

THE CORPORATION OF THE TOWN OF PELHAM

BY-LAW NO. 3357 (2013)

AN ENVIRONMENTAL PROTECTION BY-LAW

WHEREAS the Corporation of the Town of Pelham (the "Town") has identified areas containing important environmental and heritage features that it desires to protect;

AND WHEREAS Council deems it in the public interest to protect these important environmental and heritage features from unnecessary degradation and damage, to encourage long-term conservation of Productive Agricultural Lands, and to prevent the importation of waste and hazardous materials into the Town;

AND WHEREAS section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the "Act") provides the Town with the capacity, rights, powers, and privileges of a natural person for the purpose of exercising its authority under the Act or any other act;

AND WHEREAS sections 10 and 11 of the Act provide the Town with the authority to pass by-laws respecting the economic, social, and environmental well-being of the municipality, the health, safety, and well-being of persons, and the protection of persons and property;

AND WHEREAS section 142 of the Act provides the Town with the authority to pass by-laws for prohibiting or regulating the placing or dumping of fill;

AND WHEREAS section 425 of the Act provides the Town with the authority to pass by-laws providing that a person who contravenes a by-Law of the Town is guilty of an offence;

AND WHEREAS section 436 of the Act provides the Town with the authority to pass by-laws providing that the Town may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not a by-law or order of the Town is being complied with;

AND WHEREAS section 445 of the Act provides the Town with the authority to make an order requiring a person in contravention of a by-law to do work to correct the contravention of the by-law;

AND WHEREAS section 446 of the Act provides the Town with the authority to direct or require a person to do a matter or thing, failing which, the Town may do such matter or thing at the person's expense and may recover the costs of doing so by adding them to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS Council wishes to enact this By-law for these purposes;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE TOWN OF PELHAM ENACTS AS FOLLOWS:

DEFINITIONS:

1. In addition to the capitalized terms defined elsewhere in this by-law, the following words have the following meanings:
 - a. **"Construction Waste"** means waste materials generally used for, resulting from, or produced by the construction, alteration, renovation or demolition of any building, structure, improvement to land, or other construction project. Without limiting the generality of the foregoing, Construction Waste includes rock, stone, rubble, boulder, concrete, asphalt, brick, tile, masonry, paper, plastic, drywall, crating, packing materials, wood materials such as dimensional lumber, plywood and particle board, and any other materials left after completion of construction or collected during cleanup of a construction site;
 - b. **"Detrimental Effect"** means contamination of lands and/or waters, or making lands and/or waters injurious or potentially injurious to public health, harmful or potentially harmful for commercial or agricultural use, or deleterious or potentially deleterious to animal or plant life;
 - c. **"Director"** means the Director of Planning and Development for the Town.
 - d. **"Dumping"** means the depositing of waste, including Construction Waste and/or Fill in a location other than where the waste, Construction Waste and/or Fill was obtained and includes, but is not limited to, the movement and depositing of waste, Construction Waste and/or Fill from one location on a property to another location on the same property. The terms "Dumping" and "Dumped" have corresponding meanings;
 - e. **"Fill"** means any type of material deposited or placed on lands and includes, but is not limited to Construction Waste, rubbish, garbage, turf, dirt, earth, aggregate, and binder or any combination of such materials;
 - f. **"Ground Water"** means water beneath the earth's surface;
 - g. **"Normal Farm Practice"** shall have the meaning ascribed to it in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1, as amended;
 - h. **"Person"** includes an individual and a corporation and the successors, assigns, heirs, executors, administrators, or other legal representatives of a person;
 - i. **"Productive Agricultural Lands"** includes lands identified by the Town and the Regional Municipality of Niagara (the "Region") as unique agricultural, good general agricultural, or specialty agricultural in the Town's Official Plan and the Region's Policy Plan, and includes all lands that are used by a farming business registered under the *Farm Registration and Farm Organization Funding Act, 1993*, S.O. 1992, c. 21, as amended, for the growing of crops, including nursery and horticultural crops, raising of livestock, raising of other animals for food, fur, fiber, including poultry and fish, aquaculture, apiaries, agro-forestry and maple syrup production;
 - j. **"Protected Area"** includes Productive Agricultural Lands, Significant Heritage Landscapes, Significant Environmental Features, and Watercourses.
 - k. **"Sediment Bed"** means a depression or low area of mud, silt, sand, gravel, rock or bedrock, or a combination thereof, which has a defined path which was formed or apparently formed by flowing water;
 - l. **"Significant Heritage Landscapes"** means properties within a heritage conservation district, properties designated pursuant to the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, or properties designated in the Town's Official Plan as natural heritage features;
 - m. **"Significant Environmental Features"** means environmentally significant lands or areas of natural and/or scientific interest. Significant Environmental Features include, but are not limited to, the lands set out in the Town's Official Plan as greenbelt, deer wintering lands, wooded areas, wetlands, provincial life science or provincial earth science;
 - n. **"Watercourse"** means an area which has a Sediment Bed and may or may not contain water. Without limiting the generality of the foregoing, the term Watercourse includes the full length and width of the Sediment Bed, bank and

shore of any stream, spring, creek, brook, river, lake, pond, bay, estuary, or coastal body, or other natural or man-made channel or swale, and any water therein, and any part thereof, up to and including the Watercourse Boundary. For greater certainty, a Watercourse includes those areas identified as watercourses in the Town's Official Plan; and

- o. "Watercourse Boundary" means, in a non-tidal Watercourse, the edge of the Sediment Bed, and in a tidal Watercourse, the top of the bank of the Watercourse and where there is no discernible bank, means the mean high water mark of the Watercourse.

APPLICATION

2. Subject to the exemptions at section 3, this by-law applies to all lands within the geographic limits of the Town, other than that portion of any property that is subject to regulations made under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c. C. 27, as amended.

EXEMPTIONS

3. This by-law shall not apply to:
 - a. activities or matters undertaken by the Town, the Regional Municipality of Niagara, or a local board, in accordance with the Act;
 - 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*, R.S.O. 1990, c. P.13, as amended (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*, S.O. 1998, c. 15 Sch. A, as amended, 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*, R.S.O. 1990, c. A.8, as amended;
 - 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 Resource Act*, R.S.O. 1990, c. A.8 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, as amended;
 - g. the placing or Dumping of Fill, removal of topsoil, or alteration of the grade of land undertaken as an incidental part of drainage construction under the *Drainage Act*, R.S.O. 1990, c. D. 17, as amended, or the *Tile Drainage Act*, R.S.O. 1990, c. T. 8, as amended;
 - h. activities or matters which are an incidental part of a Normal Farm Practice including such removal as an incidental part of sod-farming, greenhouse operations, and nurseries for horticultural purposes; however this exemption does not include, and this by-law applies to, the removal of topsoil for sale, exchange or other disposition; or
 - i. the construction, extension, alteration, maintenance, or operation of works pursuant to section 26 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P. 50, as amended.

PROHIBITIONS:

4. No person shall place, Dump, or cause to be placed, or Dumped, or otherwise permit, Construction Waste on any property other than the property upon which the Construction Waste originated or was generated or produced.
5. No person shall import or otherwise bring Construction Waste into the Town.
6. No person shall place, Dump, or cause to be placed or Dumped, or otherwise permit Fill on any property which results in:
 - a. soil erosion, slope instability, or siltation in a Watercourse;
 - b. interference with natural drainage processes or blockage or partial blockage of the flow of a Watercourse;
 - c. pollution of a Watercourse or Ground Water;
 - d. flooding, ponding, or other adverse impacts on neighboring lands;
 - e. a Detrimental Effect on any Protected Area; or
 - f. a Detrimental Effect on matters of inherent biological sensitivity, including, but not limited to, an aquifer recharge, water quality, including Ground Water quality, plants or wildlife, or their habitat, and overwintering habits.
7. No person shall place, Dump, or cause to be placed or Dumped, or otherwise permit Fill on Productive Agricultural Lands, unless:
 - a. the Fill used is material that does not contain any putrescible material and meets any of the following criteria:
 - i. soil that meets the standards set out in Table 1 of the *Soil, Ground Water and Sediment Standards* referenced in O. Reg. 153/04, as amended (the "Soil Standards") for quantities less than 2000m³; and
 - ii. liquid slurry material, to the extent that the free water is removed and the resulting wet or slurried material meets the standards set out in Table 1 of the Soil Standards and any free water from the liquid slurry that meets the standards set out in Table 1 of the Soil Standards; or
 - iii. topsoil, sod or turf materials to be stockpiled for use as final cover only; and
 - b. the Fill used is placed, Dumped, or caused to be placed or Dumped in such a manner, and any retaining wall containing such Fill is erected or caused to be erected in such as a manner, that no ponding is caused on abutting or neighbouring lands and adequate provision, to the satisfaction of the Director, is made to properly manage all surface storm water drainage; and
 - c. written permission has been obtained from the Town.
8. Where the Director deems it necessary to have Fill or other material inspected or analyzed to ensure compliance with this By-Law, a third party geotechnical and/or environmental consultant may be hired by the Town to provide all necessary inspections, analysis and reports, and if it is found that a person has contravened this by-law, the expense of any such inspection, analysis and/or report shall be the responsibility of the contravening person.

INSPECTION

9. The administration and enforcement of this by-law shall be performed by the Director and by those persons designated as officers by by-law of the Town, as may be amended from time to time:
10. The Director and officers may, at any reasonable time, enter and inspect any land to determine whether this By-law, an order issued pursuant to this By-law, or a court order relating to this By-law is being complied with.
11. For the purposes of an inspection, the Director and any officer may:
 - a. require the production for inspection of documents or things relevant to the inspection;
 - b. inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - c. require information from any person concerning a matter related to the inspection; and

- d. alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples, or photographs necessary for the purpose of the inspection.
12. No person shall obstruct the Director or any officer in carrying out an inspection or exercising any powers or duties under this By-law.
13. No person shall fail to produce any information required by the Director or any officer.

ORDERS

14. Where an owner or any other person is in contravention of this by-law, the Director or an officer may make a cease and desist order directing the person to cease and desist any or all of the work immediately.
15. If the Director or an officer is satisfied that there is a contravention of this by-law, the Director or an officer may make a work order requiring the person in contravention of this by-law to discontinue the activity and reinstate the land or otherwise correct the contravention. The work order shall set out:
- a. the municipal address and legal description of the land;
 - b. the reasonable particulars of the contravention and the work required to be done to correct 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 work order within the specified period, the Town may have the work done at the expense of the person in contravention of this by-law.
16. If the work required by a work order is not done within the specified period, the Town and its agents, in addition to all other remedies the Town may have, may do the work at the expense of the person in contravention of this by-law, and may enter upon the land at any reasonable time for this purpose.
17. A work order shall be served personally or by prepaid registered mail to the last known address or address for service of the person in contravention of this by-law as recorded in the Land Registry Office, the tax rolls, or other records of the Town. If the registered mail is not claimed or collected, the Town shall place the work order in a conspicuous place on the property and the placing of the work order shall be deemed to be sufficient service of the work order on the person.
18. Any costs incurred by the Town in completing the work, plus interest at a rate of 3% per annum or such lesser rate as may be approved by the Town, accrued to the date payment is made, may be recovered from the person by adding the costs to the tax roll and collecting them in the same manner as property taxes;
19. Any person who contravenes an order made pursuant to this By-law is guilty of an offence.

SEVERABILITY

20. If a court or tribunal of competent jurisdiction declares any provision or part of a provision of this By-law to be illegal or unenforceable for any reason whatsoever, then that particular provision or provisions or part of the provision shall be severed and the remainder of this By-law shall continue to remain in full force and shall be valid and enforceable to the fullest extent permitted by law.

ENFORCEMENT

21. Any person, other than a corporation, who contravenes the provisions of this By-law, or an order issued pursuant to this By-law and sections 444 and 445 of the Act is guilty of an offence and upon conviction, is liable:
- a. on a first conviction, to a fine of not more than \$10,000.00; and
 - b. on any subsequent conviction, to a fine of not more than \$25,000.00.
22. A corporation that contravenes the provisions of this By-law, or an order issued pursuant to this By-law and sections 444 and 445 of the Act is guilty of an offence and upon conviction, is liable:
- a. on a first conviction, to a fine or not more than \$50,000.00; and
 - b. on any subsequent conviction, to a fine of not more than \$100,000.00.

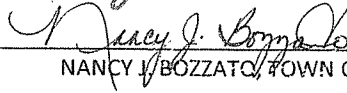
23. In addition to any fine or any other penalty, any person who is convicted of contravening a provision of this By-law, or an order issued pursuant to this By-law and sections 444 or 445 of the Act, may be ordered by a court of competent jurisdiction at the expense of the person to:

- a. rehabilitate the land;
- b. remove the Fill and/or Construction Waste placed, Dumped, or caused to be placed or Dumped, or otherwise permitted;
- c. remediate onsite and offsite impacts; and
- d. compensate affected parties, including the Town.

READ A FIRST, SECOND, AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
4th DAY OF MARCH, 2013



DAVE AUGUSTYN, MAYOR



NANCY J. BOZZATO, TOWN CLERK