

## CITY OF NIAGARA FALLS

### By-law No. 2007 - 260

A by-law to prohibit or regulate the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land within the City of Niagara Falls.

**WHEREAS** subsection 142(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that the Council of a local municipality may pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil or the alteration of the grade of the land in any defined area or on any class of land;

**AND WHEREAS** the Council of The Corporation of the City of Niagara Falls deems it expedient to regulate or prohibit certain site alterations within the City of Niagara Falls.

**THE COUNCIL OF THE CORPORATION OF THE CITY OF NIAGARA FALLS ENACTS AS FOLLOWS:**

#### Definitions

1. In this By-law,
  - (a) "**Agricultural land**" means,
    - (i) land upon which agriculture is a permitted use pursuant to the applicable Zoning By-law of the City of Niagara Falls;
    - (ii) land which is being used for agriculture at the time of the application for a permit;
  - (b) "**City**" means The Corporation of the City of Niagara Falls;
  - (c) "**Council**" means the Council of The Corporation of the City of Niagara Falls;
  - (d) "**Director**" means the Director of Municipal Works for The Corporation of the City of Niagara Falls, or his or her designate;
  - (e) "**Drainage**" means 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;
  - (f) "**Dumping**" and "**dump**" 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;

- (g) "**Erosion**" means the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;
- (h) "**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 such fill;
- (i) "**Fill**" means any type of material capable of being deposited or placed on lands and includes soil, stone, concrete, asphalt, sod or turf, either singly or in combination;
- (j) "**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;
- (k) "**Inspector**" means any person designated from time to time by the Director for the purposes of this By-law;
- (l) "**Normal agricultural practices**" means any activity performed on private lands by the owner or owner's agent that is considered by the Ministry of Agriculture, Food and Rural Affairs to be a routine or common procedure for the type of crop, soil type or general climatic conditions related to the subject property;
- (m) "**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;
- (n) "**Permit**" means a permit issued pursuant to this By-law;
- (o) "**Place of disposal**" means a municipally-owned storm drainage sewer, roadside ditch, a natural watercourse, or an outlet for storm drainage approved by the Corporation;
- (p) "**Placing**" and "**place**" means the distribution of fill on lands to establish a finished grade different from the existing grade;
- (q) "**Ponding**" means the accumulation surface water in an area not having drainage therefrom where the lack of drainage is caused by the placing or dumping of fill, or altering of the grade of the land;

- (r) "**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;
- (s) "**Retaining wall**" means a wall designed to contain and support fill which has a finished grade higher than that of adjacent lands;
- (t) "**Site**" means the lands which are the subject of an application for a permit pursuant to this By-law;
- (u) "**Soil**" means material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel;
- (v) "**Soil Scientist**" means a person holding a degree granted by a Canadian University or College attesting to completion of a course of study of the agricultural qualities of soil or to training in the grading and typing of agricultural soil or such equivalent qualification as is acceptable to the Director;
- (w) "**Storm sewer**" means a sewer for the collection and transmission of uncontaminated water, storm water, drainage from land or from a watercourse or any combination thereof under City roads and on City property;
- (x) "**Swale**" means a shallow depression in the ground sloping to a place of disposal of surface water for the purpose of providing a method of drainage;
- (y) "**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;
- (z) "**Watercourse**" means an open channel, ditch or depression, either natural or artificial, in which the flow of water occurs, either continuously or intermittently.

### **Application of By-law**

2. No person shall **dump**, or cause or permit the **placing** or **dumping** of **fill** on, nor alter or cause or permit the alteration of the grade of, any lands in the **City**, including lands which are submerged under any **watercourse** or other body of water, without first having obtained a **Permit** issued by the **Director** pursuant to this By-law.
3. No person shall remove, or cause or permit the removal of any **topsoil** from any **site** in the **City** without first having obtained a **Permit** issued by the **Director** pursuant to this By-law.

## Permit Application

4. A person applying for a **Permit** shall submit the following to the **Director**:
  - (a) a complete application in the form approved by the **Director** as is amended from time to time by the **Director**;
  - (b) the fee prescribed for a **Permit** as set out in Schedule "A";
  - (c) a Control Plan, the requirements of which are set out in section 7;
  - (d) Phase I, Phase II and Phase III Environmental Site Assessment Reports, as required by the **Director**;
  - (e) a plan showing properly scaled design details of any **retaining wall** that the applicant proposes, or that may be required by the **Director**, including the dimensions thereof and any materials to be used in the construction of any such **retaining wall**;
  - (f) securities in accordance with Schedule "A" to secure performance of the applicant's obligations under this By-law and any **Permit** issued hereunder; and
  - (g) in the case of **Agricultural land** a report prepared by and signed by a **Soil Scientist** confirming that the site alteration will maintain or improve the overall fertility of the **soil** of the **site**.
5. An applicant for a **Permit** shall, in addition to the requirements in section 4:
  - (a) certify that the **fill** contains no contaminants within the meaning of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, as amended; and
  - (b) forever and unconditionally release and indemnify the **City** 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.
6. The certificate and release and indemnity required by subsections 5(a) and (b), respectively, shall be in the form prescribed by the **Director** from time to time.

## Control Plans

7. A Control Plan required to be submitted as part of an application for **Permit** pursuant to this By-law shall include, where applicable:

- (a) a key map showing the location of the **site**;
- (b) the **site** boundaries, and the size of the **site** in hectares;
- (c) the current and proposed use of the **site** and the location and use of buildings and other structures adjacent to the **site**;
- (d) the location, dimensions and use of the buildings and other structures existing or proposed to be erected on the **site**;
- (e) the location of lakes, streams, wetlands, channels, ditches, other water courses and other bodies of water on the **site** and within fifteen (15) metres beyond the **site** boundaries for **sites** less than 0.2 hectares, and within thirty (30) metres beyond the **site** boundaries for **sites** greater than 0.2 hectares;
- (f) the Regional Storm Flood Plain and Conservation Authority Fill Regulation lines, with appropriate setbacks as required by the Conservation Authority;
- (g) the location of the predominant **soil** types;
- (h) the location and dimensions of any existing and proposed storm water **drainage** systems and natural **drainage** patterns on and within fifteen (15) metres beyond the **site** boundaries for **sites** less than 0.2 hectares, and within thirty (30) metres beyond the **site** boundaries for **sites** greater than 0.2 hectares;
- (i) the location and dimensions of utilities, structures, roads, highways and paving;
- (j) the existing **site** topography at a contour interval not to exceed 0.5 metres and to extend a minimum of fifteen (15) metres beyond the **site** boundaries for **sites** less than 0.2 hectares, and within thirty (30) metres beyond the **site** boundaries for **sites** greater than 0.2 hectares;
- (k) the location, diameter, species and drip line of all trees with a calliper measuring 100mm or greater at breast height, all other vegetation to be identified in masses showing outline of canopy created by the massing;
- (l) all existing vegetation 3 metres outside of the **site** boundaries or property lines must be identified, including **City** trees, individually locating all trees with a calliper measuring 100mm or greater at breast height, all other vegetation to be identified in masses showing outline of canopy created by the massing;
- (m) the proposed final elevations of the **site**;

- (n) the location and dimensions of all proposed land disturbance;
  - (o) the location and dimensions of all temporary **soil** or dirt stockpiles;
  - (p) the location, dimensions, design details, estimated costs and design calculations of all construction **site** control measures necessary to meet the requirements of this By-law;
  - (q) provisions for the maintenance of **site** control measures during construction;
  - (r) the scale of the drawing; and
  - (s) any other necessary information with respect to the **site**, as required by the **Director**.
8. Every Control Plan accompanying an application for **Permit** must be certified by a Professional Engineer who is licensed to practice in the Province of Ontario, or by any other qualified person approved by the **Director**.
9. Notwithstanding any other provisions of this By-law, the **Director** may, at his or her sole discretion, waive the requirement for a Control Plan, or any part thereof, and may reduce the fee for a **Permit** under this By-law, after taking into consideration the proposed works and the anticipated impact on the **site** and the surrounding environment.

### **Agreement with City**

10. The **Director** may, prior to the issuance of a **Permit** under this By-law, require the Applicant to enter into an agreement with the **City** to provide security for the Applicant's obligations under this By-law and any **Permit** issued hereunder, and such requirements as the **Director** considers necessary to ensure that the work is in accordance with proper engineering and environmental practices. The said agreement may be registered on title to the **site**, and the Mayor and City Clerk are hereby authorized to execute any such agreement on behalf of the **City**.

### **Issuance of Permit**

11. The **Director** shall issue a **Permit** pursuant to this By-law where:
- (a) the **Director** is satisfied that the lands which are the subject of the application are not within an area where the **placing** or **dumping** of **fill**, removal of **topsoil** or alteration of the grade of land is prohibited under this By-law, or any other applicable law;

- (b) the **Director** is satisfied that Applicant has complied or will comply with all requirements of this By-law, including the payment of all applicable fees, charges, securities and deposits;
- (c) the Applicant has entered into an agreement as referred to in section 10 of this By-law, if required by the **Director**, and has performed all of its obligations under the agreement which are required to be performed prior to the issuance of the **Permit**;
- (d) the **Director** is satisfied that the proposed final elevation, the resulting **drainage** patterns, the design of any **retaining wall**, the type of **fill** to be used, if any, and the method of **placing or dumping** of **fill**, removal of **topsoil** or alteration of the grade of land are all in accordance with proper engineering and environmental practices; and
- (e) the **Director** is satisfied that the **placing or dumping** of **fill**, removal of **topsoil** or alteration of the grade of the land will not result in:
  - (i) **soil erosion**;
  - (ii) blockage of a **watercourse**;
  - (iii) siltation in a **watercourse** or **storm sewer**;
  - (iv) pollution or contamination 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 seventy-five (75) millimetres or more located on the **site**;
  - (viii) a detrimental effect on matters of inherent biological sensitivity such as aquifer recharge, water quality, unusual plants or wildlife and overwintering habitats;
  - (ix) a detrimental effect on the amenities of adjacent lots;
  - (x) hindering the orderly development of any lands;
  - (xi) physical damage to the adjacent roadway; or
  - (xii) a detrimental effect upon the fertility or viability of **Agricultural land**.

### **Terms, Conditions and Design Guidelines**

- 12. The **Director** or an **Inspector** may impose such terms, conditions and design guidelines upon the issuance of any **Permit** as serve the purposes of this By-law.
- 13. The **Director** may require, as a condition of any **Permit** issued pursuant to this By-law, that a **retaining wall**, 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, be constructed where:

1. **erosion of fill** onto abutting lands may occur as a result of the work which is the subject of the **Permit**; or
2. the **finished grade** of the **site** at the property line is higher than the **existing grade** of the abutting land.

### **Compliance with Plans and Conditions, Applicable Law**

14. Where a **Permit** has been issued pursuant to this By-law, no person shall **place** or **dump fill**, remove **topsoil** 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 terms, conditions and design guidelines imposed by the **Director**.
15. Notwithstanding any other provision of this By-law, the **Director** shall not issue a **Permit** for any **site** defined or designated as an "Environmentally Sensitive Area" by the **City's** Official Plan or the Official Plan of the Regional Municipality of Niagara, without the prior approval of **Council**.
16. Notwithstanding any other provision of this By-law, no person shall **place** or **dump**, or cause or permit the **placing** or **dumping** of **fill** on any lands for the purpose of outside storage unless the outside storage of such **fill** is permitted by the **City's** Zoning By-law, as amended from time to time.
17. Notwithstanding the issuance of a **Permit** pursuant to this By-law, an applicant and/or **owner** shall comply with all other applicable federal, provincial and municipal law.

### **Request for Inspection**

18. An applicant for a **Permit**, or his or her authorized agent, shall, where a **Permit** has been issued pursuant to this By-law, request the **Director** to make inspections at the commencement and at the conclusion of the work which is the subject of the **Permit**, and shall request such further inspection as may be required by the **Director**.

### **Time Limit for Permits**

19. A **Permit** issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance, but shall expire three (3) months from the date of issuance if work has not been commenced by that date. A **Permit** which is no longer valid or which has expired pursuant to this section may be renewed within a six (6) month period following the date of expiration upon written application to the **Director**, accompanied by a payment of one half

of the original **Permit** fee, provided that the proposed work which was the subject of the **Permit** has not be revised in any way.

### **Transfer of Permit**

20. If the lands for which a **Permit** has been issued are transferred while the **Permit** remains in effect and outstanding, any subsequent registered **owner** shall, prior to the closing of the transaction:
  - (a) provide the **City** with written consent to the transfer to the **Permit** into the name of the subsequent registered **owner**; and
  - (b) provide security in a form and amount acceptable to the **Director**, at which time any security previously provided by the original **Permit** holder pursuant to this By-law shall be released.
21. If the provisions of section 20 are not complied with, the **Permit** shall be deemed to be cancelled as of the date of the closing of the transfer of the lands for which the **Permit** had been issued.

### **Minimum Standards**

22. In addition to all other requirements in this By-law, no person shall **place** or **dump**, or cause or permit the **placing** or **dumping** of **fill**, removal of **topsoil** or alteration of the grade of land in the **City** unless:
  - (a) it is done at the request of, or with the written consent of the **owner** of the **site** where the **fill** is to be **placed** or **dumped**, **topsoil** removed or the grade of land altered;
  - (b) all **fill** to be used includes only **soil**, stone, sod or other material acceptable to the **Director** and that such material is clean and free of any glass, plastics, rubber, metals, termites, liquid, garbage and/or contaminants;
  - (c) the **drainage** system for the **site** is provided in accordance with this By-law and any **Permit** issued pursuant thereto.
23. Every person who **places** or **dumps fill**, causes or permits **fill** to be **placed** or **dumped**, removes **topsoil** or alters the grade of land, shall;
  - (a) ensure that the **finished grade** surface is protected by sod, turf, seeding of grass, greenery, asphalt, concrete or such other material as the **Inspector** may approve,

either singly or in combination;

- (b) ensure that **fill** is not **placed** around the perimeter of any existing building to an elevation higher than one hundred and fifty (150) millimetres below the top of foundation of such building, unless such building and its foundation walls are raised in a manner satisfactory to the **Director**;
- (c) ensure that no piped connection to **City** culverts, ditches or sewer systems is covered and backfilled until the work has been inspected and approved by the **Director** or an **Inspector**;
- (d) provide and maintain such protection for trees as may be required by the **Director**;
- (e) provide and maintain siltation control measures as may be required by the **Director**;
- (f) ensure that all **fill** used is clean and free of rubbish, glass, garbage, termites, organic materials, liquid and toxic chemicals and other contaminants;
- (g) ensure that the work which is the subject of a **Permit** does not soil or otherwise foul any municipal roads, and in the event that such soiling or fouling should occur, ensure that the road(s) affected are cleaned to the satisfaction of the **Director** or an **Inspector** within twelve (12) hours of any request by the **Director** or an **Inspector** for such cleaning;
- (h) 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 **site** or abutting lands and that adequate provision is made for proper surface stormwater **drainage**;
- (i) ensure that the fertility and viability of **Agricultural land** is maintained; and
- (j) ensure that all conditions of the **Permit** issued pursuant to this By-law, and any other requirements of this By-law are fulfilled to the satisfaction of the **Director**.

## **Exemptions**

24. The provisions of this By-law do not apply to:

- (a) activities or matters undertaken by the **City** or a local board of the **City**;
- (b) the **placing** or **dumping** of **fill** 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** 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** 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, 1998*, 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** 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** 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*; or
- (g) the **placing** or **dumping** of **fill** or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*.

### **Exception**

- 25. The provisions of this By-law respecting the removal of **topsoil** do not apply to 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.
- 26. The exception in section 25 respecting the removal of **topsoil** as an incidental part of a normal agricultural practice does not include the removal of **topsoil** for sale, exchange or other disposition.

### **By-law ceases to have effect**

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

### **Enforcement of By-law**

28. The administration and enforcement of this By-law shall be performed by the **Director**, his or her designates, and those persons designated from time to time by the **Director** as **Inspectors** under this By-law. The **Director**, 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 any lands to which this By-law applies.
29. Where a person has **placed** or **dumped fill**, or caused or permitted the **placing** or **dumping** of **fill**, the removal of **topsoil** or the alteration of the grade of land in contravention of any **Permit** issued 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 **Director** may make an Order directing the person to do any or all of the following:
1. comply with the conditions of the **Permit** and this By-law;
  2. cease the work which is the subject of the contravention; and/or
  3. require work to be done to correct the contravention to the satisfaction of the **Director**, and within the time specified in the Order.
30. Where a person has failed to correct any such contravention to the satisfaction of the **Director** within the time specified in an Order issued pursuant to this By-law, the **City**, in addition to all other remedies it may have, may take all necessary steps to bring the lands into compliance with the terms of this By-law, and may enter upon land, at any reasonable time, for this purpose.
31. The **City** may recover those costs incurred under section 30, plus interest accrued to the date payment is made at the rate of fifteen percent (15%) per annum, from the **owner** of the land by action or in like manner as municipal taxes.

### **Offence and Penalty**

32. Every person who contravenes any provision of this By-law is guilty of an offence and is liable for every day or part thereof upon which such offence occurs or continues to a fine of not more than \$10,000.00 on a first conviction, and not more than \$25,000.00 on any subsequent conviction, as provided in subsection 144(16) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended.
33. Every corporation that contravenes any provision of this By-law is guilty of an offence and is liable for every day or part thereof upon which such offence occurs or continues to a fine of not more than \$50,000.00 on a first conviction, and not more than \$100,000.00 on any subsequent conviction, as provided in subsection 144(17) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended.

### **Appeal to Ontario Municipal Board**

34. An applicant for a **Permit** under this By-law may appeal to the Ontario Municipal Board,
  - (a) if the **Director** refuses to issue a **Permit**, within 30 days of the refusal;
  - (b) if the **Director** fails to make a decision on an application for **Permit**, within 45 days after the application is received by the Clerk; or
  - (c) if the applicant objects to a condition in the **Permit**, within 30 days after the issuance of the **permit**.

### **Severability**

35. 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.

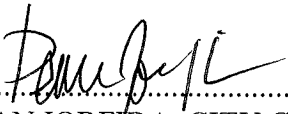
### **General**

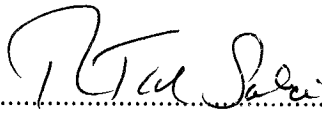
36. City of Niagara Falls By-law No. 2004-57 is hereby repealed.

**Short Title**

37. The short title of this By-law is the City of Niagara Falls Site Alteration By-law.

Passed this 10<sup>th</sup> day of December, 2007.

  
.....  
DEAN IORFIDA, CITY CLERK

  
.....  
R. T. (TED) SALCI, MAYOR

First Reading: December 10, 2007  
Second Reading: December 10, 2007  
Third Reading: December 10, 2007

**SCHEDULE "A"**

**PERMIT FEES**

**Any applicable supplementary fees where required by written agreement with the Corporation:**

**Application Fee ..... \$100.00**

**Required Security ..... (10% of estimated value of work up to \$250.00 maximum)**