

THE CORPORATION OF THE TOWNSHIP OF MUSKOKA LAKES

BY-LAW NUMBER 2008- 56

A By-law of The Corporation of the Township of Muskoka Lakes to regulate and prohibit the modifications being made to the landscape on properties in the Township of Muskoka Lakes.

WHEREAS Section 142 of the *Municipal Act, 2001*, S.O. 2001 c. 25, permits the enactment of a By-law by the Council of The Corporation of the Township of Muskoka Lakes to prohibit the placing or dumping of fill, the removal of topsoil, and the alteration of the grade of any property in the Township of Muskoka Lakes;

AND WHEREAS, an order to discontinue and work orders are authorized under Section 444 and 445 of the *Municipal Act 2001*, S.O. 2001 c. 25 where a contravention of this by-law has occurred;

AND WHEREAS, the Council of The Corporation of the Township of Muskoka Lakes may require that a permit be obtained for the placing or positioning of fill, the removal of topsoil, and the alteration of the grade of land in the Township of Muskoka Lakes and prescribe the fees for the permit and the circumstances under which a permit may be issued and the conditions to such a permit;

AND WHEREAS, the Council of The Corporation of the Township of Muskoka Lakes deems it desirable in the public interest to implement such a By-law for the purpose of:

- Implementing the District of Muskoka Lake System Health Program by preventing erosion and sedimentation of the lakes in the Township,
- Preventing extensive topographical changes of properties in Waterfront Areas,
- Preventing significant site alteration in Scenic Corridors,
- Protecting and preventing site alteration in Environmental Protection Areas,
- Sustaining a healthy and aesthetically pleasing natural environment.

NOW THEREFORE, the Council of The Corporation of the Township of Muskoka Lakes enacts as follows:

1. DEFINITIONS

In the By-law:

- (a) "Alteration" or "Site Alteration" means a change in elevation from existing grade or finished grade resulting from:
 - i. the placing or dumping of fill,
 - ii. the removal of topsoil,
 - iii. placing, dumping, removal, or blasting of rock, or
 - iv. any other action that alters the grade of land including the altering in any way of a natural drainage course on a Site.
- (b) "Council" means the Council of the Township;
- (c) "Designated Officer" means a person designated by the Township under Section 13;
- (d) "Director" means of the Director of Planning for the Township or his or her designate provided such designate is an officer appointed under this By-law;
- (e) "Drainage" means the movement of water to a place of disposal, whether by way of the natural characteristics of the ground surface or by artificial means;
- (f) "Dumping" and "Dump" means the depositing of Fill in a location other than where the Fill was obtained or the movement and depositing of Fill from one location on a property to another location on the same property;
- (g) "Erosion" means the detachment and movement of Soil, sediment or rock fragments by water, wind, ice or gravity;
- (h) "Fill" means any type of material capable of being removed from or deposited on lands, such as soil, stone, sod, turf, concrete, wood, stumps, rock, and asphalt either singly or in combination excluding construction material which are incorporated into a building or structure within 6 months of deposit on the lands and excluding installed paving materials.

- (i) "Grade" means the elevation of the ground surface and shall be more particularly defined as follows:
 - i. "Existing Grade" means the elevation of the existing ground surface of the lands upon which Dumping and/or Placing of Fill, altering of the Grade, removing of Topsoil, or Blasting of Rock is proposed and of abutting ground surface up to three metres wide surrounding such lands, except that where such activity has occurred in contravention of this By-law, Existing Grading shall mean the ground surface of such lands as it existed prior to the said activity;
 - ii. "Finished Grade" means the approved elevation of ground surface of lands upon which Fill has been Placed or Dumped, the Grade altered or Topsoil removed, in accordance with this By-law;
- (j) "Natural Drainage Course" means a valley or elongated depression created by naturally flowing water that varies in size and may be dry or contain intermittent, ephemeral, or perennial running water, including a lake, river, stream, creek, spring, ravine, swamp and gulch with well-defined banks and a bed that gives direction to a water source, but excludes roadside ditches, drainage ditches and irrigation works;
- (k) "Officer" means any person designated by this or any other By-law of the Township to issue permits and impose conditions and to enforce the permits, and such Officers are so designated pursuant to Schedule "D" to this By-law;
- (l) "Owner" means the registered Owner(s) of the property;
- (m) "Permit" means the authorization in writing from the Director or his or her designate provided such designate is an Officer, to make modifications to landscapes in the Township pursuant to this By-law;
- (n) "Person" means any individual, corporation, partnership or association, firm, trust, or other entity and includes anyone acting on behalf or under the authority of such entity;
- (o) "Placing or Place" means the distribution of Fill on lands to establish a Finished Grade, and includes soil stripping;
- (p) "Professional" means a professional engineer, who is licensed to practice in the province of Ontario, and who is retained to advise on the prevention of adverse effects from erosion and sedimentation from and at a Site;
- (q) "Proposed Grade" means the proposed elevation of ground surface of land upon which Fill is proposed to be Placed or Dumped, the Grade altered, Topsoil or Rock removed;
- (r) "Rock Blasting" means to break up or dislodge various rock material to form or open up land through various means such as, but not limited to, explosives or hydraulics;
- (s) "Sedimentation Control Plan" means a plan to control erosion and sedimentation prepared and implemented to comply with this By-law;
- (t) "Site" means the lands which are the subject of an application for a Permit and where the Alteration will occur, or has occurred if the soil has not yet been stabilized so as to prevent erosion and sedimentation;
- (u) "Soil" means material commonly known as earth, Topsoil, loam, subsoil, clay, sand or gravel;
- (v) "Township" and "Township of Muskoka Lakes" means The Corporation of the Township of Muskoka Lakes;
- (w) "Vegetation" means any woody plant, or contiguous cluster of plants including trees, shrubs, and hedgerows,
- (x) "Zoning By-law" means the By-law regulating land use as provided for under the Planning Act within the Township.

2. LAND SUBJECT TO THIS BY-LAW

This by-law applies to the following lands within the Township:

- i. All lands within 200 feet of a navigable waterway in the Waterfront as designated in the Official Plan,
- ii. All lands within 25 feet of a navigable waterway in the Urban Centre or Community designation in the Official Plan,
- iii. All lands zoned Environmental Protection (EP1) in the Township Comprehensive Zoning By-law,

- iv. All lands zoned Scenic Corridor in the Township Comprehensive Zoning By-law.

3. PROHIBITIONS

Subject to Section 3 of this By-law:

- (a) No person shall cause or permit any site alteration within 15 metres (50 feet) of a navigable waterway in the Waterfront designation and within 7.5 metres (25 feet) of a navigable waterway in the Urban Centre or the Community designation, such designations as defined in the Township's Official Plan;
- (b) No person shall cause or permit any site alteration within an area zoned Environmental Protection (EP1) in the Township's Comprehensive Zoning By-law;
- (c) No person shall cause or permit any site alteration in an area zoned Scenic Corridor or Scenic Area in the Township's Comprehensive Zoning By-law within a distance of 100ft. from the front lot line;
- (d) No person shall cause or permit site alteration without an owner or person first obtaining a permit under this By-law in any area within 60 metres (200 feet) of a navigable waterway in the Waterfront designation as defined in the Township's Official Plan or within 7.5 metres (25 feet) of a navigable waterway in an Urban Centre or Community designation as defined in the Township's Official Plan;
- (e) No person shall fail to comply with an Order issued under this By-law;
- (f) No person shall pull down or deface an Order posted under this By-law;
- (g) No person shall fail to produce or post a permit as required by this by-law;
- (h) No person shall obstruct or interfere with an Officer, or any person or agent authorized by an Officer, in the discharge of his or her duties under this by-law. Such action shall be considered a violation of this By-law.

4. EXEMPTIONS FROM APPLICATION OF BY-LAW

The provisions of this By-law do not apply to:

- (a) activities or matters undertaken by the Township or a local board of the Township;
- (b) the placing or dumping of fill, removal of topsoil, blasting of rock, or alteration of the Grade of land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of *the Planning Act* or as requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (c) the placing or dumping of fill, removal of topsoil, blasting of rock, or alteration of the Grade of land imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as requirement of an agreement entered into under the regulation;
- (d) the placing or dumping of fill, removal of topsoil, blasting of rock, 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, 1998*, for the purposed of constructing and maintaining a transmission system or a distribution system, as those terms area defined in that section;
- (e) the placing or dumping of fill, removal of topsoil, blasting of rock, or alteration of the Grade of land undertaken on land described in a license for a pit or quarry or a permit for wayside pit or wayside quarry issued under the *Aggregate Resource Act*;
- (f) the placing or dumping of fill, removal of topsoil, blasting of rock, 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* or a predecessor of that Act, and
 - ii. on which a pit or quarry is a permitted land use under By-law passed under section 34 of the *Planning Act*; or
- (g) the placing or dumping of fill, removal of topsoil, blasting of rock, or alteration of the Grade of land undertaken as an incidental part of drain construction under the *Drainage Act* or the *Tile Drainage Act*; and
- (h) the removal of topsoil as incidental part of a normal agricultural practice including such removal as an incidental part of sod farming, greenhouse operation and nurseries for horticultural products, but not the removal of topsoil for sale, exchange or other disposition.
- (i) the placing or dumping of fill, removal of topsoil, blasting of rock or alteration of grade necessary for the installation of a septic system approved and for which a permit has been issued under the Ontario Building Code Act,

- (j) the placing or dumping of fill necessary for one driveway no wider than 4.5m (15 ft.) to access a property in an area zoned a Scenic Corridor or Scenic Area in the township's Comprehensive Zoning By-law,
- (k) the placing or dumping of fill for the purpose of one temporary access road no wider than 4.5m (15 ft.) on properties only accessible by water,
- (l) the placing or dumping of fill, removal of topsoil, blasting of rock or alteration of grade necessary for the installation of a foundation for a structure approved under the Ontario Building Code Act and a building permit has been issued by the Township, provided that any blasting of rock is less than 450 cubic yards (345 cubic metres).

5. APPLICATION REQUIREMENTS

A Person who wishes to obtain a Permit shall submit to the Director an application that:

- (a) Is a complete Application in containing information as set out in Schedule "A";
- (b) Is accompanied by the prescribed fees payable to the Township in accordance with Schedule B of this By-law, namely:
 - i. the application fee; and
 - ii. any required security deposit.
- (c) Includes any report required by the Township or external agency e.g. Sedimentation Control Plan, archeological report, vegetation analysis, environmental impact assessment, geotechnical report, or hydrogeological report.

6. RENEWAL OR TRANSFER

- (a) A permit may be transferred or renewed upon application to the Township, if the Owner is in compliance with the existing Permit. A permit may be renewed a maximum of two times. A transferred Permit expires on the date that the existing Permit was due to expire. A renewed Permit expires one year after the expiry date of the previous Permit.
- (b) A Person who wishes to renew or transfer a Permit shall, at least 30 days before the expiry of the Permit, submit to a Designed Officer a fresh application that:
 - i. complies with all requirements set out in section 5, and
 - ii. for its Sedimentation Control Plan, relies upon the Sedimentation Control Plan for the Site that is referenced in the existing Permit.

7. ISSUANCE OF PERMIT

- (a) The Director shall issue a Permit where:
 - i. the Director is satisfied that the application is complete, in accordance with this By-law and the Schedules;
 - ii. the Director is satisfied that the site is not within an area where alteration is prohibited under Section 2;
 - iii. the Director is satisfied that the proposed Placing or Dumping of Fill, altering of the Grade or removing of Topsoil, will not result in:
 - 1. erosion;
 - 2. blockage of a natural or manmade watercourse;
 - 3. siltation of a natural or manmade watercourse;
 - 4. contamination of a natural or manmade watercourse;
 - 5. any disruption or impact of both warm and cold watercourses;
 - 6. flooding or ponding;
 - 7. a detrimental effect on any Vegetation that has been designated for preservation;
 - 8. a detrimental effect on the natural environment of the area; or
 - 9. contravening the intent of the by-law as expressed in the recitals.

8. CONDITIONS TO PERMIT

- (a) The following are deemed to be conditions to every Permit:
 - i. A permit expires one calendar year after it is issued;
 - ii. The Owner must ensure that any Sedimentation Control Plan referred to in the Permit is implemented;
 - iii. The Owner shall give the Designated Officer five business days' advance notice of the commencement of Site Alteration; and

- iv. Once the permitted works are complete, the owner shall notify the Township.
- (b) The Director may attach such other conditions to a Permit that in the opinion of the Director, are reasonably required to protect the public and the natural environment from adverse effects associated with erosion and sedimentation from or at the Site.
- (c) An Officer, appointed by resolution of Council, or any person authorized by an Officer, may at all times enter upon and inspect any land for the purposes of enforcing this By-law, determining compliance with this By-law, determining compliance with terms and conditions of a Permit issued under this By-law, determining compliance with an Order issued under Section 13 of this By-law or laying charges under this By-law.

9. EXPIRY OR REVOCATION OF PERMIT

- (a) The Township may revoke any Permit if:
 - i. the application contains false or misleading information, or
 - ii. the Owner has breached any of the Prohibitions of Section 3 of this Bylaw.
- (b) When a Permit expires or is revoked, the Owner shall immediately cease all Site Alteration, and shall immediately rehabilitate and stabilize the Site so as to prevent adverse effects from erosion and sedimentation from or at the Site. If the Owner has registered a site plan agreement, a subdivision agreement, or a developmental agreement that includes the Site Alteration as a condition or requirement, rehabilitation and stabilization shall take place in accordance with that agreement.

10. REVIEW OF DECISIONS OF DIRECTOR

An Applicant for a Permit under this By-law may request a review by Council:

- (a) Where the Director refuses to issue a permit, within ten (10) days after the refusal; or
- (b) if the Director fails to make a decision on the complete Application, within thirty (30) days after the complete application is received by the Director, or
- (c) if the Applicant objects to a condition in the permit, within thirty (30) days after the issuance of the permit.

11. DESIGNATION OF OFFICERS

In addition to the Township's Municipal By-law Enforcement Officers, who are deemed to be designated as Officers for the purposes of enforcing this By-law, the individuals employed by the Township and filling the positions set out in Schedule "D" are hereby designated as Officers pursuant to the provisions of this By-law and the Clerk is authorized to issue Certificates of Designation to these individuals.

12. INSPECTION BY AN OFFICER

- (a) During daylight hours and upon producing a Certificate of Designation, an officer, may enter and inspect any land to which this By-law applies at any time.
- (b) Any person who obstructs an officer in carrying out an inspection under this By-law is guilty of an offence.

13. ORDERS

- (a) Where an officer is satisfied that a person has contravened any provision of this By-law, the officer may make an Order requiring the person to discontinue the approved activity and shall set out the particulars of the contravention. The Order shall set out the information contained in Schedule "E".
- (b) Where the Director is satisfied that a person has contravened any provisions of this By-law, the Director may make an Order requiring the person to rehabilitate the land or to plant or replant trees in such a manner and within such a period as the Director considers appropriate.
- (c) An Order issued under this section may be served personally or served by sending it by mail to the last known address of;
 - (i) The owner of the property at the address shown on the municipal tax rolls; and
 - (ii) The person identified as contravening this by-law.
- (d) Where service of an Order is made by mail, the order shall be deemed to have been served on the fifth day after the Order is mailed.

- (e) Where service cannot be made under the preceding sections of this by-law, it is deemed sufficient if the Officer places a placard containing the terms of the Order in a conspicuous place on the affected lands and the placing of the placard shall be deemed to be sufficient service of the Order on the person to whom the Order is directed.
- (f) A person to whom an Order under this section has been directed may request a review by Council by filing a written request with the Director within 30 days after the date of the order. Council may confirm, alter, or revoke the Order.
- (g) If a person fails to comply to an Order, the Township may carry out the work, enter the property for that purpose and recover the cost with interest all in accordance with Section 446 of the Municipal Act, 2001.

14. PENALTY

- (a) Any person, other than a corporation, who contravenes any provision of this By-law, the terms or conditions of a Permit, a Sedimentation Control Plan, or an Order issued under section 13 of this by-law (pursuant to Sections 444 and 445 of the Municipal Act 2001), is guilty of an offence and on conviction is liable,
 - i. To a fine of not more than \$10,000; and
 - ii. on any subsequent conviction, to a fine of not more than \$25,000.
- (b) In the case of a continuing offence a fine of not more than \$10,000 for each day or part of a day that the offence continues.

15. OTHER APPROVALS

The issuance of a Permit under this By-law does not excuse the Owner from complying with other applicable federal, provincial and municipal By-laws.

16. CONFLICT WITH OTHER BY-LAWS

- (a) Nothing in this By-law shall exempt any person from complying with the requirement of any By-law in force or from obtaining any license, permission, permit, authority or approval required under any By-law or legislation.

17. ADMINISTRATION

- (a) Schedules "A" to "E" shall form part of this By-law.
- (b) If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts thereof shall be deemed to be severable and all other Sections or parts of this By-law shall be deemed to be separate and independent there from and continue in full force and effect unless and until similarly found illegal.
- (c) The short title of this By-law is the "Site Alteration By-law"

READ a First, Second and Third time, and finally passed this 8th day of July, 2008.

Original signed by Mayor Susan Pryke
Susan Pryke, Mayor

Original signed by Cheryl Mortimer, Clerk
Cheryl Mortimer, Clerk

SCHEDULE "A"

Information Required for Application

1. Name, address and telephone number of all owners
2. Signature or authorization of all owners
3. Name, address, and telephone number of person retained to perform the work
4. Municipal address of property
5. Legal description of property

AND

6. A plan containing but not limited to:
 - a) A general description of the history of use of the property
 - b) A key map of the property showing the location of the property within the Township of Muskoka Lakes
 - c) A detailed inventory map of the property showing the property boundaries, vegetation types, fence, access roads, hydro lines, utility lines, watercourses, fields, railways, buildings, marshes, rocky areas, and topography
 - d) A map showing the extent of areas of site alteration including blasting, filling, and removal of topsoil
 - e) A statement as to where fill or blasted material is to be deposited on site or off site
 - f) Details of dates work will occur.

SCHEDULE "B"

Fees

\$250 per Application

SCHEDULE "C"

For Design and Maintenance of Erosion and Sedimentation Control Measures

1. Pre-Construction Information

The Sedimentation Control Plan shall include the following descriptive information with respect to the pre-construction state of the Site:

- (a) A 1" = 40' scale Site map and key map
- (b) Drainage information, including:
 - i. existing storm water drainage;
 - ii. natural drainage channels on Site;
 - ii. natural drainage channels within 100 feet (30 metres) of the Site boundary; and
- (c) Location and type of existing vegetative cover;
- (d) Description of the historic, current and any proposed future land use of the Site.

2. Sediment Control Plan

The Sedimentation Control Plan shall include the following information relating to the proposed Site Alteration:

- (a) A detailed description of the location and dimensions of all proposed Site Alteration activities.
- (b) A land alteration sequencing plan, setting out:
 - i. timing of construction activities;
 - ii. sequencing of installation and removal of all control measures; and
 - iii. measures taken to minimize exposed areas.
- (c) The location and dimensions of all temporary soil or dirt stockpiles;
- (d) The location of all erosion and sedimentation control measures to be installed on the Site.

Ministry of Environment Best Management Practices

The Ministry of Environment Best Practice manual may also be used in conjunction with the aforementioned Design and Maintenance of Erosion and Sedimentation Control Measures to ensure Adequate Performance for any and all Site Alterations.

SCHEDULE "D"

Appointment of Officers

- (a) Council may appoint from time to time by resolution, persons it deems qualified and necessary to act as officers to administer and enforce the provisions of this By-law, to issue Permits under this By-law and to impose conditions to such Permits.
- (b) Designated Officers for the purpose of this By-law:
 - i. By-law Enforcement Officer;
 - ii. Senior Planner
 - iii. Director of Planning

SCHEDULE "E"

**STOP WORK ORDER
TOWNSHIP OF MUSKOKA LAKES**

Under the authority of Section 13 of By-law 2008-56 YOU ARE HEREBY DIRECTED AND ORDERED TO forthwith stop, halt, cease, and desist from any and all works associated with the alteration of a site on those lands comprising;

MUNICIPAL ADDRESS / LEGAL DESCRIPTION OF THE PROPERTY:

LOT: _____ CONCESSION: _____ MUNICIPALITY: _____

OWNER / INDIVIDUAL RESPONSIBLE FOR DESTRUCTION OR INJURY OF TREES:

DESCRIPTION OF INFRACTION:

Date of Inspection: _____

Effective Order Date: _____ TO _____

Signature of Officer: _____ Date:

Pursuant to By-law (2008-56) Section 13, subsection (f) Where the person to whom the Order is directed has been served in accordance with this By-law is not satisfied with the terms of the Order, the person may request a review by Council by filing a written request by personal service or certified mail to the Director within 30 days after the date of the Order.

**Twp. Of Muskoka Lakes
P.O. Box 129, 1 Bailey St.
Port Carling, ON
P0B 1J0
Attn: Cheryl Mortimer**

Copy to: By-law Enforcement, Director, Planning, Clerks