

THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF ARMOUR

BY-LAW #41-2010

A BY-LAW TO PROHIBIT THE REMOVAL OF TOPSOIL, THE PLACING OR DUMPING OF FILL, AND THE ALTERATION OF THE GRADE OF ENVIRONMENTALLY SENSITIVE LANDS IN THE MUNICIPALITY AND TO RESCIND BY-LAW# 15-2010

WHEREAS the Township of Armour deems it necessary to enact a by-law to ensure the proper drainage of land, to prevent the removal of topsoil, and to prohibit the placing or dumping of fill in order to protect the environment and the ratepayers of this municipality;

AND WHEREAS Section 142(2) of the *Municipal Act*, S.O. 2001, c. 25, as amended (the "Act"), authorizes a local municipality to prohibit the dumping of fill, the removal of topsoil and alteration of grades;

AND WHEREAS pursuant to Section 23.1 of the Act, the Council of a municipality may by by-law delegate its powers and duties under the Act to an individual who is an officer, employee, or agent of the municipality;

AND WHEREAS pursuant to Section 429 of the Act, the Council of a municipality may by by-law establish a system of fines for offences under a by-law;

AND WHEREAS pursuant to Sections 436 and 438 of the Act, the Council of a municipality may by by-law provide for entry onto land for inspection purposes;

AND WHEREAS Armour Township wishes to prohibit the placing or dumping of fill, the removal of topsoil and the alteration of the grade of the land in certain defined areas of the municipality as set out in Schedule "B" attached to this By-law;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ARMOUR ENACTS as follows:

DEFINITIONS

1. For the purposes of this By-law:
 - (a) "Chief Building Official" means the Chief Building Official of the Township of Armour.
 - (b) "Council" means the Council of the Corporation of the Township of Armour.
 - (c) "Fill" means any type of material deposited or placed on lands and includes soil, stone, concrete, asphalt, sod, stumps, wood or turf either singly or in combination.

- (d) "Normal Agricultural Practices" means any activity performed on private lands by the owner or owner's agent that is considered by the Normal Farm Practices Protection Board to be routine or common procedure for the type of crop, soil type or general climatic conditions related to the subject property, and
 - (i) Is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar circumstances, or
 - (ii) Makes use of innovative technology in a manner consistent with proper advanced farm management practices.
- (e) "Owner" includes the registered owner of any property in the Township of Armour 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.
- (f) "Person" includes a natural individual and their heirs, executors, administrators or other legally appointed representatives, a corporation, partnership or any other form of business association.
- (g) "Removal" means excavation or extraction of any fill which lowers the existing grade, including soil stripping.
- (h) "Soil" means material commonly known as earth, topsoil, loam, subsoil, clay, sand or gravel.
- (i) "Township", means the Corporation of the Township of Armour.
- (j) "Township Clerk" means the Clerk-Administrator of the Township of Armour.

PROHIBITION

2. Unless explicitly authorized by Council in a Site Plan Agreement under Section 41 of the *Planning Act*, or unless qualified as an exempted activity under the provisions of Section 4 of this By-law, no person shall remove topsoil, place or dump fill, or cause fill to be placed or dumped or alter the grade of land specified in Schedule "B" to this By-law.

APPLICATION OF BY-LAW

3. This By-law applies to certain defined areas of the Township of Armour as set out in Schedule "B" attached to this By-law.

EXEMPTIONS

4. This By-law is not applicable to the following activities:
- (a) 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*, S.O. 1998, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
 - (b) The placing or dumping of fill, removal of topsoil or alteration of the grade of land undertaken on land described in a license 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) 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* R.S.O. 1990 or a predecessor of that Act, but
 - (ii) upon which a pit or quarry is a permitted land use in a by-law passed under section 34 of the *Planning Act*, R.S.O 1990;
 - (d) 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*, R.S.O. 1990, or the *Tile Drainage Act*, R.S.O. 1990;
 - (e) The removal of topsoil as an incidental part of normal agricultural practice excluding the removal of topsoil for sale, exchange or other disposition;
 - (f) Any work pursuant to normal agricultural practices with a setback of 10 m (30 ft) or greater from all property lines that does not change the direction, rate or quality of runoff resulting in a detrimental impact on neighbouring property;
 - (g) The use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site within the meaning of Part V of the *Environmental Protection Act*, R.S.O.1990, as amended, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
 - (h) The construction, extension, alteration, maintenance or operation of works under Section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, as amended;

- (i) Emergency measures taken by the Township to mitigate erosion, soil failure or damage caused by trees or beavers;
- (j) The activities of a federal or provincial Ministry or Crown Corporation related to the establishment or maintenance of utilities and services, roads, ditches or drains, bridges, flood and erosion control facilities, walkways, bicycle paths, fences, signage, retaining walls, steps and lighting providing that there is no change in the direction, rate or quality of runoff that causes a detrimental impact on neighbouring properties;
- (k) activities or matters undertaken by the Township or the Fire Department or by any local board as defined in the Act, having jurisdiction within the Township providing that there is no permanent change in the direction, rate or quality of runoff that causes a detrimental impact on neighbouring properties;
- (l) To any action by any Crown agency as defined in the *Crown Agency Act* providing that there is no change in the direction, rate or quality of runoff that causes a detrimental impact on neighbouring properties;
- (m) To any action by any person implementing a grading control plan or lot grading plan approved on behalf of the Township pursuant to a registered site plan agreement, subdivision agreement, or development agreement pursuant to the provisions of the *Planning Act* duly executed by the Township and affecting the lands;
- (n) To any action by any person implementing a Township-approved grading plan or installing a sewage disposal system approved pursuant to the requirements of the North Bay Mattawa Conservation Authority; and
- (o) Such other activities as Council may permit after receipt and evaluation of a written application from a person seeking an exemption from the provisions of this By-law.

PENALTIES

5. Every person who places or dumps fill or who causes or permits fill to be placed or dumped or who alters the grade or who causes or permits the grade to be altered of any land and every person who places or removes soil or who causes or permits the removal of soil in Armour Township contrary to the provisions of this By-law shall remove such fill or replace such soil and restore the existing grade of the land.
6. Where the owner of the land or the person who caused or permitted the placing, dumping of fill, removal of topsoil or alteration of grade in contravention of any

provision of this By-law, the Chief Building Official may make an order directing the person to do any or all of the following:

- (a) Cease the placing or dumping of fill or the movement or removal of topsoil;
 - (b) Remove the fill that has been placed or dumped within forty-eight (48) hours after service of the order, or such other length of time as may be specified in the order;
 - (c) Reparation or rehabilitation in a specified time period involving but not limited to:
 - (i) Leveling and regrading the affected lands;
 - (ii) Replanting of trees and native vegetation; and
 - (iii) Replacement of topsoil (minimum of 50 mm depth) and stabilization by either sodding, hydroseeding, mulching or such other methods as may be directed.
7. Every person who contravenes any provision of this By-law is guilty of an offense, pursuant to the provisions of the *Provincial Offences Act*, R.S.O. 1990, c.P. 33, as amended, and upon a first conviction, is liable for a minimum fine of \$500 .00 and for a maximum fine of \$100,000.00. Every person who is convicted of the same offence for a second and any subsequent time shall be liable for a minimum fine of \$5,000 .00 and for a maximum fine of \$100,000 .00 for each second and subsequent conviction.
8. Where an owner of land fails to do any work required in an order issued pursuant to the provisions of this By-law within the period specified in the order, the Township of Armour may determine to do the work and for this purpose may enter on the owner's land with its employees and agents. The Township of Armour may charge such work back to the owner of the land for all costs incurred in undertaking such work, and such charge may be added to the tax roll.

ENFORCEMENT

9. The administration and enforcement of this By-law shall be performed by the Chief Building Official, or his or her designates, or by those persons designated as Inspectors under Schedule "A" to this By-law or as may be designated for the purposes of this By-law under other by-laws of the Township of Armour . The Chief Building Official, 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, at any reasonable time, any lands to which this By-law applies, to determine compliance with the provisions of this By-law.

SEVERABILITY

10. 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.

EFFECTIVE DATE

11. This By-law shall come into force and effect upon the passing of the By-law by Armour Township Council. By-law No. 15-2010, and all amendments thereto, is hereby repealed.

Read a first, second and third time, signed and the seal of the Corporation affixed thereto and finally passed in open Council this 12th day of October, 2010.

Original signed by Bob MacPhail
REEVE

Original signed by Wendy Whitwell
CLERK-ADMINISTRATOR

SCHEDULE "A" ADMINISTRATION AND ENFORCEMENT

1. The following Armour Township employees or agents are hereby designated as Inspectors for the purposes of this By-law and are authorized to carry out the administration and enforcement of this By-law:
 - (a) The Chief Building Official and his or her designate(s) for the purposes of this by-law;
 - (b) Persons appointed by Council as Inspectors under the authority of Section 3 subsection (2) of the *Building Code Act*;
 - (c) Persons appointed by Council as Municipal Law Enforcement Officers.

SCHEDULE "B"

DESCRIPTION OF LANDS SUBJECT TO THE PROVISIONS OF SITE ALTERATION BY-LAW

Those lands lying within the limits of the Flood Plain (FP) Zone as shown on the zoning map schedules of Armour Township comprehensive Zoning By-law No. 27-95, as amended, plus all lands designated as Wetlands on the Land Use Plan in the Armour Township Official Plan including all lands below the Regulatory Flood Elevations designated in the Armour Township Official Plan and Zoning By-law.