



Town of Whitby

By-law # XXXX-23

Infill Development By-law

Being a By-law to prohibit or regulate any alteration to the grade (topography) and drainage of land within the Town of Whitby to limit interference and damage to watercourses, drainage systems and water supplies, to regulate unanticipated grading and drainage alterations as a result of Infill Developments, to limit the use of improper fill and potential environmental impacts, to limit erosion arising from such changes and to limit impacts on neighboring and surrounding properties.

Whereas, Section 142 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes a Municipality to prohibit or regulate the dumping of fill, removal of topsoil and alteration of grades;

And Whereas Section 11(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended authorizes a Municipality to provide any service or thing that the Municipality considers necessary or desirable for the public;

And Whereas Section 11(2), Paragraph 8 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, allows for a Municipality to pass By-laws respecting the protection of persons and property, including consumer protection;

And Whereas Section 11(3), Paragraphs 6 and 7 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, allow for a Municipality to pass By-laws relating to drainage and flood control and structures;

And Whereas Section 8(3) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, permits a municipality to provide for a system of licenses respecting a matter in a By-law passed under Section 11;

And Whereas, the Council for The Corporation of the Town of Whitby considers it desirable and necessary to regulate the alteration of sites where ten (10) residential units or less is being altered and constructed in a manner that will protect persons and property surrounding the site, as well as the public;

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

1. Introduction

The By-law provides an explanation of what defines the requirements for a Grading, Servicing and Drainage Permit.

2. Definitions

- 2.1 "Adjacent Lands" means any lot, block, Section or parcel of property owned by a Person, other than the Owner of the Site, that shares a property boundary with the Site;
- 2.2 "Applicant" means any person, partnership, organization, or corporation who or which is the certified agent to act on behalf of the Owner of the Site in the application process and performance of the Site Engineering Works seeking

to obtain a permit;

- 2.3 “Complete application” means an application including the contents as outlined within the Infill Development Guidelines, to the satisfaction of the Director;
- 2.4 “Council” means the Council of The Corporation of the Town of Whitby;
- 2.5 “Director” means the Director of Engineering Services or their designate;
- 2.6 “Drainage” means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by artificial means;
- 2.7 “Drainage System Appurtenance” includes the various accessories on the drainage system that are necessary for the approved operation of the drainage system, including but not limited to catchbasins, area drains, maintenance holes, infiltration galleries, and low impact development measures;
- 2.8 “Drainage Areas” includes areas of land surface that contribute water flow to a particular point;
- 2.9 “Dumping” shall be broadly interpreted to include stripping, removing, moving, transporting, importing, exporting, or placing of any fill into, out of, or upon lands within the Town;
- 2.10 “Erosion” means the detachment and movement of soil, sediment or rock fragments by water, wind, ice, or gravity;
- 2.11 “Excavation or Excavating” means to remove by digging, scraping, or scooping out;
- 2.12 “Fee” means a non-refundable payment by certified cheque or cash in a form acceptable to the Director;
- 2.13 “Fill” means any type of material deposited or placed on lands, and includes clean fill, soils and topsoil with any water content and other regulated materials including, stone, concrete, construction materials, asphalt, sod, turf, or debris either singly or in combination;
- 2.14 “Grade” means the elevation of the ground surface and shall be more particularly defined as follows:
- 2.14.1 “Existing Grade” means the elevation of the existing ground surface of the site upon which the placing, dumping, excavating or removal of fill or altering of the grade is proposed and of the existing ground surface of adjacent lands up to 5 m wide surrounding such site, except that where such activity has occurred in contravention of this By-law, existing grade shall mean the ground surface of the site and adjacent lands as existed prior to the said activity requiring a permit under this By-law;
- 2.14.2 “Proposed Grade” means the proposed finished elevation of ground surface of the site after fill is dumped or placed, the grade altered or topsoil removed; and

- 2.14.3 “Finished Grade” means the approved elevation of ground surface of the site upon which fill has been placed, dumped, excavated or removed or the grade altered pursuant to this By-law.
- 2.15 “Grading, Servicing and Drainage Permit” or “Permit” means a permit issued by the Director pursuant to the provisions of this By-law, Section D5.00 of the Town’s Design Criteria and Engineering Standards for the purpose of creating an Infill Development. Grading, Servicing and Drainage Permit (GSDP) is a separate permit, issued by Engineering Services and is not a Building Permit issued by the Building Department.
- 2.16 “Grading, Servicing, and Drainage Plan” means a drawing or set of drawings as outlined within the Infill Development Guidelines, that details the Site Engineering Works to the satisfaction of the Director;
- 2.17 “Haul” means to move fill and/or topsoil on Town highways;
- 2.18 "Infill Development" (or Infill Lot) means the development of a new or re-development of an existing lot up to ten (10) units with a new building or structure beyond that of the original footprint that includes an increase of the impervious surface of the lot by altering of drainage pattern and/or grading of the lots. Infill Development may vary in size, consist of more than one residential unit/lot and include different types of residential dwellings, such as single, semi-detached, and townhouse blocks. Other types of small-scale developments may fall under the Infill Developments definition, at the sole discretion of the Director;
- 2.19 “Lot” means a parcel of land, described in a deed or other document legally capable of being conveyed, or shown as a block on a registered plan of subdivision;
- 2.20 “Owner” means the registered owner of a property and includes the owner’s representative, a tenant, or the Property Manager;
- 2.21 “Permit Holder” means an Applicant for a permit issued under this By-law and/or the owner of a lot to which a permit issued under this By-law applies;
- 2.22 “Person” means any individual, firm, partnership, company or corporation or any trustee, manager or other person, either individually or jointly with others, owning, occupying or having the management or supervision of any building or property, and shall also include any agent, workman, servant, employee, or authorized representative of such individual, firm, partnership, company or corporation;
- 2.23 “Placing” means the distribution of fill on sites to establish a finished grade higher than the originally existing grade;
- 2.24 “Ponding” means the accumulation of surface water in an area not having drainage there from which the lack of drainage could have been caused by the placing or dumping of fill, altering of grade or removing of fill;

- 2.25 “Qualified Person” has the same meaning as in Section 5 of Ontario Regulation 153/04, or a licensed surveyor (for the purpose of land surveying), possessing expert or special knowledge in regard to matters contained within this By-law;
- 2.26 “Removal” means the moving of fill off an existing site;
- 2.27 “Security” means a refundable deposit by certified cheque, cash, or an irrevocable letter of credit in a form acceptable to the Director;
- 2.28 “Site” means the lands from which it is proposed that material be moved or removed, or subjected to a site alteration and/or land development;
- 2.29 “Site Alteration” means dumping, the removal of topsoil from land, or the alteration of the grade of land by any means including placing fill, clearing and grubbing, the compaction of soil or the creation of impervious surfaces, or any combination of these activities;
- 2.30 “Site Engineering Works” mean the following:
- 2.30.1 placing, dumping, excavating, or removal of fill from the site;
 - 2.30.2 the alteration of grade of the site by any means including placing, dumping, excavating, or removal of fill, clearing and grubbing, the compaction of soil or the creation of impervious surfaces;
 - 2.30.3 the alteration of drainage, drainage areas and/or drainage system appurtenances within and external to the site; and
 - 2.30.4 any combination of these activities.
- 2.31 “Soil” means material commonly known as earth, topsoil, loam, subsoil, clay, sand, or gravel;
- 2.32 “Storm Sewer” means a sewer dedicated for the collection and transmission of uncontaminated water, storm water, drainage from land or from a watercourse or any combination thereof under Town roads and on Town property;
- 2.33 “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;
- 2.34 “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;
- 2.35 “Town” means The Corporation of the Town of Whitby or the geographic jurisdiction of the Town of Whitby as the context requires;
- 2.36 “Watercourse” means an identifiable depression, channel, or ditch, either natural or artificial, in which the flow of water occurs either continuously or intermittently;
- 2.37 “Zoning By-law” means a By-law passed by the Town pursuant to Section 34 of the Planning Act and includes Zoning By-law 2585, Zoning By-law 1784 and Oak Ridges Moraine Zoning By-law 5581-05, as amended from time to time, whichever is applicable to any land to which this By-law applies.

3. Interpretation

- 3.1. Unless otherwise specified, references in this By-law to parts, Sections, subSections, clauses and schedules are references to parts, Sections, subSections, clauses and schedules in this By-law.
- 3.2. References in this By-law to any statute or statutory provision include references to that statute or statutory provision as it may from time to time be amended, extended or re-enacted.
- 3.3. This By-law shall be read with all changes in gender or number as the context requires.
- 3.4. References in this By-law to items in the plural include the singular, and references to the singular include the plural, as applicable.
- 3.5. The words “include”, “includes” or “including” are not to be read or interpreted as limiting the words, phrases or descriptions that precede them.

Severability

- 3.6. If a court of competent jurisdiction declares any Section, or any part of any Section, of this By-law to be invalid, or to be of no force or effect, it is the intention of the Town that every other provision of this By-law be applied and enforced in accordance with its terms to the extent possible according to law.

Application

- 3.7. The provisions of this By-law shall apply to all lands and premises within the Town.

Compliance with Other Laws

- 3.8. This By-law and the provisions contained within are intended to be complementary to Provincial statutes and to other By-laws passed by Council, in the event that any other applicable law requires a higher standard than this By-law requires, the higher standard shall apply.

Delegated Authority – Infill Development Guidelines

- 3.9. The Director is hereby authorized to amend the provisions of the Infill Development Guidelines, as required.
- 3.10. The Infill Development Guidelines provide steps involved in submitting an application, calculating fees and securities, and issuing a Grading, Servicing and Drainage Permit.
- 3.11. The Director shall be authorized to issue a Grading, Servicing and Drainage Permit in the form of a Permit and Letter of Conditions, and approved Grading, Servicing and Drainage Plan, pursuant to this By-law, and to amend or revise such Permit, from time to time, provided that the Permit, amendment(s) or revision(s), as the case may be, are in the form satisfactory to the Town Solicitor.

- 3.12. Nothing in this By-law shall be interpreted so as to permit Site Engineering Works, which by provisions of any applicable Town By-law, plan, approval, etc. or Provincial Act, regulation, policy, etc. or to a provision thereof is prohibited.
- 3.13. Any reference to any Town By-law, plan, approval, etc. or Provincial Act, regulation, policy, etc. or provision enacted in substitution or amendment thereof.
- 3.14. This By-law shall apply to Site Engineering Works on all Infill Developments.

4. Exempted Activities

- 4.1. The provisions of this By-law, with respect to the requirement to obtain a Grading, Servicing and Drainage Permit as described in the Infill Development Guidelines, do not apply where **all** of the following conditions are met:
- 4.1.1. Renovation of an existing building that does not involve changes to the building footprint and changes to the existing grade and drainage pattern of the site;
 - 4.1.2. the total lot coverage does not exceed max lot coverage as per the Zoning By-law;
 - 4.1.3. post development flows do not exceed originally designed flows for the subject property;
 - 4.1.4. existing receiving storm sewers are not running under surcharge conditions; and
 - 4.1.5. Development construction where the finished grade is established through a Development Approval Process, such as, Site Alteration Permit, Site Plan, Draft Plan of Subdivision, Approved Subdivision Grading Plan, or a Consent under Sections 41, 51, or 53 of the Planning Act or as a requirement of a Site Plan Agreement or Subdivision Agreement entered into under those Sections.

5. Restrictions

- 5.1. No person shall perform Site Engineering Works activities on their land except in accordance with the provisions of this By-law and the Infill Development Guidelines, including any requirement for a Grading, Servicing and Drainage Permit.
- 5.2. No person shall use the Town's highways for the purpose of moving fill and/or topsoil to or from lands, construction or reconstruction of roads, sewers, watermains, utilities and other infrastructure, except in accordance with this By-law and the Infill Development Guidelines, including any requirement for a Grading, Servicing and Drainage Permit.
- 5.3. Where a Grading, Servicing and Drainage Permit has been issued pursuant to this By-law, no permit holder shall, except in accordance with the provisions of the Permit,

- 5.3.1. place, dump or remove fill or cause or permit fill to be placed, dumped or removed; or
 - 5.3.2. alter the grade of any land or cause or permit the alteration of the grade of any land in the Town; or
 - 5.3.3. commence construction or reconstruction of roads, sewers, watermains, utilities and other infrastructure.
- 5.4. No person shall conduct or permit the operation of any site alteration, site servicing or construction activity,
- 5.4.1. outside of the times permitted for the operation of heavy equipment in the Town's Noise By-law, as may be amended from time to time; or
 - 5.4.2. during a period in which a wind warning has been issued for the area by Environment Canada and when dust/material is being blown off of the site or off of the external roadways being used to access the site, as the context requires; or
 - 5.4.3. within 24 hours of precipitation or snow melt events, unless the operations being performed during this time are completely within the boundaries of the site alteration property or do not result in mud tracking onto the external roadways adjacent to the property.

6. Permit

- 6.1. Infill Developments are subject to a Building Permit Application (as per OBC) and Engineering Review fee, as per Town's Consolidated Fees & Charges By-law. The Building Permit Application for Infill Developments shall be supported, at a minimum, by approved engineering drawings, such as Grading, Servicing and Drainage Plans, and reports as determined by the Town.
- 6.2. A Grading, Servicing and Drainage Permit must be issued prior to the initiation of a Building Permit process and a commencement of proposed works.
- 6.3. The Director has the authority to issue a Permit where an applicant has satisfied the requirements of this By-law and the Infill Development Guidelines.
- 6.4. All Applicants for a Permit shall pay the appropriate fees as set out in the Fees and Charges By-law and shall provide the appropriate securities as set out in the Infill Development Guidelines, as amended from time to time.
- 6.5. All Applicants for a Permit shall submit a completed permit application, including the submission of a Grading, Servicing and Drainage Plan(s), Stormwater Management Brief, financial securities and other requirements as described in the Infill Development Guidelines, within a six (6) month timeframe from the date of submission of the application form, failing which, the application is deemed to have expired.

6.6. Applicants for a Permit who are unable to comply with the timeframe specified in Section 6.4. of this By-law shall be required to make a new application for a Permit including the payment of applicable fees, and such applicants are not entitled to a refund of any fees paid for with respect to the previous, expired application.

Grading, Servicing, and Drainage Permit Conditions

6.7. All surface run-off, including roof drainage directed to surface, generated from the private site as a result of the Infill Development works must be contained within private property limits and managed in accordance with the Town's Property Standards By-law and accepted engineering design / proposal.

6.8. An inspection of site grading, municipal servicing and stormwater management (SWM) measures is required to be completed by Town staff of Engineering Services before and after measures are installed. An appointment for the inspection must be booked in advance to ensure final grading, servicing and stormwater management measures are completed and in place prior to any deposits being refunded.

6.9. Consistent with the Ontario Building Code requirements, a site shall be graded so that water will not accumulate at or near the building and will not adversely affect adjacent properties. The Qualified Person must ensure that no ponding or other drainage issues will occur as a result of construction.

6.10. The Permit Holder Shall:

- i. Ensure all other parties involved with the Infill Development project are provided with a copy of the signed Permit, Letter of Conditions and approved Grading Plan and ensure copies of same are kept on-site.
- ii. Ensure sufficient space is provided to accommodate drainage swales along the boundary of the proposed lot next to adjacent properties. All grades must match existing grades on lot lines unless written permission from adjacent landowner(s) is provided.
- iii. Provide any extension request to the Town of Whitby three (3) weeks in advance of the expiry date of the Permit where the specified site alteration activities will be required after the approved expiry date.
- iv. Ensure all sedimentation controls and silt/protective fencing is in place prior to the commencement of the proposed construction works.
- v. Notify Construction Inspection staff two (2) days before backfilling of any services and SWM measures and post completion of construction works to arrange for inspection of the site grading, servicing and SWM measures installed as per the approved grading plan(s) in accordance with Condition 6.8.
- vi. Ensure all proposed construction activities are in accordance with the approved Construction Management Report.

- vii. Ensure all construction activities, vehicles and material storage are contained entirely within the subject property.
 - viii. Ensure all applicable construction signage, with reference but not limited to Ontario Traffic Manual (OTM) Book 7, are in place prior to the commencement of the proposed construction works.
 - ix. Ensure works outlined in the permit (including warming up of equipment) are conducted in accordance with the Town of Whitby's Noise By-law No. 6917-14, as may be amended or replaced.
 - x. Inform Engineering Services if there are changes to any proposed grading, servicing, and SWM design as approved. Any change in design, and/or scope of works, will have to go through permit amendment.
 - xi. Ensure that any Erosion and Sediment Control (ESC) measures are inspected weekly, and immediately following any significant rainfall or snow melt events and restore as necessary.
 - xii. Comply with, and ensure all on-site contractors comply with, all applicable Provincial Orders, Provincial and Regional Public Health directives and guidelines.
 - xiii. Submit a Sealed Final Grading Certificate to Construction Staff upon completion of all grading works. The form shall be in accordance with Section D7.04, page D-13. This is required for release of the development securities, including Sodding Deposit.
- 6.11.If construction works have come to a halt for any reason, after fourteen (14) days of no work activity, the entire site will need to be stabilized through hydro seeding or any other manner satisfactory to the Director.
- 6.12.Construction traffic shall be restricted to time windows that do not conflict with any nearby school drop-off and pick-up times.
- 6.13.On a continuous basis both during and after construction works, until the site has been stabilized, the applicant shall:
- i. Ensure all ESC measures are functioning as intended.
 - ii. Perform regular site and road inspections.
 - iii. Control dust with water, chemical agent, and/or other appropriate media, as required or directed by the Director.
- 6.14.The Applicant shall monitor surrounding roads and immediately implement mud tracking mitigation and dust control measures as required and upon the written or verbal request from Town staff.

- 6.15. The Applicant shall immediately remove debris, mud, dirt or any material deposited on any of the roads within the construction area or accumulated through other operations from the construction area, as required, and upon written or verbal request from the Town.
- 6.16. When moving material, it is the contractor's responsibility to abide by the half load restrictions that may apply at the time of hauling material.
- 6.17. The Applicant acknowledges that the securities may be drawn upon at the Director's sole discretion, to remedy any deficiency in the approved works and to correct or complete works under this permit.
- 6.18. The Town reserves the right to modify and provide additional conditions as required by site conditions, performance, and orderly management of the construction site.

Permit Expiry, Extension and Transfers

- 6.19. All permits issued under this By-law shall expire or be extended or transferred in accordance with the terms identified in the Infill Development Guidelines.
- 6.20. Permit conditions may be transferred in accordance with the terms identified in the Infill Development Guidelines.

Permit Refusal, Suspension and Revocation

- 6.21. The Director may refuse to accept an application for a permit, or may refuse to issue a permit, where in the opinion of the Director, the acceptance of a permit application or the issuance of a permit would not be in the best interests of the Town.
- 6.22. The Director, in determining whether the acceptance of a permit application or the issuance of a permit would not be in the best interests of the Town, shall consider all the relevant circumstances, including (without limitation):
 - 6.22.1. past performance of the applicant in complying with the provisions of this By-law or any applicable legislation; and
 - 6.22.2. ongoing or past prosecution of the applicant regarding compliance with this By-law or any applicable legislation; and
 - 6.22.3. the number of active permits within the Town or within a geographic area of the Town; and
 - 6.22.4. the condition of public highways which provide access to a proposed area of site alteration, including any planned highway improvements by the Town, the Regional Municipality of Durham, or the Province of Ontario.
- 6.23. If the Director refuses to issue a permit, the Applicant shall be informed of this decision in writing and the reasons for the refusal.
- 6.24. The Director shall revoke a permit if,

- 6.24.1. the permit was obtained on mistaken, false, incorrect or misleading information; or
 - 6.24.2. the permit was issued in error; or
 - 6.24.3. the permit holder requests in writing that the permit be revoked.
- 6.25. The Director may suspend and/or revoke a permit if,
- 6.25.1. the permit holder or any person acting on behalf of the permit holder fails to comply with the conditions of an issued permit made under this By-law;
 - 6.25.2. the permit holder or any person acting on behalf of the permit holder fails to comply with the provisions of this By-law or with an order issued pursuant to this By-law; or
 - 6.25.3. the Site Engineering Works authorized under the Permit has been halted for a period of 1 year.
- 6.26. If a permit is suspended in accordance with the provisions of this By-law, the Director may impose additional conditions on the applicant. Until such time as those conditions are satisfied in the sole discretion of the Director, the permit shall remain suspended.
- 6.27. If a permit is suspended or revoked in accordance with the provisions of this By-law, then any financial security provided by the applicant may be used or drawn upon by the Town to remedy any non-compliance with the provisions of this By-law, without any further notice to the applicant.

7. Enforcement and Penalties

- 7.1. The Director shall be responsible for the enforcement of this By-law.
- 7.2. The Director, or any person acting under his or her direction, may enter upon any Site at any reasonable time without a warrant for the purpose of inspecting the lands, machinery, equipment, work, activity or documents to determine:
 - 7.2.1. Whether the Site conforms to the standards prescribed in this By-law; or
 - 7.2.2. Whether a notice of contravention, order to comply or permit made under this By-law has been complied with.

Orders

- 7.3. If the Owner fails to comply with this By-law, the Director may issue an Order to comply to the Owner and the Owner shall, at the Owner's sole expense, bring the Site into compliance with this By-law.
- 7.4. An Order to Comply issued pursuant to SubSection 7.3 of this By-law shall:
 - 7.4.1. State the municipal address or the legal description of the Property;

- 7.4.2. Give reasonable particulars of the steps to be taken in order to comply with this By-law; and
- 7.4.3. Indicate the time for complying with the terms and conditions of the order and give notice that if compliance is not obtained within that time, the Town may take such action as is necessary to rectify and remedy the contravention of this By-law at the Owner's expense.

7.5. The Order to Comply shall be served:

- 7.5.1. upon the Owner by personal service; or
- 7.5.2. by mailing a copy of the notice by registered mail to the last known address noted on the tax assessment roll and shall be deemed to have been served five (5) days after it is mailed.

7.6. In the event that an Order to Comply issued pursuant to SubSection 7.3 of this By-law is not complied with by the specified date, the Town may take such action as necessary to rectify and remedy the contravention of this By-law at the Owner's sole expense and the Town may send an invoice to the Owner of the costs incurred by the Town thereto. In the event of failure to pay the entire invoice within thirty (30) days of the date of the invoice, any unpaid costs, plus interest in the amount of 15% per annum, may be added to the tax roll of the Property and collected in the same manner as property taxes. For the purposes of this Section, interest shall be calculated for the period commencing on the day the Town incurs the costs and ending on the day the costs, including interest, are paid in full.

Penalties

7.7. Every Person, other than a corporation, who contravenes any provisions of this By-law, the terms or conditions of a Certificate issued pursuant to this By-law or an order issued pursuant to this By-law and Section 444(1) or 445(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, is guilty of an offence and, upon conviction, is liable:

7.7.1. on a first conviction, to a fine of not more than \$10,000; and

7.7.2. on any subsequent conviction to a fine of not more than \$25,000.

7.8. Every corporation that contravenes any provision of this By-law, the terms or conditions of a Certificate issued pursuant to this By-law, or an order issued pursuant to this By-law and Section 444(1) or 445(1) of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, is guilty of an offence and on conviction is liable:

7.8.1. on a first conviction, to a fine of not more than \$50,000; and

7.8.2. on any subsequent conviction to a fine of not more than \$100,000.

8. Short Title

8.1. This By-law may be cited as the Infill Development By-law.

9. Repeal of Existing By-law

9.1. By-law XXXX-XX is repealed on the day that this By-law comes into full force and effect.

10. Effective Date

10.1. This By-law shall come into full force and effect on the day is passed.

11. Transition

10.1. Any permit that has been issued under By-law XXXX-XX which is in effect and in good standing prior to the passage of this By-law shall be deemed to have continued under the provisions and conditions of By-law XXXX-XX and that existing permit, until such time as that permit has expired.

By-law read and passed this XX day of XXXX.

Elizabeth Roy, Mayor

Christopher Harris, Town Clerk