

THE CORPORATION OF THE  
TOWNSHIP OF EDWARDSBURGH/CARDINAL

BY-LAW NO. 2012-38

“A by-law to prohibit the obstruction or alteration of drains,  
private drains and the grade of land, and regulating the maintenance and repair of drains,  
private drains, and the grade of land”

**WHEREAS** subsection 11(2) of the Municipal Act, 2001, as amended, provides that a municipality may pass by-laws respecting economic, social and environmental well-being of the municipality and respecting the health, safety and well-being of persons;

**AND WHEREAS** subsection 142(2) of the Municipal Act, 2001, as amended, provides that a municipality may prohibit or regulate the alteration of the grade of land;

**NOW THEREFORE** Council of the Township of Edwardsburgh/Cardinal enacts as follows

**DEFINITIONS**

1. In this by-law,

"Alter" means any act that has the effect of changing the grade of the land including, but not limited to the placement or removal of fill, topsoil, gravel, crushed stone, pavement, interlock, fencing, a swimming pool, a deck, a shed or a retaining wall;

"Township" means the Township of Edwardsburgh/Cardinal;

"Drain" means a culvert, drain, open ditch, rain water leader, watercourse, sewer, swale or storm sewer to carry and/or accept rain, ground, surface or subsurface water or any of them, or parts thereof, and includes appurtenances such as manholes and catchbasins;

"Private Drain" means a "Drain" located on private Property;

"Manager" means the Manager of Public Works of the Township of Edwardsburgh/Cardinal, authorized subordinates or assistants, and the Chief Administrative Officer of the Township of Edwardsburgh/Cardinal;

"Good Repair" includes the provision of facilities, the making of additions or alterations or the taking of any other action that may be required to ensure that a Drain or Private Drain remains clear of any Obstruction;

"Last Known Address" means the address that appears on the last revised assessment roll of the Township;

"Obstruct" means any act or inaction that has the effect of preventing or hindering the proper functioning of a Drain or a Private Drain including, but not limited to the placement, dumping or removal of fill or topsoil, or altering the grade of the land by any means including, but not limited to, landscaping, pavement, interlock, fencing, a swimming pool, deck, shed or retaining wall;

"Obstruction" means any object which prevents or hinders proper functioning of a Drain or a Private Drain including, but not limited to fill, topsoil, rocks, gravel, landscaping, pavement, interlock, fencing, a swimming pool, deck, shed or retaining wall;

"Occupant" means any person or persons over the age of 18 years in possession of

Property;

"Owner" includes:

- a. the registered owner of the land;
- b. the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and
- c. a lessee or occupant of Property who, under the terms of a lease, is required to repair and maintain the Property in accordance with the standards for the maintenance and occupancy of Property;

"Property" includes a building or structure or part of a building or structure, and includes the lands and premises appurtenant thereto and all mobile homes, mobile buildings, mobile structures, outbuildings, fences and erections thereon whether heretofore or hereafter erected, and includes vacant property.

#### DRAINAGE

2. (1) No Owner or Occupant shall, or shall permit any person to, Alter, fill, block, interfere with, Obstruct, or cause or contribute to the Obstruction of a Drain, Private Drain or lot grade such that the flow of storm, rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern.
- (2) For the purposes of Subsection (1), "deviates" does not include a corrective measure taken by the Owner or Occupant on the Property of the Owner or Occupant, which measure, in the sole opinion of the Manager, improves the drainage on the Property of the Owner or Occupant without impacting the existing drainage pattern or approved grading and drainage pattern.

#### REPAIR

3. No Owner or Occupant shall fail to keep in Good Repair a Private Drain

#### MAINTENANCE

4. No Owner or Occupant shall allow a Drain or a Private Drain to fall into disrepair such that the flow of storm, rain, ground, surface or subsurface water is increased, impaired or deviates from the existing drainage pattern or approved grading and drainage pattern in a manner which in the sole opinion of the Manager creates adverse conditions.
5. An Owner may apply for a permit to alter grading and drainage for a fee, provided that such alteration is not governed by any other by-law or legislation. The Manager of Public Works may require that the Owner produce engineering detail, at the Manager's sole discretion, in order to support the application for a permit to alter grading and drainage. The Manager shall have authority to approve or reject the application, at his sole discretion.

#### ORDER TO DISCONTINUE ACTIVITY AND WORK ORDER

6. (1) If the Manager is satisfied that a contravention of this by-law has occurred, the Manager may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity. The order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred and the date by which there must be compliance with the order.
- (2) If the Manager is satisfied that a contravention of this by-law has occurred, the

Manager may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention. The order shall set out reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred and the date by which the work must be done.

- (3) Pursuant to subsection 445 (3) of the Municipal Act, 2001, as amended, an order under subsection (2) may require the work to be done even though the facts which constitute the contravention of the by-law were present before this by-law making them a contravention came into force.

#### POWERS OF ENTRY FOR INSPECTION

7. The Manager may enter upon Property at any reasonable time for the purpose of carrying out an inspection to ascertain whether the provisions of this by-law are complied with and to enforce and carry into effect the provisions of this by-law.
8. (1) For the purposes of an inspection under Section 6 the Manager may,
  - (a) require the production for inspection of documents or things that may be relevant to the inspection;
  - (a) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (a) require information from any person concerning a matter related to the inspection; and
  - (a) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests or photographs necessary for the purposes of the inspection.
- (2) A receipt shall be provided for any document or thing removed under subsection (1) and the document or thing shall be promptly returned after the copies or extracts are made
- (3) Copies of or extracts from documents and things removed under subsection (1) and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals.

#### NOTICE

9. (1) If the Manager ascertains that there is any Obstruction or alteration as described in subsection 2(1) of this by-law, the Manager shall send a notice, by registered mail or direct delivery by hand to the Owner or Occupant's Last Known Address, requiring the Owner or Occupant to remove the Obstruction, to maintain or repair the Drain or Private Drain, or to restore the lot grade to the same condition it was in prior to the alteration, and the notice shall specify the time allowed for compliance.
- (2) No person shall fail to comply with a notice sent pursuant to subsection (1).

#### DEFAULT AND REMEDIAL ACTION

10. (1) Where a notice has been sent by the Manager pursuant to section 9 and the requirements of the notice have not been complied with, the Manager may cause the work to be done and the total cost of the work shall be at the expense of the Owner or Occupant. The total cost of such work shall include an administration fee in the amount of 15% of the cost of the work.
- (2) For the purposes of subsection (1), the Manager may enter upon Property at any reasonable time.

- (3) The costs of the work to be done pursuant to subsection (1) and all costs related to the administration, enforcement and the establishment, acquisition and replacement of capital assets related to this by-law, may be recovered from the Owner or Occupant by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The costs include interest calculated at a rate of 15% per annum, calculated for the period commencing on the day the Township incurs the costs and ending on the day the costs, including the interest, are paid in full.
- (4) The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued at the rate established under subsection (3) to the date the payment is made.
- (5) Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Township shall register a discharge of the lien in the proper land registry office at the expense of the Owner or Occupant.

#### OFFENCES AND PENALTIES

11. (1) Every person who contravenes an order that is issued pursuant to subsection 6(1) of this by-law is guilty of an offence and the offence is hereby designated as a continuing offence as provided for in subsection 429(2)(a) of the Municipal Act, 2001, S.O 2001, c.25, as amended.
  - (2) Every person who contravenes an order that is issued pursuant to subsection 6(2) of this by-law is guilty of an offence and the offence is hereby designated as a continuing offence as provided for in subsection 429(2)(a) of the Municipal Act, 2001, S.O 2001, c.25, as amended.
  - (3) Every person who contravenes any of the provisions of this by-law is guilty of an offence and the offence is hereby designated as a continuing offence as provided for in subsection 429(2)(a) of the Municipal Act, 2001, S.O 2001, c.25, as amended
12. A person who is convicted of an offence under this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00 and the total of all of the daily fines for the offence is not limited to \$100,000.00 as provided for in subsection 429(3)2 of the Municipal Act, 2001, S.O 2001, c.25, as amended.
  13. When a person has been convicted of an offence under this by-law the Superior Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.
  14. The requirements of this By-Law are severable. If any requirements of this By-Law are held invalid, the application of such requirements to other circumstances and the remainder of the By-Law shall be valid and shall remain in force.

#### FEES

15. Fees shall be as per Schedule "A" attached hereto.

#### SHORT TITLE

16. This by-law may be referred to as the "Drainage By-law".

Read a first and second time in open Council this 28<sup>th</sup> day of May, 2012.

Read a third and final time, passed, signed and sealed in open Council this 28<sup>th</sup> day of May, 2012.



Mayor



Clerk

Schedule "A"

Fees

By-law 2012-38

Section 5	Each application to alter grading and drainage	\$100.00
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