

## **The Corporation of The Town Of Essex**

### **By-Law Number 843**

Being a by-law to provide for the regulation  
of the placing or dumping of fill,  
alteration of the grade of, removal of  
topsoil from land in the municipality

Whereas, Section 142(2) of the Municipal Act, R.S.O. 2001 and amendments thereto, provides that a local municipality may:

- (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; and
- (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.

And Whereas, the Council of the Corporation of the Town of Essex considers it desirable to pass such a By-Law;

Now therefor the Council of the Corporation of the Town of Essex enacts as follows:

#### **Section 1-Definations:**

In this By-Law:

- a) "Act" Shall mean the Provincial Offences Act R.S.O. 1990 Chapter P.33
- b) "Crown of the road" means the high portion of a road cross-section, generally associated with the centerline of the road.
- c) "Dumping" means the placing of any fill material on any lands.
- d) "Existing grade" means the naturally occurring grade.
- e) "Filling" means the changing of the existing grade through the addition of fill material.
- f) "Grading means the altering of the existing grade.
- g) "Owner" means the person whose name appears on the latest revised assessment role.
- h) "Professional Engineer" means an engineer licenced by the Association of Professional Engineers of Ontario.
- i) "Town" means the Corporation of the Town of Essex.

#### **Section 2-General**

- 2.1 This By-Law may be referred to as the "Grading By-Law", "Fill By-Law", "Dumping By-Law", or the "Topsoil By-Law".
- 2.2 The provisions of the By-Law shall apply to all lands within the boundaries of the Town as are now or hereafter legally constituted.
- 2.3 Nothing in this By-Law shall serve to relieve any person from the obligation to comply with all other applicable law.

- 2.4 The provisions of this By-Law shall not apply to the placing or dumping of fill, the grading of, or the removal of topsoil from land lawfully conducted prior to the final passing of the By-Law.
- 2.5 The Town may by agreement permit the placing of fill, the grading of, or the removal of topsoil from land that does not otherwise comply with the provisions of this By-Law.
- 2.6 If any court of competent jurisdiction finds any portion 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.
- 2.7 This By-Law shall come into full force and effect upon the passage thereof.
- 2.8 All schedules affixed to this By-Law are included and form part of this By-Law by reference thereto.
- 2.9 English measurements, provided in brackets, are shown of convenience only and do not form part of this By-Law.

### **Section 3-Administration and Enforcement**

- 3.1 The provisions of this By-Law shall be administered by the Town's Chief Building Officials. The duly appointed Chief Building Officials of the Town are hereby designated as Officers for the purposes of this By-Law.
- 3.2 Every 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 upon conviction is liable to a fine in the maximum amount provided for by the Act.
- 3.3 Notwithstanding the provisions of Section 3.2, every person who contravenes any provision of this By-Law is guilty of an offence and can, at the option of the Town be prosecuted pursuant to the provision of Part 1 of the Act, and upon conviction thereof is liable to a set fine as determined with the procedure delineated in the Act and Regulations passed there under.
- 3.4 An Officer may at any reasonable time, enter and inspect any lands for the purpose of determining compliance with any provision of this By-Law, a permit issued pursuant to this By-Law or an order issued pursuant to this By-Law.
- 3.5 An Officer may at any reasonable time, enter lands to do work required by an order issued pursuant to this By-Law provided the service requirements of Section 3.12 have been complied with.
- 3.6 Any dumping or placing of fill carried out contrary to this By-Law or permit issued pursuant to this By-Law shall be removed and the site restored to its original condition by the person who dumped or placed it or caused or permitted it to be dumped or placed.
- 3.7 Where the grade of the land has been altered contrary to this By-Law or a permit issued pursuant to this By-Law, the grade of the land shall be restored to its original condition by the person who altered it or caused or permitted it to be altered.
- 3.8 For the purpose of enforcing the requirements of subsections 3.6 and 3.7 the Town shall have recourse to the owner of the land in accordance with the powers set out in the Act.
- 3.9 Where topsoil has been removed contrary to the provisions of this By-Law or a permit issued pursuant to this By-Law, the land shall be rehabilitated.
- 3.10 Stop Work Order- If an Officer is satisfied that there is a contravention of this By-Law, the Officer may revoke the permit and may make an order requiring the owner of the land or the person who caused or permitted the placing or dumping of fill, removal of topsoil or alteration of the grade of land in contravention of this By-Law to discontinue the activity and the order shall set out:

- a) the municipal address or the legal description of the land; and
- b) reasonable particulars of the contravention and the period within which there must be compliance.

3.11 Work Order- If an Officer is satisfied that that a contravention of this By-Law has occurred, the Officer may make an order requiring work to be done to correct the contravention and the order shall set out:

- a) the municipal address or the legal description of the land; and
- b) reasonable particulars of the contravention and the period within which there must be compliance; 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 expense of the owner.

3.12 An order issued 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.

3.13 If an Officer is unable to effect service on the owner under subsection 3.12, the Officer may place a placard containing the terms of the order in a conspicuous place on the land.

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

3.15 Costs incurred by the Town under subsection 3.14 shall be recovered from the indemnity deposit and/or in like manner and with the same priority as Municipal Taxes.

3.16 No person shall obstruct an Officer in the performance of his/her duties or a person carrying out work in accordance with subsection 3.5.

#### **Section 4-Dumping, Filling and Grading**

4.1 No person shall dump on, fill, remove topsoil from or grade lands within the Town unless a permit has been issued authorizing the dumping, filling, removal of topsoil or grading. The cost of the permit and indemnity deposit shall be as provided for in Schedule "A".

4.2 Notwithstanding subsection 4.1, where a building permit has been applied for, the provisions of this By-Law shall be complied with as a condition to the issuance of the building permit and, as such, the requirement for a separate permit and fee required by this By-Law shall be waived.

4.3 No person shall change the drainage characteristics of lands without a permit.

4.4 No person shall change the grade elevations of lands as designated by a professional engineer without a permit.

4.5 An Officer shall issue a permit upon the following conditions being satisfied:

- a) That a satisfactory lot-grading plan has been received showing the extent of the works, the maximum elevation of the raised lands and the measures proposed to control storm-water run-off. Changes to the elevations of lands as designed by a professional engineer must be certified by a professional engineer.
- b) That the Town is satisfied that storm water control measures including swales, tile drains and, or retaining walls are adequate to prevent the run-off of storm-water to adjacent lands.
- c) That the maximum permitted elevation shall be consistent with the elevation of adjoining lands. Further, the maximum permitted elevation shall not exceed one metre (39 inches) above the crown of the road.

- d) That all required yards are adequately sloped from the existing grade at the property line. The maximum slope of all required yards shall be eight centimetres per metre (1 inch per foot).
- e) Where it can be demonstrated that the requirements of c) and d) above cannot be met, an Officer, at the Officer's sole discretion, may waive the requirements as long as the waiving of these requirements does not create an adverse impact on adjoining lands.
- f) That the minimum elevation conforms to the requirements of the Essex Region Conservation Authority, where applicable. That where a minimum elevation has not been established by the Essex Region Conservation Authority, the minimum elevation shall be established to the satisfaction of the Officer having regard to the elevation of the road, the elevation of abutting lands and the potential for flooding.
- g) That the topsoil being removed is being used to restore the lands for which the permit is being issued unless it can be shown to the satisfaction of the Officer that the topsoil is not needed to restore the lands in which case the topsoil may be permitted to be removed from the land. Topsoil permitted to be removed may only be relocated within Town limits, and the site where the topsoil is being located to shall be approved by the Officer.
- h) That satisfactory dust control, traffic control, noise control, hours of operation and vehicle travel routes are established for all equipment involved in the dumping, filling or grading operation.
- i) The requirements for issuing a permit under Section 5 are satisfied.

4.6 No person shall alter a private drain without a permit. In addition to the requirements of subsection 4.4, a permit to alter a private drain shall not be issued until it can be shown that:

- a) the drain is no longer required; or
- b) that alternative drainage measures will be constructed to satisfactorily maintain the existing drainage scheme.
- c) No person shall fill, dump on, remove topsoil from, alter a private drain or grade lands contrary to the conditions of a permit or contrary to the plans, specifications or drawings upon which the permit was issued.

4.7 A permit issued in accordance with subsections 4.4 and 4.5 may impose any other conditions that are in the opinion of the Officer required to fulfill the requirements of this By-Law.

4.8 In addition to any other requirements of this By-Law, rear-yard drainage shall be provided as a condition to the issuance of a permit on any lands zoned "Residential" in the Town's Zoning By-Law.

4.9 The requirement of subsection 4.8 may be waived, at the sole discretion of an Officer, where an adequate storm sewer outlet cannot be obtained.

### **Section 5-Additional Agricultural Zone Provisions**

The following provisions shall apply to all lands zoned Agricultural in the Town's Zoning By-Law in addition to the provisions of Section 4.

5.1 The dumping on, filling of, removal of topsoil from or the grading of lands zoned Agricultural in the Town's Zoning By-Law shall be prohibited unless a permit is obtained.

5.2 Notwithstanding subsection 5.1 above, an Officer may issue a permit where:

- a) a building permit has been issued for the construction of a structure on the land and the dumping on, filling of, removal of topsoil from or grading of the land is incidental and subordinate to the construction of the structure; or,
- b) the dumping on, filling of, removal of topsoil from or grading of the land is an approved farm practice as determined by the Ministry of agriculture, Food and Rural Affairs or the practice falls within the exemptions contained in Section 142 (6) of the Municipal Act, 2001 and amendments thereto or the exclusions contained in 142 (7) of the Municipal Act, 2001 and amendments thereto.
- c) the dumping on, filling of, removal of topsoil from, or grading is taking place to alter an existing irregular or unusual feature on the land such as the filling of a pond or the grading of a raised mound of earth.

**Section 6-Exemptions**

6.1 Section 142(5) of the Municipal Act 2001 and amendments thereto shall apply.

Read a first, second, third time and finally passed this 4th day of September, 2007.

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Mayor

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Clerk

**Part 1 Provincial Offences Act  
The Corporation of The Town Of Essex  
By-Law Number 843**

Being a by-law to provide for the regulation  
of the placing or dumping of fill,  
alteration of the grade of, removal of  
topsoil from land in the municipality

Column 1	Column 2	Column 3
Item	Offence Creating Provision Or Defining Offence	Set Fine
Short Form Wording		
1. Obstructing an Officer in the performance of his/her duties	3.16	\$100.00
2. Dumping on lands without a permit	4.1	\$100.00
3. Placing fill on lands without a permit	4.1	\$100.00
4. Removing topsoil without a permit	4.1	\$100.00
5. Altering grade of land without a permit	4.1	\$100.00
6. Changing the drainage characteristics of land without a permit	4.3	\$100.00
7. Changing the grade elevations of a professional engineer without a permit	4.4	\$100.00
8. Altering a private drain without a permit	4.6	\$100.00
9. Failure to install rear-yard drainage	4.8	\$100.00
10. Dumping on agricultural lands without a permit	4.1	\$100.00
11. Placing fill on agricultural lands without a permit	4.1	\$100.00
12. Removing topsoil from agricultural lands without a permit	4.1	\$100.00
13. Altering grade of agricultural land without a permit	4.1	\$100.00

Penalty provisions for the offences indicated above is Section 3.3 of By-Law #843, a certified copy of which has been filed.

**Schedule "A"**  
**To By-Law Number 843**

Permit Fees:	\$ 225.00
Indemnity Deposit:	
Agricultural Zoned Lands	\$ 500.00
Non-Agricultural Zoned Lands	\$1,000.00

Municipal Act R.S.O. 2001 (for reference purposes)

Exemptions

142 (5) A By-Law passed under this section does not apply to,

- (a) activities or matters undertaken by a municipality or a local board of a municipality;
- (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, 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, 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; or
- (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

Exception

142 (6) A By-Law respecting the removal of topsoil does 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.

Exclusion

142 (7) The exception in subsection (6) 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.



COURT HOUSE  
15<sup>TH</sup> FLOOR, UNIT "G"  
80 DUNDAS STREET  
LONDON, ONTARIO  
N6A 6B3

TELEPHONE/TÉLÉPHONE (519) 660-2292  
FAX/TÉLÉCOPIEUR (519) 660-3248

September 19, 2007

J. E. Marion  
Town of Essex Clerk  
33 Talbot Street South  
Essex, Ontario  
N8M 1A8

Dear Sir/Madam:

**Re: Set Fines - Provincial Offences Act - Part I  
By-law Number 843, of the Town of Essex**

Enclosed herewith is a copy of an Order, and a copy of a schedule of set fines for the above referenced By-Law, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

I have forwarded the copy of the Order and the schedule of set fines to the Provincial Offences Court in Windsor, Ontario, together with a certified copy of the By-law.

Yours truly,

A handwritten signature in black ink, appearing to read 'B. G. Thomas', written over a large, stylized scribble.

Bruce G. Thomas  
Regional Senior Justice  
West Region

Enclosures

/pp

cc: Manager, Provincial Offences Court

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 843, of the Town of Essex, attached hereto are the set fines for those offences. This Order is to take effect September 19, 2007.

Dated at London this 19<sup>th</sup> day of September, 2007.



Bruce G. Thomas  
Regional Senior Justice  
West Region