-laws of the Town. The Chief Building Official, his or her designates and any duly designated Inspector shall have all powers necessary to carry out the administration and enforcement of this By-law including the power to enter upon and inspect, at any reasonable time, any lands to which this

By-law applies, to determine compliance with the provisions of this by-law.

- (a) Upon the failure by the applicant to complete all or part of the works in the time stipulated in the Site Alteration Plan, the Town may draw the appropriate amount from the securities posted and use the funds to arrange for the completion of the said works, or any part thereof;
 - (b) Upon the failure by the applicant to repair or maintain a specific part of the works as requested by the Town, and in the time requested, the Town may at any time authorize the use of all or part of the securities to pay the cost of any part of the works it may in its or their absolute discretion deem necessary; or
 - (c) In the case of emergency repairs or clean-up, the Town may enter upon land at any reasonable time and undertake the necessary works at the expense of the applicant and reimburse itself out of securities posted by the applicant.
23. Where it has been discovered that an applicant for a Site Alteration Permit pursuant to this By-law has provided misleading or false information on the application, the Permit issued under this By-law shall become null and void and the Town may order or direct that any persons or corporation conducting site alteration activity which was based on this misleading or false information, forthwith shall cease and desist all operations and make appropriate reparation as outlined in Section 19.
24. Where a person who has been ordered to remedy a contravention in accordance with Section 19 fails to do so within forty-eight (48) hours, the Town may have the work that was agreed upon completed at the expense of such person and the Town may recover the expenses incurred in so doing by action, the same may be recovered in like manner as municipal taxes or drawn from the Letter of Credit or the security deposit. Before the Town enters on the land to do said work, the owner shall be notified as pursuant to Section 144 of the Municipal Act, 2001, S.O. 2001.

OFFENCE AND PENALTY

25. Every person who contravenes the provisions of this By-law is guilty of an offence and, upon conviction, is liable to a maximum fine as established pursuant to the Municipal Act.
26. Every corporation that contravenes the provisions of this By-law is guilty of an offence and, upon conviction, is liable to a maximum fine as established pursuant to the Municipal Act.

APPEAL TO ONTARIO MUNICIPAL BOARD

27. An applicant for a permit under this By-law may appeal to the Ontario Municipal Board:
- (a) If the Chief Building Official refuses or neglects to issue a permit under this By-law within forty-five (45) days after the application is received by the Chief Building Official and after the supporting plans and documents referred to in Schedule "A" are received by the Chief Building Official; or
 - (b) If the Chief Building Official refuses to issue a Permit, within 30 days of the refusal; or
 - (c) If the applicant objects to a condition in the Permit, within 30 days after the issuance of the permit.

The owner may appeal to the Ontario Municipal Board in accordance with the applicable provisions of the Municipal Act, 2001, as amended.

ASSISTANCE FOR CHIEF BUILDING OFFICIAL

28. The Chief Building Official shall have the right to retain the services of a consulting engineer, at the applicant's cost, for the purposes of determining whether the requirements of Schedule "A" or Schedule "B" have been complied with, and to assist with the administration of this By-law.

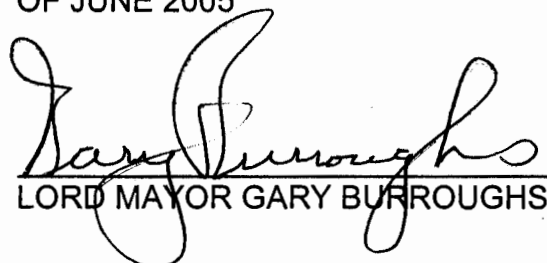
SEVERABILITY

29. In the event that any provision or part of this By-law is found to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the By-law and all other provisions or parts thereof shall remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

GENERAL

30. That Township By-law 1394 is hereby repealed.
31. This By-law shall come into force and effect upon the passing of the By-law by Council.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 13TH DAY OF JUNE 2005


LORD MAYOR GARY BURROUGHS


TOWN CLERK HOLLY DOWD

SCHEDULE "A"

A person applying for a permit pursuant to Section 6 of By-law 3941-05 shall provide to the Chief Building Official the following information in addition to the information required pursuant to Section 6:

- | <u>Yes</u> | <u>No</u> | |
|-----------------------|-----------------------|--|
| <input type="radio"/> | <input type="radio"/> | (a) A complete application in the form prescribed by the Chief Building Official; |
| <input type="radio"/> | <input type="radio"/> | (b) A description of the fill proposed to be dumped including a description of the source of the fill; and |
| <input type="radio"/> | <input type="radio"/> | (c) If the Chief Building Official so requests, a set of accurate plans meeting some, or all, of the requirements set out below. |

To indicate proposed changes, before and after Site Alteration Plans prepared by an Ontario Land Surveyor or professional engineer are required. Plans for the alteration and grading or for the placing or dumping of fill shall be prepared in accordance with the standard drawings and to the satisfaction of the Town, in accordance with the Town's Municipal Servicing Standards and include and/or note the following on the site and surrounding area:

- A title block – including lot and plan number and scale used
- A location map with north arrow,
- Property lines and dimensions,
- The current and proposed use of the site,
- Dimensions and use of any existing or proposed buildings or structures on or adjacent to the site,
- Existing & proposed elevations with contours at 0.5 metre intervals or less,
- Spot elevations along property lines at 3 metres beyond the property
- The predominant soils,
- Any environmental contamination on the site,
- All wetlands,
- Woodlots,
- Vegetative cover, drains,
- Channels,
- Ditches,
- Swales,
- Watercourses or water bodies,
- Fish habitat,
- Regulatory floodline and Conservation Authority fill regulation lines,
- Utilities,
- Roads,
- Easements, existing and proposed
- The proposed stormwater management system and the existing and final elevations of the site with direction of flow arrows,
- Temporary erosion control measures to be in place during the construction period, e.g. silt fence, sedimentation traps, etc., and permanent erosion control works to be left in place after construction and lot grading is completed, e.g. siltation ponds, etc.
- Located within area identified as having archaeological resource potential
- Compliance with all lot grading requirements specified in Ontario Building Code

SCHEDULE "B"

TOWN OF NIAGARA-ON-THE-LAKE SITE ALTERATION AND GRADING APPLICATION FORM

Owner's Name: _____
Address: _____
Phone No: Residence: _____ Business: _____ Fax: _____

Applicant/Agent's Name (if different from owner): _____
Address: _____
Phone No: Residence: _____ Business: _____ Fax: _____

Owner's Authorization - (Required when the Owner is not the Applicant)
I/We _____ (Name(s) of the Owners(s)), being
the registered Owner(s) of the subject lands, hereby authorize _____
(Name of Agent) to act as my/our agent(s) in the submission and processing the Site Alteration Permit Application.

Signature Date

Witness Date

DESCRIPTION OF PROPERTY

Municipal Address: _____
Brief Legal Description: Lot _____ Plan _____
Other _____
(Attach survey if available)

DESCRIPTION OF PROPOSED WORK (PLEASE MAKE APPLICABLE PROVISIONS)

Do you propose to add fill to the property? Yes/No
Do you propose to alter the grading of the property? Yes/No
Do you propose to remove soils from the property? Yes/No
Do you propose to construct retaining wall(s)? Yes/No

PLEASE DESCRIBE NATURE OF PROPOSED WORKS

(Please attach separate sheet if required)

PLEASE ANSWER FOLLOWING QUESTIONS
Is there a registered flood and/or fill line on or adjacent to the property? Yes/No
Is there a significant natural area or fish habitat on or adjacent to this property? Yes/No
Has the property ever been used for industrial/commercial/institutional purposes? Yes/No
Will elevations be altered at any property boundary? Yes/No
Is the land or portion of land within the archaeological resource potential area? Yes/No
Has there been consultation with NPCA / other Agencies? Yes/No

Date of Consultation _____ Name of Staff Consulted _____

Applicant's Signature: _____ Date: _____

I certify that any fill to be placed on the site contain no contaminants within the meaning of the Environmental Protection Act, R.S.O. 1990, as amended; and

I forever and unconditionally release and indemnify the Town with respect to any and all liability which may arise in the event that the fill contains contaminants within the meaning of the Environmental Protection Act, and any successor legislation.

Applicant's Signature: _____ Date: _____

Witness: _____ Date: _____

FOR OFFICE USE ONLY - STAFF COMMENTS

Date Received: _____ Date Inspected: _____

Agreement Required: Yes/No _____

(Attach agreement if applicable) _____

Permit Issued: Yes/No _____

More Information Required: Yes/No _____

(Attach requesting information if applicable) _____

Security Required: Yes/No _____

Conditions Added: Yes/No/Attach Permit _____

Agency Review & Conditions: _____

*****SHOULD DEEPLY BURIED ARCHAEOLOGICAL MATERIAL BE FOUND THE ONTARIO MINISTRY OF CULTURE IN LONDON (519-675-7742) SHOULD BE CONTACTED IMMEDIATELY. IN THE EVENT THAT HUMAN REMAINS ARE ENCOUNTERED, THE APPLICANT SHOULD IMMEDIATELY CONTACT BOTH THE MINISTRY OF CULTURE AND THE CEMETERIES REGULATION UNIT OF THE ONTARIO MINISTRY OF CUSUMER AND COMMERCIAL RELATIONS IN TORONTO (416-326-8392), AS WELL AS THE MUNICIPAL POLICE AND THE LOCAL CORONER.**

SCHEDULE "C"

PERMIT FEES

1. The fee for processing, administration and inspection for a 6 month permit is \$300.00 for the site area plus \$25.00 for each additional hectare or part thereof over 5 hectares.

LETTER OF CREDIT (to guarantee site control measures)

2. An irrevocable Letter of Credit or other security acceptable to the Town in the amount of \$5000.00 to cover the cost of site control measures including the cost of the Erosion and Sediment Control measures, mud tracking control measures, litter and debris control measures, and dust control measures is required. The security is to be in a form acceptable to the Treasurer.
 - (a) The security must remain in effect for the full duration of the permit with an automatic renewal clause in the document. Any Letter of Credit and its subsequent renewal forms shall contain a clause stating that thirty (30) days written notice must be given to the Town prior to its expiry or cancellation. All calculations to be supplied by the owner or their representative and verified by the Town.
 - (b) In the event that the Town receives notice that a Letter of Credit is expiring and will not be renewed, or, if further or additional securities are not provided within the said thirty (30) days, the Town may draw on the current Letter of Credit at the discretion of the Treasurer. The permit holder agrees that any interest accruing on the realized security shall belong to the Town and not to the applicant.
 - (c) It is the responsibility of the applicant:
 - (i) To provide evidence satisfactory to the Chief Building Official that the site has been adequately reinstated and stabilized in accordance with this By-law and the Erosion and Sediment Control Plan accompanying the permit; and
 - (ii) To notify the Town no later than two working days of the completion of works set out in the Permit and to request that the Town carry out an inspection to confirm that all relevant terms of this By-law have been complied with.
 - (d) The security may be reduced from time to time by the Treasurer to the satisfaction of the Chief Building Official. When the provisions of subsections (i) and (ii) of section 2(c) have been fully complied with, the Treasurer shall release the Applicant's security.
 - (e) If a new owner satisfies all the conditions outlined in the By-law, all securities will be returned to the original owner unless the original owner authorizes, in writing, the return of the securities to another person.

PERMIT EXTENSION FEES

3. The fee for processing, administration and inspection for a 6 month permit extension is \$150.00

SCHEDULE "D"

SITE ALTERATION SECURITY AGREEMENT

THIS AGREEMENT made, in triplicate, this day of

B E T W E E N:

The Corporation of the Town of Niagara-on-the-Lake
(hereinafter may be referred to as the "Town")
OF THE FIRST PART

And

(hereinafter may be referred to as the "Owner")
OF THE SECOND PART

WHEREAS the Owner is the registered owner of the property municipally known as _____ in the Town of Niagara-on-the-Lake, Ontario and described in Schedule "A" attached hereto (hereinafter referred to as the "Property") in this Agreement;

AND WHEREAS Sections 142 through 144 of the Municipal Act, 2001, (hereinafter referred to as the "Act") authorizes Council of municipalities to pass a by-laws prohibiting or regulating the placing or dumping of fill, the removal of topsoil, the alteration of the grade of land and requiring the a Permit and requiring restoration and rehabilitation of the site in the event of contravention of the by-law;

AND WHEREAS the Owner intends to alter the grade of the Property in accordance with the Site Alteration By-law and has applied for a Permit pursuant to that Site Alteration By-law;

NOW, THEREFORE that in consideration of the application for the Permit and after review of the application and of the covenants hereinafter set forth the parties hereto mutually covenant and agree as follows:

1. ALTERATION OF PROPERTY GRADES

- 1.1 The Owner agrees that, within six (6) months from the date of the Permit, issued pursuant to the Site Alteration By-law (hereinafter referred to as the "Permit"); all placing or dumping, or alteration of the grade of the Property shall be completed in accordance with the Site Alteration By-law and the control drawings as previously approved.
- 1.2 It is the responsibility of the Owner:
 - 1.2.1 To obtain the approval of the Chief Building Official, Planning and Development Services Department of the Town (hereinafter referred to as the "Chief Building Official") that the Property has been adequately reinstated and stabilized in accordance with the Site Alteration By-law, the approved control drawings and the terms and conditions of the Permit; and
 - 1.2.2 To request the Town to carry out a final inspection of the Property and to obtain the approval of the Chief Building Official that this By-law and the terms and condition of the Permit have been complied with.
- 1.3 The owner agrees that the works described in clause 1.1 and 1.2 above will be completed on or before _____, 20__.

2.0 SITE ALTERATION PERMIT

- 2.1 No Permit will be issued by the Town:
 - 2.1.1 Until the Owner has paid all required fees;
 - 2.1.2 If the Owner is in default under the Site Alteration By-law or any other applicable law.

3.0 SECURITIES FOR PERFORMANCE

- 3.1 The Owner is to deposit with the Town at the time of execution of this Agreement, securities, cash, or a Letter of Credit satisfactory in form to the Town, and for a term of not less than one year, in the amount of Dollars (\$) (hereinafter referred to as "Security") as security for;
 - 3.1.1 All work which is the subject of the application including all site siltation control measures and retaining walls necessary to meet the requirements of the Site Alteration By-law; and
 - 3.1.2 Performance of any other provision of this Agreement.
- 3.2 The described Security is to be renewed by the Owner until the Town deems it is no longer required to guarantee the:

- 3.2.1 Completion of the said works in conformity with the provisions of this Agreement; and
- 3.2.2 Performance of any other provision of this Agreement.

3.3 In the event the Owner:

- 3.3.1 Fails or is negligent in performing the work required under the Site Alteration By-law to the satisfaction of the Chief Building Official; or
- 3.3.2 Fails to do any other act, matter or thing required to be done, including a renewal of the Security, under the provisions of this Agreement, the Town at its discretion, at any time and from time to time, may realize upon the security described in subsection 3.1 of this section and may employ the same or the proceeds thereof, or any part thereof, in doing or completing any or all of the work or for any act, matter or thing required to be done under this Agreement and may employ the proceeds thereof to hire legal counsel to prosecute any contravention of this Agreement or any other law.

3.4 In the event of default the Owner agrees and consents to permit forces hired by the Town to enter upon the Property and undertake the works to be done under this Agreement, unencumbered and without restriction in any manner.

4.0 COVENANTS TO RUN WITH THE LANDS

4.1 All covenants and conditions set forth in this Agreement are and shall be deemed to be covenants running with the Property and it is hereby agreed between the parties of the First and Second Parts:

- 4.1.1 That every covenant and condition herein to the benefit of and is binding upon the parties of the First and Second Parts hereto and their heirs, executors, administrators, successors and assigns; and
- 4.1.2 That when the context so requires or permits the singular number is to be read as if the plural were expressed and the masculine gender as if the feminine or neuter, as the case may be, were expressed.

5.0 RELEASE OF LETTER OF CREDIT

When the obligations set out in this Agreement have been fulfilled, including receipt, satisfactory to the Chief Building Official, of a Letter of Compliance from the Professional Engineer or other qualified person responsible for the preparation of the control plan as previously approved, and when the Chief Building Official is satisfied that the provisions of this Agreement have been fully complied with, the Owner's Security shall be released.

6.0 MUNICIPAL FREEDOM OF INFORMATION

The Owner acknowledges that this Agreement and any information or documents provided by it to the Town may be released pursuant to the provisions of the Municipal Freedom of Information and Protection of Privacy Act. This acknowledgement shall not be construed as a waiver of any right to object to the release of this Agreement or any information.

IN WITNESS WHEREOF the parties hereto have duly set their hands and seals as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

In the presence of:

THE CORPORATION OF THE TOWN of
NIAGARA-ON-THE-LAKE:
Per:

TOWN CLERK

WITNESS

OWNER

I,
have authority to bind the Corporation.

(Schedule "A"
Site Alteration Agreement
Legal description of land)

SCHEDULE "E"

1. The following Town employees or agents are hereby designated as Inspectors for the purposes of this By-law and are authorized to carry out the administration and enforcement of this By-law:
 - (a) The Chief Building Official and his or her designate(s) for the purposes of this by-law;
 - (b) Persons appointed by Council as Inspectors under authority of Section 3 subsection (2) of the "Building Code Act";
 - (c) Persons appointed by Council as Municipal Law Enforcement Officers.