

Site Alteration By-law

CP-1363-381 - Consolidated February 28, 2011

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**OFFICE CONSOLIDATION
INCLUDING AMENDMENT C.P.-1363(e)-77 (Feb 28/11)**

Bill No. 485
1996

COMMUNITY PLANNING

By-law C.P.-1363-381

**A by-law to prohibit and regulate the placing or dumping of fill
and the alteration of the grade of land
in defined areas of the City of London**

WHEREAS section 223.1 of the *Municipal Act, R.S.O. 1990, c. M.45*, as amended by section 56 of the *Planning and Municipal Statute Law Amendment Act, 1994* authorizes the Council of a local municipality to pass by-laws for prohibiting or regulating the placing or dumping of fill and the alteration of the grade of land in the Municipality'

AND WHEREAS the City of London Official Plan has identified areas containing important natural features which have been recommended for long-term protection or more detailed assessment prior to the final determination of land use designations;

AND WHEREAS it is in the interest of the community to protect these important natural features from unnecessary degradation or alteration until such time as a final determination has been made on the need for long-term protection;

THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

**SHORT TITLE
THE CITY OF LONDON SITE ALTERATION BY-LAW**

**Part 1
DEFINITIONS**

1.1 definitions

In this by-law:

““City Planner” shall mean the person who holds the position of City Planner for The Corporation of the City of London.”

“Director of Development Planning” shall mean the person who holds the position of Director of Development Planning for The Corporation of the City of London;

“Drainage” shall mean the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by an artificial method;

“Draft Plan of Subdivision” shall mean the draft plan of the proposed subdivision pursuant to section 51 of the *Planning Act, R.S.O 1990*, as amended

“Dumping” shall mean the depositing of fill in a location other than where the fill was obtained and includes the movement and depositing of fill from one location on a property to another location on the same property;

“Environmental Protection Area” includes “Environmental Review” areas and “Open Space” areas designated on Map Schedule “A” Land Use of the Official Plan for the City of London Planning Area adopted by Municipal Council and amended from time to time;

“Fill” shall mean any type of material deposited or placed on lands and includes soil, stone, rock, concrete, asphalt, sod or turf;

“Grade, Existing” shall mean the elevation of the existing ground surface of the lands identified as “Environmental Protection Area” on the date of passage of this by-law;

“Inspector” shall mean a person duly authorized by the City Planner to carry out the administration and enforcement duties in Parts 7 and 8 of this by-law;

“Managing Director of Development Approvals Business Unit” shall mean the person who holds the position of Managing Director of Development Approvals Business Unit for The Corporation of the City of London;

“Owner” shall mean the registered owner of land, or their agent, or anyone acting under the direction of the owner and their agent;

“Site” shall mean the area of land containing any proposed dumping or alteration; and

“Soil” shall mean material commonly known as earth, topsoil, loam, subsoil, clay, sand, gravel, silt, rock or fill.

Part 2 EXEMPTIONS

2.1 By-law – provisions not applicable – various

The provision of this by-law do not apply;

- a) where a regulation made under section 28(1) of the *Conservation Authorities Act* respecting the alteration to existing grades and the placing or dumping of fill is in effect;
- b) to the placing or dumping of fill or alteration of the grade of land undertaken by any municipality or local board as defined in the *Municipal Affairs Act*, to a Crown agency as defined in the *Crown Agency Act* or to Ontario Hydro;
- c) to activities or matters prescribed by regulations pursuant to the *Municipal Act*;
- d) in areas that are zoned and draft plan approved for development and a subdivision agreement or development agreement has been entered into between the owner and the City which has been registered against the title of the subject lands and is still in effect;
- e) In areas that are under licence or permit, issued in accordance with the *Aggregate Resources Act*;
- f) in areas that are not defined as “Environmental Protection Area” by this by-law;
- g) to the ploughing of land associated with planting, cultivation or harvesting of agricultural crops, and routine maintenance of existing drains;
- h) to routine maintenance activities within established golf courses;
- i) to minor activities approved by the City Planner as exceptions; and
- j) in areas which do not have “draft plan of subdivision” approval.

Part 3 PROHIBITIONS

3.1 Grade alteration – permit required

Unless otherwise exempted by this by-law, no person shall alter the grade of land or place or dump fill within any Environmental Protection Area or on any land that is subject to a draft plan of subdivision without having first obtained a permit issued by the City Planner.

3.2 Grade alteration – in accordance with permit

Where a permit has been issued pursuant to this by-law, no person shall alter the grade of land, or place or dump fill except in accordance with the plans, conditions and any other information on the basis of which a permit was issued.

Part 4 REQUIREMENTS FOR AN APPLICATION

4.1 Application requirements - permit

A person applying for a permit to alter the grade of land or place or dump fill within any Environmental Protection Area or on any land that is subject to a draft plan of subdivision shall submit a completed application form, along with the required plans and information to the City Planner.

4.2 Application - approved form

Applications shall be made on the form approved by the City Planner.

Part 5
REQUIREMENTS FOR ISSUANCE OF A PERMIT

5.1 Permit Issuance – requirements – various

In an Environmental Protection Area, the City Planner shall issue where:

- a) the applicant has fulfilled all requirements pursuant to this by-law;
- b) the proposed activity is associated with an existing use of the property;
- c) the City Planner is satisfied that the proposed site alteration (including any protective measures) will not result in:
 - (i) interference with natural drainage processes or blockage of a watercourse;
 - (ii) soil erosion, slope instability or siltation in a watercourse;
 - (iii) pollution of a watercourse;
 - (iv) flooding, ponding or other impacts on the natural hydrologic cycle;
 - (v) a significant impact on any healthy vegetation community within, or adjacent to the subject site; and
 - (vi) a significant impact on any fish or wildlife habitat within, or adjacent to the subject site; and
- d) the owner, if required, enters into an agreement which may be registered on title to the subject lands containing such conditions as the City Planner considers necessary to ensure that the site alteration and any protective measures will be undertaken in accordance with the approved plans and information. Such an agreement may contain a provision that the applicant post with the City security in an amount determined by the City Planner, to ensure performance of the obligations under the agreement.

5.1.1 Permit Requirements – draft plan

In an area that is subject to a draft plan of subdivision, the City Planner shall issue a permit where:

- a) the applicant has fulfilled all requirements pursuant to this by-law;
- b) the proposed activity is pursuant to meeting the conditions of draft plan of subdivision approval;
- c) the City Planner is satisfied that the proposed site alteration (including any protective measures) will not result in:
 - (i) drainage patterns of adjacent properties being adversely disturbed;
 - (ii) any other works commencing on site until all pertinent approvals are in place;
 - (iii) undue dust problems for adjacent properties;
 - (iv) any existing City street being fouled with dirt, mud or debris;
 - (v) any existing City street being used for construction access purposes except those routes designated for construction access by the City Engineer;
 - (vi) any on site burning of material without prior approval of the Fire Department;
 - (vii) any negative impact on groundwater levels except those which are approved by the City Engineer; and
 - (viii) any non compliance with any relevant conditions of subsection 5.1. (c) of this by-law:

- d) registration of the subdivision agreement on title is expected within four (4) months;
- e) the City is in receipt of the first submission of engineering drawings for the area (or portion thereof) of draft plan of subdivision approval; and
- f) the owner, if required, enters into an agreement which may be registered on title to the subject lands containing such conditions as the City Planner considers necessary to ensure that the site alteration and any protective measures will be undertaken in accordance with the approved plans and information. Such agreement may contain a provision that the applicant post with the City security in an amount determined by the City Planner, to ensure performance of the obligations under the agreement.

5.2 Permit valid – until expiry date

A permit issued pursuant to this by-law shall be valid to the expiry date as specified on the permit by the City Planner.

5.3 Permit issuance – no exemption from other requirement

A permit issued pursuant to this by-law does not preclude the applicant's responsibility to obtain all other approvals which may be required by any level of government and /or agencies thereof.

5.4 Permit transfer – requirements

If the lands for which a permit has been issued are transferred while the permit remains in effect the new owner of the lands shall either:

- a) provide the City with an undertaking to comply with all the conditions under which the existing permit was issued; or
- b) apply for and obtain a new permit in accordance with the provisions of this by-law.

5.5 City Planner – Imposition of conditions

The City Planner may impose conditions to permit as in the opinion of the City Planner are reasonable to ensure that the proposed site alteration is consistent with the provisions of Section 5.1 or Section 5.1.1 of this by-law.

5.6 City Planner – refer application – comment

The City Planner may refer any application, associated plans and information to municipal staff, public agency, advisory body and/or other qualified professional for comment prior to making a decision.

Part 6 APPEALS

6.1 Permit – conditions – refusal – appeal OMB

An applicant for a permit pursuant to this by-law may appeal to the Ontario Municipal Board:

- a) where the applicant objects to a condition in the permit, within thirty (30) days from the issuance of a permit; and,
- b) where the City Planner refuses to or does not issue a permit within forty-five (45) days from the date the application and all required plans and information are received by the clerk, within thirty (30) days from the expiration of the forty-five (45) days.

6.2 OMB – powers on appeal

The Ontario Municipal Board may make an order,

- a) upholding the decision of the municipality;
- b) requiring the municipality to vary any condition in a permit; or,
- c) requiring the municipality to issue a permit on such conditions as the Board considers appropriate.

6.3 OMB decision – final

The decision of the Ontario Municipal Board is final.

6.4 Ontario Municipal Board Act – sections not applicable

Sections 43 and 95 of the *Ontario Municipal Board Act* do not apply to a decision of the Ontario Municipal Board under section 6.2 of this by-law.

6.5 OMB powers – correction of errors

The Board may, without a hearing, correct an error in decision under this section if the error is of a typographical, clerical or similar nature.

Part 7 ADMINISTRATION

7.1 City Planner –administers and enforces by-law – City Planner -absence.

The administration and enforcement of this bylaw shall be performed by the City Planner. When the City Planner is absent or his office is vacant then the Managing Director of the Development Approvals Business Unit or when they are absent or their respective offices are vacant, then the Director of Development Planning shall act in the place and stead of the City Planner under this by-law and while so acting has and may exercise all the rights, powers and authority of the City Planner as delegated by this by-law subject to the same responsibilities and limitations set out in this by-law.”

7.2 Inspectors – training and designation

Each inspector under this by-law shall be suitably trained and issued with a certificate of designation.

7.3 Inspectors – powers – enter and inspect

An inspector may during daylight hours and upon producing the certificate of designation, enter and inspect any land to which the by-law applies.

7.4 Inspectors – accompanied by assistant

An inspector may, in carrying out an inspection, be accompanied by an assisting person.

7.5 Notice – contravention – owner

If, after the inspection, the inspector is satisfied that there is a contravention of this by-law, he or she shall notify the owner of the land of the particulars of the contravention by personal service or prepaid registered mail and may, at the same time, provide all occupants with a copy of the notice.

7.6.1 Contravention – person to remove fill

Where fill is dumped or placed or grading carried out contrary to this by-law or contrary to a permit issued pursuant to this by-law, it shall be removed by the person who dumped or placed it or who caused or permitted it to be dumped or placed.

7.6.2 Required actions – City can do

Where anything required to be done in accordance with this by-law is not done, the City Planner or persons designated by the City Planner of Planning and Development for The Corporation of the City of London may, upon such notice as he/she deems suitable, do such thing at the expense of the person required to do it and, in so doing, may charge an administration fee of 15% of such expense.

7.7 Inspector – powers – to make order

After giving any person served with a notice pursuant to this by-law an opportunity to appear before the inspector and make representations in connection with the notice, the inspector may make an order setting out:

- a) the municipal address or the legal description of the land;
- b) reasonable particulars of the work to be done to correct the contravention and the period in which there must be compliance with the order; and
- c) notice that if the work is not done in compliance with the order within the specified period the City may have the work done at the owner's expense.

7.8 Order – method of service

An order pursuant to this by-law shall be served personally or by prepaid registered mail sent to the last known address of the owner of the land.

7.9 Inspector – placard – site – constitutes service

An inspector who is unable to effect service pursuant to section 7.8 of this by-law shall place a placard containing the notice or order in a conspicuous place on the property and the placing of the placard shall be deemed to be sufficient service of the notice or order on the owner.

7.10 City – entry to do remedial work

If the owner fails to do the work required by the order within the period it specifies the City, in addition to all other remedies it may have, may do the work and for this purpose may enter on the land with its employees and agents.

7.11 Costs – represents a lien

Costs incurred by the City pursuant to this by-law are a lien on the land upon the registration in the proper land registry office of a notice of a lien.

7.12 Costs – interest accrues until payment

The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date payment is made.

7.13 Regulation – Conservation Authorities Act – supersedes by-law

A regulation made under the *Conservation Authorities Act* respecting the placing or dumping of fill in any area of the City supersedes the provisions of this by-law.

**Part 8
ENFORCEMENT**

8.1 Inspector obstructed – constitutes offence

Any person who obstructs an inspector who is carrying out an inspection of work pursuant to the provisions of this by-law is guilty of an offence.

8.2 Fine for conviction – Provincial Offences Act

Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*.

8.3 Court order – continuation or repetition of offence

If any person is convicted of an offence under this by-law, in addition to any other remedy or any penalty provided by law, the court in which the conviction has been entered, and any other court of competent jurisdiction thereafter may make an order prohibiting the continuation or the repetition of the offence of any person.

**Part 9
EFFECTIVE DATE**

9.1 Effective date

This by-law comes into force on the day it is passed

PASSED in Open Council on July 2, 1996

D.L. Haskett
Mayor

J. A. Malpass
Assistant City Clerk

First Reading – July 2, 1996
Second Reading – July 2, 1996
Third Reading – July 2, 1996