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Bowmanville, Ontario
L1C 6J3
April 19, 2024
By E Mail Attachment

Office of The Clerk
Municipality of Clarington
40 Temperance St,
Bowmanville, ON
L1C 3A6

To Whom It May Concern:

Re: Proposed Amendments to By-law 2008-114, Site Alteration By-law

Introduction and Purpose

I am writing regarding the proposed changes to the above-captioned By-law as contained in report LGS-016-24 which was presented at the Municipality's General Governance Committee meeting on April 8, 2024 and which is subject to adoption at Council's regular meeting on April 22, 2024.

I have a keen interest and extensive experience in the management of excess soil from construction projects but was unable to attend the January 25, 2024 PIC on this matter. Consequently, I wrote to the appropriate person at the Municipality on January 29 requesting that I be kept apprised of further developments pertaining to the proposed changes to the existing By-law as well as being provided with a copy of the PIC presentation changes. I was assured that such information would be provided when available.

Unfortunately, it was not until earlier this week when I was contacted by Ms. Cassy MacDonald of the Mayor's Office, who knew I had an interest in this area, and informed that the proposed changes to the By-law had been drafted and already presented to the General Governance Committee. I thank Ms. MacDonald for her diligence and thoughtfulness.

As Deputy Municipal CAO, Rob Maciver, who presented on this matter to the General Governance Committee on this matter last week is not available, I have since discussed the general content of what follows with Michelle Chambers of the Legislative Services Department.

The events above explain the late submission of my comments. As the upcoming Council meeting on the evening of April 22 coincides with the first night of Passover, my faith obligations prevent me from delegating to Council at that time.

My intent in writing is to offer constructive input to hopefully improve upon the proposed changes and thereby achieve better outcomes in excess soil management as aspired to in the amended By-law.

This intent is motivated by:

- My part-time residency in Clarington and wish for improved excess soil management practices in my locale.
- My long-standing involvement in the Clarington business community, particularly in the area of land development.
- My commitment to give-back to the community and enhance benefits to its members.
- My extensive experience in the field of excess soil management from construction projects.

Without becoming self-congratulatory, I believe it important for Council to have some understanding of my commitment to improving outcomes in excess soil management.

As a homebuilder who has garnered numerous local and provincial awards for sustainable practices, I became concerned that our industry conduct regarding the handling of excess soil from our construction endeavors was, at times, unacceptable, leading to, in some cases, highly detrimental outcomes that negatively impacted upon environmental and human health. Accordingly, about 10 years ago, I volunteered to be, and still am, the delegated representative of The Ontario Homebuilders' Association on this file.

While the comments contained herein are strictly my own, this delegated position resulted in my being a key member of the Ministry of the Environment's Provincial Engagement Group that helped shape O. Reg. 406/19: ON-SITE AND EXCESS SOIL MANGEMENT. This Regulation provides for sweeping changes in the appreciation and practice of excess soil management along with extensive rules for same and significant penalties for infractions. It has been lauded by many other jurisdictions as being one of the most advanced of its kind.

With this knowledge, I have delivered countless, speeches, webinars and educational opportunities for all stakeholders in the excess soil chain of custody, including many that have been attended by Municipal representatives throughout the Province.

I have also been a co-founder of a commercial enterprise, SoilFLO Inc. (www.soilflo.com) that has provided soil management solutions and enhanced outcomes for construction projects across Canada and in countries abroad. SoilFLO has been involved in literally millions of truckloads of removal, transport and deposit of excess soil and is used by numerous contractors operating throughout Durham Region. It is also used by numerous Municipalities and other government agencies throughout Ontario as a procurement standard for infrastructure works concerning their own properties.

This foundational experience leads me to applaud the Municipality's initiative to update its site alteration By-law. That being said, I believe there are opportunities for further improvements to what has been proposed. The focus on this matter also gives rise to reviewing how the Municipality may use the provisions of O. Reg 406/19 to its greatest advantage.

Understanding O. Reg 406/19 and its Intersection with Municipal By-laws

Ontario Regulation 406/19: ON-SITE AND EXCESS SOIL MANAGEMENT was made into law in late 2019 under the Environmental Protection Act. It was done so after extensive and collaborative consultation with all stakeholders in this arena, including representatives from the Municipal government sector. The fundamental shaping of this Regulation was accomplished under the previous Liberal government and because of its wide support was made into law by the subsequent Conservative administration. It generally applies to instances where a volume of excess soil exceeding 2,000m³, is extracted from one site and moved to another. This means that small excavations may be exempt from the Regulation but that developments of moderate to larger scope, whether exporting or importing soil fall within the prescripts of the Regulation.

A common rule of thumb is that a standard dump truck carries 10m³ of soil so those projects where 200 truckloads of displaced soils are involved are subject to the Regulation with some specific exemptions.

Without digressing into a thesis on the Regulation, its salient features are as follows:

1. Excess Soil is to be regarded as a resource rather than a waste unless otherwise specified.
2. Testing, tracking and proper record-keeping for all soil movements subject to the Regulation is mandatory.
3. Responsibility and liability for adherence to the Regulation falls onto the Owner of the property from which the soil originates. It cannot be downloaded or ascribed to an intermediary such as a contractor or hauler. The definition of Owner includes Municipalities for works performed on their properties.
4. Movements of soils subject to the Regulation must be registered and updated on the public registry operated by RPRA (The Resource Productivity and Recovery Authority)

While the intent of the Regulation is to promote better attitudes and outcomes in the handling of excess soil from construction projects, it squarely puts responsibility for compliance upon the owner of the site generating the excess soil. Municipal By-laws dealing with site alteration on the other hand, focus primarily on the obligations of the soil receiver. Nonetheless, there is no reason why Municipal site alteration by-laws cannot make reference to O. Reg. 406/19 and require permit applicants to demonstrate that they have properly registered soil movements subject thereto. This would ensure greater transparency and accountability for any projects involving significant soil movements. It also would provide greater onus on both soil generators and receivers of compliance as the penalties for infractions under the Regulation can be substantial.

I therefore respectfully suggest that consideration be given to fill permit applicants being required to verify whether the soil deposit being requested is subject to the Regulation and, if so, provide information as required under the Regulation regarding the soil origins, project owner and responsible parties for its handling.

Accepting Imported Soil

The proposed By-law maintains the current practice of prohibiting the placement of Fill or Topsoil on a property within the Municipality if the origin of such material is outside of the Municipal boundaries.

This prohibition is an understandable response to egregious instances of illegal dumping of suspect or outright contaminated soils on Clarington properties from projects elsewhere. There has been substantial citizen demand for this kind of prohibition as an attempt to place some greater control over soil management activities.

I respectfully suggest to Council, constituent pressure notwithstanding, that consideration be given to re-examining this prohibition in light of the following:

- There are instances (such as the case with the Marigold Hospice) where limiting the import of soils for construction purposes may have detrimental consequences to the construction of required facilities that benefit the community.
- Increased demands upon applicants for adherence to both Municipal and Provincial regulations and co-ordinated scrutiny by their respective Officers will lead to far greater assurance as to the provenance of imported soils assuring that the right soil goes to the right place.
- Many other Municipalities have adopted such accelerated and co-ordinated compliance initiatives and as a result are able to facilitate the proper enhancement and rehabilitation of properties benefitting from imported soils while collecting higher tip fees to offset the road degradation and other costs associated with these activities.
- Refusal of proper and vetted soils from beyond the Municipality's boundaries is environmentally harmful and adds to the costs of construction. Consider for a moment the consequence of refusing clean topsoil from a development site in northeast Oshawa to be placed on an appropriate receiving site in Courtice. The consequence of this may be to have trucks haul such soil greater distances, perhaps along Taunton Road through the Municipality to be disposed of in a neighbouring Township. Such practice leads to greater carbon emissions, increased traffic congestion and road degradation while absenting the Municipality from collecting any portion of tip fees for road rehabilitation.

The primary objection to the receipt of "foreign" soils has been fear of the quality of such soil and possible harms it may cause. The tracking and record-keeping provisions of O. Reg. 406/19 go a long way to alleviating such concerns.

Opening the door to properly imported soils by no means should reduce the Municipality's right and responsibility to robustly enforce truck traffic routes, times of operation and operator requirements for proper vehicle management and cleanup of mud generated from their activities.

Municipal Requirements Under O. Reg. 406/19

While the proposed By-law exempts Municipal projects, O. Reg. 406/19 does not exempt Municipalities from compliance regarding projects on properties under Municipal ownership. This may be the time to review such compliance as well as ensuring that all contractors procured for work on Municipal projects that may fall under the Regulations are subject to contracts that require their compliance with the Regulations.

Public Engagement

In reviewing Mr. Maciver's excellent presentation to the General Governance Committee, I noted substantial interest in engaging the public to report suspicious soil dumping activities. There are several additional measures that may be employed to both prevent and report illegal dumping activities that I would be pleased to share with staff. An immediate suggestion is referral to the Provincial Excess Soil Registry (<https://rprr.ca/programs/excess-soil-registry>) which has a public portal where soil movements subject to the Provincial Regulation are described as well as contact information for responsible parties.

Conclusion

It is my hope that the comments contained herein are taken in the spirit of constructive consideration for the possible enhancement of the proposed By-law amendments.

I remain at the disposal of Council and staff for any further assistance I may provide in this matter.

Respectfully submitted,



Jeff Goldman