

The Corporation of the Town of Lakeshore

By-Law 60-2020

Being a By-Law to Regulate Site Alterations of Land or Private Drain Alterations in the Town Of Lakeshore

Whereas, section 142 of the *Municipal Act 2001*, S.O., 2001, c. 25, provides local municipalities with the power to prohibit or regulate and issue permits respecting the dumping or place of fill, removal of topsoil or the alteration of the Grade of Land;

And whereas, the Council of The Corporation of the Town of Lakeshore considers it desirable to pass such a by-law;

Now therefore, the Council of The Corporation of the Town of Lakeshore enacts as follows:

Section 1 – Definitions

1.1 In this by-law,

“Administration Fee” means the fee for the administration of remediation costs pursuant to this by-law and the amount as set out in the User Fee By-law;

“*Aggregate Resources Act*” means the *Aggregate Resources Act*, R.S.O. 1990, c.A.8;

“Appeal Fee” means the fee to file an appeal pursuant to this by-law and the amount as set out in the User Fee By-law;

“By-law Compliance Officer” means the persons designated as such by the Town for enforcement of by-laws pursuant to the *Provincial Offences Act*, and includes the Chief Building Official;

“Chief Building Official” means the person designated as such by the Town;

“Clerk” means the person appointed by Council as the municipal clerk pursuant to the *Municipal Act, 2001*;

“Crown of the Road” means the highest portion of a road cross-section, generally associated with the centerline of the road;

“*Drainage Act*” means the *Drainage Act*, R.S.O. 1990, c.D.17;

"Dump" or "Dumping" means the deposit or placement of Fill Material from one location to another and includes from one location at a site to another location on a site on the same property;

"*Electricity Act*" means the *Electricity Act*, 1998, S.O. 1998, c.15, Sched.A;

"Fill" or "Filling" means the alteration of the existing grade of the Land through the addition of Fill Material;

"Fill Material" means any type of material capable of being removed from or deposited on Land, and may include soil, Topsoil, stone, sod, turf, concrete, asphalt, either singly or in combination;

"Grade" or "grading" means the elevation of the ground surface of Land;

"Land" means any real property within the geographic boundaries of the Town of Lakeshore;

"*Municipal Act, 2001*" means the *Municipal Act, 2001*, S.O. 2001, c. 25;

"Owner" means the Person that is the registered owner of the Land pursuant to the laws of the Province of Ontario;

"Order to Discontinue Activity" means an order to discontinue activity issued pursuant to section 8 of this by-law;

"Person" means an individual, a corporation, a partnership, and an association as the context requires, and includes an applicant for a permit under this by-law;

"Permit" means an authorization in writing obtained pursuant to section 3 of this by-law;

"Permit Fee" means the fee for obtaining a Permit pursuant to this by-law and the amount as set out in the User Fee By-law;

"*Planning Act*" means the *Planning Act*, R.S.O. 1990, c.P.13;

"Private Drain" means any system or means by which storm water from adjacent or neighbouring Land crosses Land that is not designated as a Municipal Drain under the *Drainage Act*, R.S.O. 1990 c.D.17;

"Professional Engineer" means an engineer licenced by the Association of Professional Engineers of Ontario;

"*Provincial Offences Act*" means the *Provincial Offences Act*, R.S.O. 1990, c. P.33;

“Remedial Work Order” means an order issued pursuant to section 9 of this by-law;

"Required Yard" shall have the same meaning as that found in the Zoning By-law;

“Site Alteration” means one or more of the following:

- (a) placing Fill Material on Land;
- (b) Dumping on Land;
- (c) removing Topsoil from Land, including the removal of Topsoil for sale, exchange or other disposition;
- (d) altering the Grade of Land; and,
- (e) altering or removing a Private Drain.

“*Tile Drainage Act*” means the *Tile Drainage Act*, R.S.O. 1990, c.T.8;

“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;

“Town” means The Corporation of the Town of Lakeshore;

“Treasurer” means the person appointed by Council as the treasurer pursuant to the *Municipal Act, 2001*;

“User Fees By-law” means the User Fee By-law passed by Council pursuant to section 391 of the *Municipal Act, 2001*; and,

“Zoning By-law” means any by-law passed pursuant to section 34 of the *Planning Act*.

Section 2 – Site Alteration Prohibitions

- 2.1 No Person shall engage in Site Alteration without a Permit.
- 2.2 No Person shall cause or permit to be caused Site Alteration without a Permit.
- 2.3 No Person shall change the drainage characteristics of Land without a Permit.
- 2.4 No Person shall alter the Grade of Land as designed by a Professional Engineer without a Permit.
- 2.5 No Person shall engage in Site Alteration or cause or permit Site Alteration contrary to a Permit or contrary to the representations, plans, specifications or drawings that form the basis upon which a Permit was issued.

Section 3 - Permit

- 3.1 An applicant for Site Alteration shall submit the following to the Chief Building Official:
- (a) a completed application in the form prescribed from time to time by the Chief Building Official in accordance with the information required in this by-law;
 - (b) the Permit Fee as established in the User Fees By-law;
 - (c) when required by the Chief Building Official in order to assess the impact of the Fill or alteration on the environment affected, a fill-control plan, prepared by a Professional Engineer or licensed Ontario Land Surveyor, which may include any or all of the following as may be specified by the Chief Building Official or such other information as the Chief Building Official may deem appropriate:
 - (i) a key map showing the location of each lot, including the nearest major intersection and north arrow;
 - (ii) the lot boundaries and number of 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 25 metres beyond each lot boundary;
 - (vi) application of any applicable Conservation Authority storm flood plain, Fill regulation or applicable regulations or guidelines;
 - (vii) the location and identification of the predominant existing soil types;
 - (viii) the species, Grade at base and size of all trees greater than 150 millimetres in caliper, all shrubs, trees and hedges within 25 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 dimensions of any existing and proposed storm water drainage systems and natural drainage patterns on and within a minimum of 25 metres beyond each lot boundary;

- (x) the location and dimensions of utilities, structures, roads, highways and paving located within a minimum of 25 metres beyond each lot boundary;
 - (xi) the existing topography on each lot and extending a minimum of 25 metres beyond each lot boundary;
 - (xii) the proposed final 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 Fill Material 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 final 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, geotechnical and environmental analysis reports as to content and quality, prepared by qualified experts in that regard;
 - (f) a plan, which shall be prepared by a Professional Engineer or licensed Ontario Land Surveyor if the Chief Building Official so requires, 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;
 - (g) security in a form and amount to be determined by the Chief Building Official to secure performance of the work for which the Permit is being applied. The Chief Building Official may draw upon the security posted to recover the cost

of the Town performing any required work that the Owner has failed to perform and any Administration Fee that applies;

- (h) where the Land for which a Permit is being sought has access to a road under the jurisdiction of the County of Essex, evidence that the County of Essex has been consulted with respect to the application for a Permit together with a plan indicating how any requirements of the County of Essex will be met; and,
- (i) a plan indicating how the requirements of subsections 3.1(d) and 3.1(e) will be satisfied.

Section 4 - Issuance of Permit

4.1 Subject to section 4.2, the Chief Building Official shall issue a Permit upon being satisfied that:

- (a) a satisfactory grading plan has been received showing:
 - i) the extent of the works,
 - ii) the maximum and minimum elevations of the affected Land, and the maximum elevation shall be consistent with the elevation of adjoining Land and in no circumstance shall the raised elevation exceed one more above the Crown of the Road; and,
 - iii) the measures proposed to control storm-water run-off;
- (b) if there is an existing grading plan that was designed by a professional engineer then the proposed new Grading plan must be certified by a professional engineer;
- (c) storm water control measures, including swales, tile drains, retaining walls or other professionally designed systems are adequate to prevent the run-off of storm water to adjacent Land;
- (d) there is no adverse impact on neighbouring Land;
- (e) all required yards are adequately sloped from the existing Grade at the property line and the maximum slope of all required yards shall be eight centimetres per metre (one inch per foot);
- (f) the minimum elevation conforms to the requirements of the Conservation Authority, where applicable;

- (g) any Topsoil being removed is being used to restore the Land for which the Permit is being issued unless it can be shown to the satisfaction of the Chief Building Official that the Topsoil is not needed to restore the Land in which case the Topsoil may be removed from the Land provided the Topsoil is not being relocated outside the Town limits and a Permit has been issued for the Land to which the Topsoil is being applied; and,
 - (h) satisfactory dust control, traffic control, noise control, hours of operation and vehicle travel routes are established for all vehicles and equipment involved in the Dumping, filling or Grading operation.
- 4.2 Where the application for a Permit is for alteration of a Private Drain, the Chief Building Official must also be satisfied that:
- (a) the Private Drain is no longer required; or,
 - (b) alternative drainage measures will be constructed to satisfactorily maintain the existing drainage scheme.
- 4.3 It shall be a condition of every Permit that:
- (a) every reasonable step be taken to prevent nuisances related to dust and noise emanating from the activities undertaken pursuant to that Permit;
 - (b) all vehicles and equipment involved in the Dumping, Filling, removing or Grading or alteration shall follow the vehicle travel route established by the Chief Building Official when travelling to or from the property for which the Permit was issued; and,
 - (c) rear-yard drainage shall be provided as a condition to the issuance of a Permit on any Land zoned Residential in the Zoning By-law.
- The requirement of paragraph (c) may be waived, at the sole discretion of the Chief Building Official, where an adequate storm sewer outlet cannot be obtained.
- 4.4 A Permit shall expire on the date indicated on the Permit or 6 months from the date of its issue, whichever date is earlier.
- 4.5 A Permit that has expired may be renewed within 60 days of its date of expiry upon written application to the Chief Building Official accompanied by the applicable fee as set out in the User Fees By-law as well as an updated deposit, if required, and provided that the proposed work has not been revised.
- 4.6 The Chief Building Official may revoke the Permit under any of 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 Permit holder requests, in writing, that it be revoked;
- (d) if the Owner or Permit holder fails to comply with the terms and conditions of the Permit;
- (e) if work authorized under the Permit has not been commenced within 6 months of the issuance of the Permit; or,
- (f) if an Owner or Permit holder fails to comply with the provisions of this by-law.

4.7 An applicant for a Permit may file an appeal with the Clerk for the following:

- (a) the Chief Building Official's decision to refuse a Permit;
- (b) the Chief Building Official's decision to revoke or suspend a Permit; and,
- (c) elimination or modification of one or more conditions of a Permit. Appeals will not be heard for conditions required pursuant to section 4.3 of this by-law.

4.8 Appeals shall be heard by the Hearing Committee and the Hearing Committee may dispose of the appeal by:

- (a) upholding the Chief Building Official's decision; or
- (b) removing or modifying the conditions of a Permit.

4.9 Appeals shall be in writing and specify the grounds for the appeal.

4.10 The Clerk shall receive an appeal and deny, for administrative purposes, any appeal filed more than 15 days following the Chief Building Official's decision.

Section 5 - Administration and Enforcement

5.1 The provisions of this by-law shall be administered by the Chief Building Official and shall be enforced by a By-law Compliance Officer.

Section 6 - Powers of Officers

6.1 A By-law Compliance Officer may:

- (a) at any reasonable time, enter onto Land for the purpose of carrying out an inspection for the purpose of determining compliance with this by-law or the *Municipal Act, 2001*;
- (b) during an inspection, require production for inspection of documents or things relevant to the inspection and inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts and photograph such documents or things;
- (c) during an inspection require information from any person concerning a matter related to the inspection;
- (d) during an inspection be accompanied by a Person or Persons who has relevant or expert knowledge in relation to this by-law or matters regulated by this by-law;
- (e) conduct or direct a person possessing the relevant or expert knowledge to conduct such examinations or take tests, samples or photographs as the By-law Compliance Officer believes necessary for the purposes of inspection; and,
- (f) to confirm compliance with a Permit, require that a Permit holder or Owner provide a survey, prepared by a Professional Engineer or licensed Ontario Land Surveyor, of the Land forming the subject of the Permit once the works authorized by that Permit have been completed.

6.2 In addition to any other provision of this by-law, and subject to the provisions of the *Municipal Act, 2001*, a provincial judge or justice of the peace may issue an order authorizing a By-law Compliance Officer and any Person under his or her direction to enter onto or into any premises, including a room or place actually being used as a dwelling for the purpose of carrying out an inspection to determine compliance with this by-law, a Permit issued under this by-law or an order made under section 431 of the *Municipal Act, 2001* in relation to the subject matter of this by-law.

6.3 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Person who is exercising a power or performing a duty under this by-law.

6.4 No Person shall refuse or neglect to produce for inspection any document or thing required by a By-law Compliance Officer pursuant to this by-law.

Section 7 - Offences

- 7.1 Any Person who contravenes any provision of this by-law, a condition to a Permit or an order issued pursuant to this by-law is guilty of an offence and subject to prosecution pursuant to the *Provincial Offences Act*. A Person found guilty shall be liable:
- (a) upon conviction, to a minimum fine of \$500 and a maximum fine of \$100,000 for a first conviction;
 - (b) for each subsequent conviction, a minimum fine of \$500 and a maximum fine of \$10,000 for each day that the offence continues; and,
 - (c) upon conviction for each multiple offence, for each offence included in the multiple offence, the minimum fine shall not exceed \$500 and the maximum fine shall not exceed \$10,000; however, the total of all fines for each included offence is not limited to \$100,000.
- 7.2 Any director or officer of a corporation who knowingly concurs in the contravention of this by-law, a condition to a Permit or an Order issued pursuant to this by-law is guilty of an offence and subject to prosecution pursuant to the *Provincial Offences Act* as described in section 7.1.
- 7.3 If this by-law is contravened and a conviction entered, in addition to any other remedy and to 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:
- (a) prohibiting the continuation or repetition of the offence by the person convicted; and,
 - (b) require the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Section 8 - Order to Discontinue Activity

- 8.1 If the By-law Compliance Officer is satisfied that a contravention of this by-law has occurred, the By-law Compliance Officer may make an Order to Discontinue Activity requiring the Person who contravened the by-law or who caused or permitted the contravention or the Owner or occupier of the Land on which the contravention occurred to discontinue the contravening activity. The Order to Discontinue Activity shall set out:
- (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the Land on which the contravention occurred; and

(b) the date by which there must be compliance with the order.

8.2 Any Person that contravenes an Order to Discontinue Activity is guilty of an offence.

Section 9 - Remedial Work Orders

9.1 If a By-law Compliance Officer is satisfied that a contravention of this by-law has occurred, the By-law Compliance Officer may make a Remedial Work Order requiring a Permit holder or Owner or both to do work to correct the contravention and the Remedial Work Order shall set out:

- (a) the municipal address or the legal description of the Land;
- (b) reasonable particulars of the contravention and of the work to be done and the period within which there must be compliance with the order; and
- (c) a notice stating that if the work is not done in compliance with the order within the period it specifies, the Town may have the work done at the Owner's expense.

9.2 A Remedial Work Order shall be served personally or by prepaid registered mail sent to the last known address of the Permit holder or Owner of the Land or both.

9.3 If a By-law Compliance Officer is unable to effect service on the Owner or Permit holder, the By-law Compliance Officer may place a placard containing the terms of the order in a conspicuous place on the Land.

9.4 If the work or things required by a Remedial Work Order are not done within the period specified therein, the Town, in addition to all other remedies it may have, may, by its employees or agents, do the work required by the Remedial Work Order and the employees or agents of the Town may enter on the Land that are the subject of the order for this purpose.

9.5 Any Person that contravenes a Remedial Work Order is guilty of an offence.

Section 10 - Recovery of Expenses and Fines

10.1 Costs incurred by the Town pursuant to a Remedial Work Order, in addition to an Administration Fee, shall be recovered from the Owner from the security provided where applicable. All of the costs or the balance of the costs not recovered through the security, where applicable, shall be added by the Treasurer to the tax roll for any property in the Town for which the Owner is responsible for paying the costs and the costs may be collected in the same manner as municipal taxes. The costs include interest calculated at a rate of 15% calculated for the period commencing

on the day that the Town incurs the costs and ending on the day that the costs, including the interest, are paid in full.

- 10.2 Fines owing to the Town that are in default pursuant to section 69 of the *Provincial Offences Act* shall be added by the Treasurer to the tax roll for any property in the Town for which the Owner is responsible for paying the fine and the fine may be collected in the same manner as municipal taxes.

Section 11 - General

- 11.1 Nothing in this by-law shall serve to relieve any person from the obligation to comply with all other applicable law.
- 11.2 This by-law shall not apply to:
- (a) activities or matters undertaken by the Town or a local board of the Town;
 - (b) 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 the approval of a site plan, a plan of subdivision or a consent under section 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) 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;
 - (d) 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*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (e) 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*;
 - (f) 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* 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*;
- (g) 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*; and
- (h) the removal of Topsoil as an incidental part of a normal agricultural practice including such removal as an incidental part of sod-farming, greenhouse operations and nurseries for horticultural products.

Section 12 - Short Title

12.1 This by-law may be referred to as the “Fill By-law”.

Section 13 - Interpretation

- 13.1 If any court of competent jurisdiction finds any provision of this by-law is invalid or is *ultra vires* of the jurisdiction of the Town, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of this by-law.
- 13.2 The headings contained herein are for ease of reference only and do not form part of this by-law.
- 13.3 References in this by-law to words in the singular shall be deemed to include the plural.
- 13.4 Reference to any statute or by-law includes any amendment to that statute or by-law and any successor thereto.

Section 14 - Repeal

14.1 By-law 2011-24 and any amendments thereto are repealed, including by-laws 88-2015 and 76-2019.

Section 15 - Effect

15.1 This by-law shall come into force and effect upon passage.

Read and passed in open session August 11, 2020.

**Mayor
Tom Bain**

**Clerk
Kristen Newman**