

RURAL MUNICIPALITY OF EAST ST. PAUL
BY-LAW NO. 2011-16

A By-Law of the R.M. of East St. Paul to control and regulate lot grading and drainage patterns on private land.

WHEREAS subsection 232(1) of the Municipal Act, C.C.S.M. c. M225, as amended, provides authority for a municipal council to pass By-Laws with respect to, among other things, drains and drainage on private property and the enforcement of By-Laws;

AND WHEREAS SUBSECTION 232(2) of the Municipal Act, C.C.S.M. c. M225, as amended, provides authority for a municipal council, by By-Law, to among other things, regulate or prohibit and provide for a system of licences, permits and approvals;

NOW THEREFORE, the R.M. of East St. Paul, in Council assembled, enacts as follows this 9th day of November, 2011:

1. SHORT TITLE

(1) This By-Law may be cited as the “Private Property Lot Grade By-Law.”

2. INTENT AND SCOPE OF BY-LAW

(1) The intent of this By-Law is to establish regulations governing lot grading on private property including work, construction, alteration, excavation, in filling and grading on private property so as to control drainage effects on and around private property.

(2) This By-Law applies to Property within the Municipality.

(3) Compliance with this By-Law shall not exempt any Person from compliance with any of the following:

- (a) the R.M. of East St. Paul Building By-law;
- (b) the R.M. of East St. Paul Development Plan;
- (c) any other appropriate federal, provincial or municipal legislation; and
- (d) the conditions of any caveat, covenant, site plan, development agreement, variance or conditional use order, easement or other instrument affecting a Building or Property.

- (4) Failure by the Municipality to enforce any part of this By-Law shall not result in any civil liability to the Municipality, and the Municipality shall be entitled to a full indemnity for any liabilities it incurs as a result of any Person's failure to comply with the provisions of this By-Law from such Person.

3. DEFINITIONS

- (1) Unless the context otherwise requires, wherever used in this By-law:

"Accessory Building" means a structure constructed on a Property that already contains a Primary Building, whose use is incidental and/or subordinate to the Primary Building, and:

- has a gross footprint of more than 10 m².; or
- has a Constructed Floor;

"Applicant" means the Owner of a Property or such other person authorized in writing by the Owner to apply for a Permit;

"Building" means any structure used or intended for shelter, accommodation, use or enclosure of persons, animals, material or equipment and, without restricting the generality of the foregoing, includes residential, commercial, institutional and industrial structures;

"Building Grade" means the geodetic elevation of the finished land grade at the Building as per the Lot Grade Plan;

"Constructed Floor" means any floor consisting of concrete, asphalt, or any other material that does not permit the drainage of water through the floor;

"Designated Officer" means any individual(s) appointed by the Municipality by municipal By-Law, and their successors or duly authorized representatives;

"Detailed Landscape Plan" means a report completed by a Professional Engineer registered with the Association of Professional Engineers and Geoscientists of Manitoba, a Land Surveyor registered with the Association of Manitoba Land Surveyors, or a Landscape Architect registered with the Manitoba Association of Landscape Architects, and that includes the following information:

- (a) the proposed and existing Elevations and grading;
- (b) the location of all proposed plant material, planting beds and sodded areas,
- (c) the location of existing vegetation to be retained or removed,
- (d) the location and type of protection measures for the existing vegetation to be retained,
- (e) the location of all existing natural features including top of bank and watercourse features,
- (f) a plant list showing index, type, size, quantity, species, spacing, etc.,
- (g) the location and material of all hard surfaced areas (e.g. driveways, walkways, parking areas),
- (h) the location, height and material of all fences, screen walls and retaining walls,
- (i) the location of Stormwater management landscape features,
- (j) the location of above and below ground utilities (including lighting facilities),
- (k) the location of garbage collection facilities, and
- (l) any other landscape element that contributes to site development.

“Elevations” means the elevation of the finished ground surface at any specific reference point or at any point on the slope between two specific reference points on a Property;

“Excavation” means any activity that affects Lot Grades or drainage on, around or across a Property, as determined by the Municipality, including digging, ditching, excavation of or addition of fill, sodding, or any landscaping which alters, widens, limits or deepens existing drainage patterns;

“Fill” means the same as “Excavation”;

“Final Lot Grade Elevations” means confirming or re-establishing Elevations prior to the installation of any landscaping material;

“Garage” means a building or structure primarily intended for the storage of motor vehicles as defined under the *Highway Traffic Act*, C.C.S.M. c. H60, as amended;

“Landscape Sketch” means a sketch, whether hand-drawn or otherwise, that contains all of the following information for a Property:

- (a) the location and dimensions of all physical features, existing or proposed, including vegetation, berm contours, walls, fences, outdoor furniture and fixtures, surface utilities, and paving; and
- (b) the location of all shrubs and trees, whether existing or proposed, labeled by their common name, botanical name, and size.

“Landscaping” refers to the area of a Property surrounding a Building, and means activity which impacts or includes both natural (native) and constructed features whether for functional or aesthetic purposes. Landscaping includes both hard and soft landscape elements, including but not limited to: pavements, decks, retaining walls, fountains, arbors, overhead structures, pools, outdoor lighting, decoration, trees, shrubs, sod and plantings;

“Lot Grade Plan” means a plan prepared in a scale of not less than 1:500 that has been signed by a

- (a) Manitoba Land Surveyor registered by the Association of Manitoba Land Surveyors, or
- (b) Professional Engineer registered by the Association of Professional Engineers and Geoscientists of Manitoba, or
- (c) Landscape Architect registered with the Manitoba Association of Landscape Architects,

and contains all of the following information:

- (a) the civic address and legal description of the Property;
- (b) a north arrow;
- (c) the project location with reference to adjoining streets or dimensions to street corners at mid-block locations;
- (d) the legal dimensions of all Property lines;

- (e) the location of the proposed Primary Building(s) and any proposed Accessory Building(s), paved areas and driveways;
- (f) distances to the flood line if the Property is located within a flood fringe area;
- (g) existing and proposed geodetic lot grade Elevations (in metric units) for the Property, any adjacent Property, and any public rights-of ways or easements, including:
 - (i) the proposed ground elevation at each corner of the Primary Building(s) and any Accessory Building(s);
 - (ii) the elevation of any Garage floor and proposed driveway slope;
 - (iii) the location of any proposed retaining walls on the Property; and
 - (iv) any other Elevations that may affect lot grading, including but not limited to walk-outs, window wells and terraces.
- (h) drainage patterns indicated by flow arrows and slopes described in percent;
- (i) the location of any roof drain downspouts, downspout extensions and sump pump discharge outlets; and
- (j) the location of any existing and proposed sewer connections on the Property;

“Lot Grades” means the finished landscape Elevations of the 4 (four) corners of the Building, swales and grade breaks for the Property;

“Lot Grading Permit – Primary Building” means a permit issued pursuant to section 6 of this By-Law;

“Lot Grading Permit – Accessory Building” means a permit issued pursuant to section 7 of this By-Law;

“Lot Grading Permit – Excavation/Fill” means a permit issued pursuant to section 8 of this By-Law;

“Municipality” means the Rural Municipality of East St. Paul and its designated representatives;

“Owner” means a person in whose name a Property is legally registered;

“Permit” includes a Lot Grading Permit – Primary Building, Lot Grading Permit – Accessory Building, and Lot Grading Permit – Excavation/Fill;

“Person” includes a corporation, partnership or individual but excludes the Municipality

“Primary Building” means a structure constructed on a Property whose use represents the primary use of the Property and that:

- has a gross footprint of more than 10 m²; or
- has a Constructed Floor.

“Property” includes any piece of privately owned property, lot, plot or parcel of land or an assemblage or continuous parcels or land of the same Owner(s), including those having frontage and/or flankage on a public street, or being adjacent to a Property owned by another Person;

“Rough Grading” means surface Elevations and surface grades of a Property established in accordance with a Lot Grade Plan preceding the establishment of final grading or to Elevations required by the Municipality in conformance with its requirements;

“Site and Drainage Plan” means a plan clearly and in detail indicating existing buildings, proposed buildings, dimensions and drainage patterns and includes the final Elevations of any proposed Building(s) in relation to the Lot Grade Plan.

“Stormwater” means the water running off the surface of a drainage area during and immediately following a period of rain or snow melt;

“Walk-Out Basement” means a basement as defined in the Manitoba Building Code, C.C.S.M. c. B93, which allows persons to exit directly to grade through a doorway that leads from the basement to the outdoors as defined by the Manitoba Building Code.

4. GENERAL LOT GRADING REQUIREMENTS

- (1) Each Property shall be graded in such a manner as to allow Stormwater to drain along the lot line without ponding, obstruction or discharging directly onto an adjacent Property other than through a Provincial Waterway as defined in the *Water Resources Administration Act*, C.C.S.M. c. W70, as amended.

- (2) Each residential Property shall be graded and landscaped to achieve a perching of soil surrounding the perimeter of any Buildings on the Property, including any Walk-Out Basements, and effectively direct surface drainage away from such Buildings.
- (3) Unless the Designated Officer approves special site conditions pursuant to subsection 4(4) of this By-Law, the grading of a residential Property shall conform to the following technical drawings for the respective type of Property:
 - (a) Type 1 Lot Grading: Residential Split Lot Drainage – Rear Yard Drains to Public Lane
 - a. Schedule A Drawing No. 1 – “Typical Lot Grading Type 1”
 - b. Schedule B Drawing No. 1 – “Typical Cross Sections for Side Yard Swale Options”
 - (b) Type 2 Lot Grading: Residential Split Lot Drainage – Rear Yard Drainage to Drainage Swale
 - a. Schedule A Drawing No. 2 – “Typical Lot Grading Type 2”
 - b. Schedule B Drawing No. 1 – “Typical Cross Sections for Side Yard Swale Options”
 - c. Schedule B Drawing No. 2 – “Typical Cross Sections for Rear Yard Swale Options”
 - (c) Type 3 Lot Grading: Residential to Front Lot Drainage – Rear Yard Drains to Front Street
 - a. Schedule A Drawing No. 3 – “Typical Lot Grading Type 3”
 - b. Schedule B Drawing No 1 – “Typical Cross Sections for Side Yard Swale Options”
- (4) The Designated Officer shall have the power to approve variances from Schedule “A” of this By-Law for special site conditions at his or her discretion provided such variances comply with subsections 4(1) and 4(2) of this By-Law.

- (5) All roof downspouts for a Building on a Property shall be located in such a manner as to achieve positive drainage away from the Building. All downspouts shall discharge through a suitable elbow onto a splash pad, unless otherwise approved by the Designated Officer. Under no circumstances shall roof downspouts be located in such a manner as to drain directly onto an adjacent Property. A drawing of a typical splash pad placement is appended as Schedule C to this By-Law.
- (6) All sump pump discharge pipes discharging weeping tile water from a Building located on a Property shall be located so as to discharge in the following manner:
 - (a) Where a storm sewer is located adjacent to the Property, all sump pump discharge pipes from the Property shall be connected to the storm sewer and discharge into it.
 - (b) Where no storm sewer is located adjacent to the Property but a retention pond is located adjacent to the Property, all sump pump discharge pipes from the Property shall be placed so as to discharge into the retention pond.
 - (c) Where neither a storm sewer nor a retention pond is located adjacent to the Property, all sump pump discharge pipes from the Property shall discharge onto splash pads located on the surface of the Property, provided that any such splash pads shall be located a minimum of three (3) metres from any property line.
- (7) All driveways on a Property shall be constructed in such a manner as to not impede drainage away from any Buildings on any Property.
- (8) Walk-Out Basements shall be only be permitted for a Property if:
 - (a) positive surface drainage can be maintained, without interruption, from the sill of any door opening(s) of the Walk-Out Basement to the perimeter of the Property and into an approved drainage path draining away from the Property and adjoining Properties; and
 - (b) the sill(s) of any door opening(s) of the Walk-Out Basement are located no less than 0.6 m above the local flood protection level set by the Province of Manitoba at the time the Walk-Out Basement is constructed.
- (9) Sunken, dug-out or recessed areas, including Garages below grade, shall not be permitted.
- (10) No openings of any Building, including windows, doors, and ventilation shafts, shall be constructed with the bottom of any such opening at an elevation that is less than 0.6 m above the local flood protection level as set by the Province of Manitoba from time to time.

- (11) Building Grades for a Property shall be sufficiently high to ensure that the sanitary sewer connection from the Building conforms to the requirements of the Municipality's Sewer and Land Drainage By-Law No. 2011-10, including any amendments thereto.

5. MAINTENANCE OF BUILDING GRADES, LOT GRADES AND DRAINAGE

- (1) The Owner of a Property for which Building Grades or Lot Grades were established and approved by the Municipality shall be responsible for maintaining such Building Grades and Lot Grades, regardless of whether they were established and approved under this By-Law or under any previous authority of the Municipality.
- (2) The Owner of a Property shall be responsible for ensuring that Stormwater originating on the Property does not flow onto an adjacent Property in such a manner as to adversely affect the adjacent Property or the use or enjoyment that can be derived from it.
- (3) The Owner of a Property shall be responsible for ensuring that all roof downspouts, sump pump discharge pipes, and splash pads are maintained so as to meet the requirements set out in section 4 of this By-Law.

6. LOT GRADING PROCEDURE – PRIMARY BUILDINGS

6.1 LOT GRADING PERMITS – PRIMARY BUILDINGS

- (1) No person shall construct or permit the construction of a Primary Building or an addition that increases the footprint of a Primary Building on a Property without having first obtained a Lot Grading Permit – Primary Building from the Designated Officer.
- (2) Notwithstanding the above, the Designated Officer shall have the discretion to waive the requirement for a Lot Grading Permit – Primary Building for an addition to a Primary Building on a Property if he or she is of the opinion that the proposed addition will not materially change existing drainage patterns on the Property.
- (3) An application for a Lot Grading Permit - Primary Building shall include the following:
 - (a) a written application in a form to be prescribed by the Municipality from time to time;
 - (b) a non-refundable application fee in an amount to be prescribed by the Municipality from time to time;

- (c) a refundable deposit in an amount to be prescribed by the Municipality from time to time; and
 - (d) three copies of a Lot Grade Plan for the Property.
- (4) Following review of the materials set out in subsection 6.1(3) above, the Designated Officer shall either:
- (a) if he or she is satisfied with the proposed Lot Grades set out in the Lot Grade Plan, issue a Lot Grading Permit – Primary Building which shall be accompanied by a copy of the submitted Lot Grade Plan, and such Lot Grade Plan shall form part of the Lot Grading Permit – Primary Building; or
 - (b) if he or she is not satisfied with the proposed Lot Grades set out in the Lot Grade Plan, require the Owner of the Property or the Applicant, as the case may be, to submit a revised Lot Grade Plan that proposes Lot Grades satisfactory to the Designated Officer.
- (5) A Lot Grading Permit – Primary Building may contain an expiration date.

6.2 MILESTONES AND DEADLINES – PRIMARY BUILDINGS

- (1) Unless the Designated Officer grants an extension in writing to the Applicant, the Owner of a Property or the Applicant, as the case may be, shall meet the following milestone dates and deadlines with respect to a Lot Grading Permit – Primary Building:
- (a) Within two (2) weeks of receiving a Lot Grading Permit – Primary Building for a Property:
 - (i) Mark the corners of the Property with suitable marker stakes and display the municipal address and lot number in a conspicuous location on the Property.
 - (b) Within eighteen (18) months of receiving a Lot Grading Permit – Primary Building for a Property:
 - (i) Provide the Designated Officer with a plan that
 - was prepared by a
 - Manitoba Land Surveyor registered by the Association of Manitoba Land Surveyors, or

- Professional Engineer registered by the Association of Professional Engineers and Geoscientists of Manitoba, or
- Landscape Architect registered with the Manitoba Association of Landscape Architects
- and shows
 - the location of any proposed Primary Building(s) on the Property,
 - the proposed Building Grades for such Primary Building(s), and
 - the Lot Grades for the Property as set out in the Lot Grade Plan.

Upon receiving such documentation, the Designated Officer shall confirm the acceptability of the proposed location and Building Grades for the proposed Primary Buildings(s) within a reasonable amount of time or require the Owner of the Property, or the Applicant, as the case may be, to make any revisions to the location of the Primary Building(s) or the Building Grades that the Designated Officer deems necessary.

- (c) Within thirty (30) months of receiving a Lot Grading Permit – Primary Building for a Property:
- (i) Provide the Designated Officer with a Landscape Sketch that shows the proposed Landscaping for the Property. Upon receiving a Landscape Sketch, the Designated Officer, within a reasonable amount of time, shall either:
- confirm the acceptability of the proposed Landscaping; or
 - require the proposed Landscaping to be revised in such a manner as the Designated Officer deems necessary to maintain appropriate drainage patterns; or

7. LOT GRADING PROCEDURE – ACCESSORY BUILDINGS

7.1 LOT GRADING PERMITS – ACCESSORY BUILDINGS

- (1) No person shall construct or permit the construction of an Accessory Building on a Property without having first obtained a Lot Grading Permit – Accessory Building from the Designated Officer.
- (2) An application for a Lot Grading Permit - Accessory Building shall include the following:
 - (a) a written application in a form to be prescribed by the Municipality from time to time;
 - (b) a non-refundable application fee in an amount to be prescribed by the Municipality from time to time; and
 - (c) three copies of a Site and Drainage Plan for the Property.
- (3) Following review of the materials set out in subsection 7.1(2) above, the Designated Officer shall either:
 - (a) if he or she is satisfied with the proposed Elevations and grading set out in the Site and Drainage Plan, issue a Lot Grading Permit – Accessory Building, which shall be accompanied by a copy of the submitted Site and Drainage Plan, and such Site and Drainage Plan shall form part of the Lot Grading Permit – Accessory Building;
 - (b) if he or she is not satisfied with the proposed Elevations and grading set out in the Site and Drainage Plan, require the Owner of the Property or the Applicant, as the case may be, to submit a revised Site and Drainage Plan that proposes Elevations and grading satisfactory to the Designated Officer.
- (4) A Lot Grading Permit – Accessory Building may contain an expiration date.

7.2 MILESTONES AND DEADLINES – ACCESSORY BUILDINGS

- (1) Unless the Designated Officer grants an extension in writing to the Applicant, the Owner of a Property or the Applicant, as the case may be, shall meet the following milestone dates and deadlines:

- (a) Within twelve (12) months of receiving a Lot Grading Permit – Accessory Building for a Property:
- (i) Provide the Designated Officer with a Landscape Sketch that shows the proposed Landscaping for the Property following the completion of the Accessory Building(s). Upon receiving a Landscape Sketch, the Designated Officer, within a reasonable amount of time, shall either:
- confirm the acceptability of the proposed Landscaping; or
 - require the proposed Landscaping to be revised in such a manner as the Designated Officer deems necessary to maintain appropriate drainage patterns; or
 - if the Designated Officer is not satisfied that the Landscape of the Property, or the Applicant, as the case may be, to s Sketch provides sufficient information upon which to determine whether appropriate drainage patterns would be maintained, the Designated Officer may require the Owner submit a Detailed Landscape Plan, and this subsection shall apply to the Detailed Landscape Plan in the same manner as to the Landscape Sketch.
- (b) Within twenty-four (24) months of receiving a Lot Grading Permit – Accessory Building for a Property:
- (i) Complete the final grading and Landscaping of the Property in accordance with the Landscape Sketch or Detailed Landscape Plan approved pursuant to subsection 7.2(1)(a)(i) of this By-Law.

8. LOT GRADING PROCEDURE – EXCAVATIONS AND FILL

- (1) No Person shall conduct or permit any Excavation or Fill to be conducted on a Property without first having obtained a Lot Grading Permit – Excavation/Fill from the Designated Officer.

- (2) An application for a Lot Grading Permit – Excavation/Fill shall include the following:
 - (a) a written application in a form to be prescribed by the Municipality from time to time;
 - (b) a refundable deposit in an amount to be prescribed by the Municipality from time to time; and
 - (c) three copies of a Landscape Sketch for the Property, provided that if the Designated Officer is not satisfied that the Landscape Sketch provides sufficient information upon which to determine whether appropriate drainage patterns would be maintained following the completion of the proposed Excavation or Fill, the Designated Officer may require the Owner of the Property, or the Applicant, as the case may be, to submit a Detailed Landscape Plan.
- (3) Following review of the materials set out in subsection 8(2) above, the Designated Officer shall either:
 - (a) if he or she is satisfied that appropriate drainage patterns would be maintained following the completion of the proposed Excavation or Fill, issue a Lot Grading Permit – Excavation/Fill, which shall be accompanied by a copy of the submitted Landscape Sketch or Detailed Landscape Plan, and such Landscape Sketch or Detailed Landscape Plan shall form part of the Lot Grading Permit – Accessory Building; or
 - (b) if he or she is not satisfied that appropriate drainage patterns would be maintained following the completion of the proposed Excavation or Fill, require the Owner of the Property or the Applicant, as the case may be, to submit a revised Landscape Sketch or Detailed Landscape Plan that proposes Elevations, drainage patterns and grading satisfactory to the Designated Officer.
- (4) A Lot Grading Permit – Excavation/Fill may contain an expiration date.
- (5) Unless the Designated Officer grants an extension in writing to the Applicant, the Owner of a Property or the Applicant, as the case may be, shall, within twelve (12) months of receiving a Lot Grading Permit – Excavation/Fill for a Property, complete the approved Excavation or Fill and the Landscaping as per the Lot Grading Permit – Excavation/Fill and the approved Landscape Sketch or Detailed Landscape Plan.

9. PENALTIES AND REMEDIAL ACTION

- (1) Any Person who performs or causes any work to be performed on a Property that requires a Permit issued pursuant to this By-Law without first obtaining such Permit is guilty of an offence and shall be liable, upon summary conviction, to a fine not exceeding \$1,000.00 (one thousand dollars), which fine shall form a debt against the Property and be collectable in the same manner as a tax may be collected under the *Municipal Act*, C.C.S.M. c. M225, as amended.
- (2) Where, in the opinion of the Designated Officer, a Property does not meet the requirements of this By-Law or any Permit issued pursuant to this By-Law, or where the Owner of a Property or the Applicant, as the case may be, has commenced the work authorized by a Permit but has failed to meet one or more of the required milestones and deadlines stipulated in this By-Law, the Designated Officer may issue an order to the Owner of the Property by registered mail or personal service that directs the Owner of the Property to undertake any required steps to bring the Property into compliance with this By-Law or any such Permit within six (6) months of the date the order is issued.
- (3) Where a Person to whom an order has been issued pursuant to subsection 9(2) fails to abide by the terms of such order within the time frame stipulated therein, the Municipality shall have the right to cause any work required by such order to be done and to enter onto the Property for such purpose. The Municipality shall be entitled to apply the amount of any deposit posted pursuant to this By-Law towards such work and recover the remainder from the Owner of the Property as a debt payable to the Municipality.
- (4) In addition to the remedies provided by subsection 9(3) of this By-Law, and regardless of whether or not the Municipality exercises those remedies, the failure of a Person to whom an order has been issued pursuant to subsection 9(2) to abide by the terms of such order within the time frame stipulated therein constitutes an offence, and such Person shall be liable, upon summary conviction, to a fine not exceeding \$1,000.00 (one thousand dollars) for each day that the offence continues, which fine shall form a debt against the Property and be collectable in the same manner as a tax may be collected under the *Municipal Act*, C.C.S.M. c. M225, as amended.

10. REPEAL OF EXISTING BY-LAW

- (1) By-Law 92-14, including any amendments thereto, is hereby repealed.

DONE AND PASSED IN COUNCIL ASSEMBLED at the Council Chambers of the Rural Municipality of East St. Paul at East St. Paul in Manitoba this 9th day of November, 2011.

Originally Sign by Lawrence Morris

Mayor

Originally Signed by Carol Oppermann

Chief Administrative Officer

Read a first time this 19th day of **October, 2011**

Read a second time this 9th day of **November, 2011**

Read a third time this 9th day of **November, 2011**