

CITY OF HAMILTON
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	November 19, 2019
SUBJECT/REPORT NO:	New Site Alteration By-law (PED19201) (City Wide) (Outstanding Business List)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Carlo Ammendolia (905) 546-2424 Ext. 2155 George T. Zajac (905) 546-2424 Ext. 3933
SUBMITTED BY:	Tony Sergi Senior Director, Growth Management Planning and Economic Development Department
SIGNATURE:	

RECOMMENDATIONS

- (a) That the draft Site Alteration By-law, as shown on Appendix “A” to Report PED19201 and in a form satisfactory to the City Solicitor, be **APPROVED**;
- (b) That the draft Site Alteration By-law attached as Appendix “A” to Report PED19201, be reviewed in eighteen months;
- (c) That the new Site Alteration By-law be identified as complete and removed from the Planning Committee’s Outstanding Business List.

EXECUTIVE SUMMARY

The proposed By-law will repeal the existing Site Alteration By-law 03-126 (as amended) to be replaced with the draft By-law attached as Appendix “A” to Report PED19201.

Draft Site Alteration By-law – Summary of Changes

Current By-law 03-126 (as amended)	New By-law
Fill permit required subject to quantity of fill material, changes in grade impact to drainage.	All properties within City required to obtain permit for Site Alteration; exception for landscaping and pool construction provided plans are in conformance with existing grading plans or By-law criteria is met.
Rural properties may import 8 cubic meters of fill for each 0.125ha of lot area (subject to grade restrictions and drainage impacts).	Permit required for any amount of fill and subject to demonstrating “Normal Farm Practice” by a Qualified Professional as defined by By-law or necessary drainage improvements.
No permit will be issued where the lands are the subject of or included within any <i>Planning Act</i> application.	No permit will be issued where the lands are the subject of or included within any <i>Planning Act</i> applications or other Provincial or Federally regulated approvals.
Acceptance of fill from Municipal Operations (Schedule D waiver).	Receiver required to obtain permit.
Commercial Storage Permitted Under Zoning.	Commercial Storage Permitted but stockpile may be regulated in accordance with By-law.
Securities – no clear security amounts.	Securities – 50% cost of earthworks plus 100% cost of restoration; plus street cleaning; plus erosion siltation control; plus road damage; plus soil testing.
No restriction on the origin of excess soils (until Amendment passed October 16, 2019)	Local sources for Excess Soils only. No importation of Excess Soils excavated from properties outside City limits.
Must demonstrate that material coming from source site has been tested and meets applicable standards and quality for receiving site.	Requires a Qualified Professional, as defined by By-law to prepare a soil management and testing plan prior to the issuance of permit with provisions permitting City to test material as required.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Key Changes – if an application is made for a site where an agricultural operation is carried on OR is intended to be carried, the application shall contain:

- a) A statement of nature of the agricultural operation;
- b) The farm business registration number of the agricultural operation or proof of membership in an accredited farm organization;
- c) A description of the normal farm practice; and,
- d) Any plans or evidence supporting normal farm practice, including the qualifications of any person providing such evidence or plans.

Additional details with respect to permit requirements can be found on page 5 of 6.

Provisions of the new By-law apply to all lands within the City of Hamilton.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: N/A

Staffing: Existing Growth Management staff shall be utilized for the review and implementation of permits. Enforcement to be provided by Municipal Law Enforcement staff.

Legal: The draft Site Alteration By-law attached as Appendix “A” to Report PED19201 has been prepared in a form satisfactory to the City Solicitor.

HISTORICAL BACKGROUND

At the June 14, 2019 Planning Committee, staff were directed to develop a rural fill By-law to stop illegal fill movement while minimizing the impact on normal farm practices. At the October 9, 2019 City Council Meeting, staff were directed to amend the current Site Alteration By-law to include a moratorium to prohibit the importing of fill from outside the geographical boundaries of the City of Hamilton.

The current By-law permits fill to be imported onto any property within the City of Hamilton, save and except for those properties regulated by the area Conservation Authorities, where the fill quantity limits are based on the size of the property and the extent of changes in grade. The current By-law places the burden of proof entirely on the City to establish non-compliance with the By-law, thus making enforcement extremely challenging and time consuming, as the inspector is relying on information

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

provided by the contractor or property owner and visual observations that can't be quantified due to the unknown original ground elevations of the subject property or the quantity of material brought in prior to a logged complaint.

On May 1, 2019, the Ministry of the Environment, Conservation and Parks ("MECP") posted an excess soil regulatory proposal on the Environmental Registry for 30 days (May 1-May 31).

The proposal includes:

- A new proposed On-Site and Excess Soil Management Regulation;
- Complementary amendments to Regulation 347 (Waste-General);
- Complementary and burden reduction amendments to O. Reg. 153/04 (Records of Site Condition);
- A proposed document to be adopted by reference titled "Rules for Onsite and Excess Soil Management", including requirements related to excess soil assessment, sampling, and characterization, destination assessment reports, tracking systems and applicable soil quality standards and related rules; and,
- A proposed "Beneficial Reuse Assessment Tool" ("BRAT").

While the regulatory changes proposed by the MECP will be imposed on the generator, the proposed By-law will regulate receiving sites within the City of Hamilton and more importantly within the rural area, ensuring any excess soils destined for agricultural farmland, under permit, will be of a suitable quality for farming purposes. The proposed By-law will require that every rural agricultural property require a permit for the importation of excess soils.

In consultation with the Agriculture and Rural Affairs Committee, concerns were raised with respect to the fee and permit requirements in order to undertake minor drainage improvements on active farms. The By-law will permit a one-time minor permit, at no cost, for the importation of a maximum 500 cubic meters of material for improving soil drainage and soil quality provided the City has received advanced written notice from the property owner. The Committee also voiced concerns with the one (1) year permit duration asking that it be extended for two (2) years citing that the availability of clean fill material as the challenge. Staff note that the permit durations noted in Site Alteration and Excess Soil By-laws from other municipalities range from six (6) months to one (1) year. The new By-law proposes a two (2) year permit duration which was in response to concerns brought forward by the Agriculture and Rural Affairs Committee with respect to the challenges associated with obtaining suitable soils.

RELEVANT CONSULTATION

City staff attended the Agriculture and Rural Affairs Advisory Committee on May 13th, 2019, June 3rd, 2019 and September 9th, 2019.

May 17th, 2019, notice and request for comment was sent to Public Works Engineering Services, Transportation Operations and Maintenance, Hamilton Water, Licensing and By-law Services, Development Planning and Legal Services Division.

ANALYSIS AND RATIONALE FOR RECOMMENDATIONS

The current site alteration enforcement process is set out in the flow chart attached as Appendix “B” to Report PED19201. The process includes an inspector attending at the property to investigate and determine whether there is an infraction or not. Then steps are taken to determine the extent of the infraction, due to the complaint being received after the grading works have been substantially completed, resulting in the inspector not being able to determine the original ground elevations of the subject property. The result is a substantial commitment in staff time requiring multiple site visits sometimes spanning several months.

In order to improve the City’s ability to enforce the new By-law, the proposed By-law will require that all property owners be subject to a Site Alteration Permit, regardless of the quantity of material imported to or removed from the property. For rural properties, a minor permit may be issued, subject to Director Approval, for the placement or removal of fill to a maximum of 500m³ (approx. 50 loads) of fill material.

Major Permits will be required for the placement or removal of fill in excess of 500m³. Prior to the issuance of Major Permits for rural agriculturally zoned properties, the owner of the property shall provide evidence that the works are a requirement of Normal Farm Practice and shall provide an application complete with:

- a) The contact details of the farmer responsible for the agricultural operation;
- b) A statement of nature of the agricultural operation;
- c) The farm business registration number of the agricultural operation or proof of membership in an accredited farm organization;
- d) Description of the normal farm practice; and,
- e) Any plans or evidence supporting the normal farm practice, including the qualifications of any person providing such plans or evidence.

The enforcement process for the new By-law is illustrated in Appendix “C” to Report PED19201.

For information, Appendix “D” to Report PED19201 shows Orders to Comply and complaints issued / received by Ward in 2018 and 2019.

The intent of the new requirements is to protect rural agricultural resources and eliminate the current practice of obtaining fill for profit. As all Rural properties will be subject to a Site Alteration Permit, major or minor, enforcement is straight forward, and the City will be in position to mitigate the impacts to the environment and drainage patterns. Standard permit conditions will regulate hours of operation, road cleaning frequency, delivery frequency, haul routes and load restrictions. The City may impose any other conditions specific to the site and nature of the application.

The new By-law shall be applicable to all permit applications that on the date of enactment have not undergone a first submission review.

ALTERNATIVES FOR CONSIDERATION

Should the proposed By-law not be approved than the existing Site Alteration By-law 03-126 (as amended) will remain in force.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton as an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

Built Environment and Infrastructure

Hamilton is supported by state of the art infrastructure, transportation options, buildings and public spaces that create a dynamic City.

Culture and Diversity

Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A”: Draft Site Alteration By-law
- Appendix “B”: Current Site Alteration Enforcement Process
- Appendix “C”: Proposed Site Alteration Enforcement Process
- Appendix “D”: Orders issued by Ward

CA:GZ:as

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.