

THE CORPORATION OF THE TOWNSHIP OF MUSKOKA LAKES

BY-LAW NUMBER 2008 - 55

A By-law of The Corporation of the Township of Muskoka Lakes to *conserve, prohibit, protect, restrict, and regulate the possible harvesting, removal, injuring, damaging and destruction of trees on (private) property in the Township of Muskoka Lakes*

WHEREAS, Section 135 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, permits the enactment of a By-law by the Council of The Corporation of the Township of Muskoka Lakes to prohibit and regulate the destruction or injuring of trees by cutting, burning or other means;

AND WHEREAS, pursuant to Section 135(7) of the Municipal Act, a municipality may require that a permit be obtained for the injuring or destruction of trees or any class of trees specified in the By-law and impose conditions including those relating to the manner in which destruction occurs and the qualification of persons authorized to destroy or injure trees;

AND WHEREAS, the Council of The Corporation of the Township of Muskoka Lakes deems it desirable in the public interest to enact a Tree Preservation By-law for the purposes of:

- Protecting vegetation in Shoreline Vegetative Buffers for the purpose of habitat protection, water quality, aesthetics, and implementing the District of Muskoka Lake System Health Program;
- Protecting and conserving vegetation in Environmental Protection Areas;
- Retention of tree cover in Scenic Areas and Scenic Corridors;
- Minimizing the destruction or injuring of trees;
- Regulating and controlling the removal, maintenance and protection of trees;
- Protecting, promoting and enhancing the aesthetic values of land;
- Sustaining a healthy natural environment;
- Protecting significant and sensitive natural areas to ensure maximum environmental benefits of trees in both urban and rural settings;
- Contributing to human health and quality of life through the maintenance of tree cover.

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

1. Definitions

In this By-law:

- (a) "Applicant" means the person who submits an application for a permit under this By-law;
- (b) "Breast height" refers to a point of measurement 1.37 metres above the highest point on the tree where the ground meets the trunk;
- (c) "Building Permit" means a building permit issued under the Building Code Act, 1992, S.O. 1992, c. 23, as amended;
- (d) "Clerk" means the Clerk of Township;
- (e) "Council" mean the Council of The Township;
- (f) "Crown" means the upper part of a tree, which includes the branches and leaves;
- (g) "Destroy" means the removal of a tree or harm resulting in the death, ruin, or removal of a tree by cutting, burning, uprooting, chemical application or other means including irreversible injury that may result from neglect, accident or design and the term "destruction" shall have a corresponding meaning;
- (h) "Diameter" means the diameter of the stem of a tree measured outside the bark at a specified point of measurement;
- (i) "Director" means the Director of Planning for the Township or his or her designate provided such designate is an officer appointed under this By-law;
- (j) "DBH" is also known as "diameter at breast height" and refers to the diameter of the stem of a tree measured at a point 1.37 metres (4.5 feet) above the highest point on the tree where the ground meets the trunk;

- (k) "Injure" means to harm, damage or impair a tree and includes, but is not limited to, harm, damage or impairment caused by changing grades around a tree, compacting soil over root areas, severing roots, improper application of chemicals, improper pruning or the removal of branches and bark and the term "injury" shall have corresponding meaning;
- (l) "Major Damage" to a tree means any one of:
 - (i) a wound greater than the square of the DBH of the tree (for example, a wound with an area of 100 square centimeters is major damage to a tree with a DBH of 10 cm),
 - (ii) any wound greater than 1000 square centimeters,
 - (iii) if the wound in paragraph 1 (m)(i) or 1(m)(ii) contacts the ground then the wound shall be considered major damage if it is 60% of the size specified in paragraph 1(m)(i) or 1(m)(ii) respectively,
 - (iv) broken branches destroying more than 30% of the Crown,
 - (v) the exposure, severing or compaction of more than 25% of the root area,
 - (vi) the breaking off of any tree,
 - (vii) the noticeable tipping of any trees,
 - (viii) a cut greater than 1/3rd of the DBH or a cut with a depth of 1/10th of the DBH.
- (m) "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 "C" to this By-law;
- (n) "Owner" means the registered Owner(s) of the property;
- (o) "Permit" means the authorization from the Director or his or her designate provided such designate is an Officer, to injure or destroy trees pursuant to this By-law;
- (p) "Person" means any individual, corporation, partnership, association, firm, trust, or other entity and includes anyone acting on behalf or under the authority of such entity;
- (q) "Remove, Removes or Removal" means to move from a place or position occupied; or
 - (i) To transfer or convey from one place to another; or
 - (ii) To take off; or
 - (iii) To take away; withdraw; or
 - (iv) To do away with; eliminate.
- (r) "Scenic Corridor" or "Scenic Area" means lands so designated by the zoning by-law and having the suffix "-s"
- (s) "Shoreline Vegetative Buffer" means the natural area maintained in its predevelopment state:
 - i) 50 feet wide abutting and running parallel to the high water mark of a navigable waterway for those lands designated as Waterfront in the Township Official Plan,
 - ii) 25 feet wide abutting and running parallel to the high water mark of a navigable waterway for those lands designated as Urban Centres or Communities in the Township Official Plan.
- (t) "Site" means the area of land containing any tree(s) proposed to be injured;
- (u) "Township" and "Township of Muskoka Lakes" means The Corporation of the Township of Muskoka Lakes;
- (v) "Tree" means a plant of any species of woody perennial plant including its root system which has reached or can reach a height of at least 4.5 metres (15 feet) at physiological maturity;
- (w) "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 injure or destroy a tree within 15 metres (50 feet) of a navigable waterway for those lands designated as Waterfront in the Township Official Plan and within 7.5 metres (25 feet) of a navigable waterway for those lands designated Urban Centre or Community in the Township Official Plan;
- (b) No person shall injure or destroy a tree within an area zoned Environmental Protection (EP1) in the Township's Comprehensive Zoning By-law;
- (c) No person shall injure or destroy a tree in an area zoned as a Scenic Corridor or Scenic Area in the Township's Comprehensive Zoning By-law within a distance of 100 feet from the front lot line;
- (d) No person shall injure or destroy a tree on land where a permit is required to do so, unless such permit has been obtained in advance;
- (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 permit.
- (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) Trees injured or removed by or with the permission of the Township of Muskoka Lakes that are situated on lands owned or controlled by it;
- (b) The removal of damaged or destroyed trees in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfalls, freezes, or as a result of insects, disease or wildlife;
- (c) Activities or matters undertaken by the Township, District of Muskoka or a local board of the Township;
- (d) Activities or matters undertaken by the provincial government or federal government or their authorized agents;
- (e) The destruction or injury of trees required in the exercise of the rights or powers of a hydroelectric corporation or any public utility board or commission;
- (f) Activities or matters authorized under the *Crown Forest Sustainability Act, S.O. 1994*;
- (g) Trees cut by a person licensed under the *Surveyor's Act, R.S.O 1990, c. S.29* to engage in the practice of cadastral surveying or any person in his or her employ while making a survey;
- (h) Trees that are part of plantations for the purposes of an orchard, nursery, or Christmas tree farm;
- (i) Trees measuring less than 25 millimetres (1 inch) DBH;
- (j) The removal of dead, dangerous, diseased or severely injured trees or stumps, in accordance with good forestry practice;
- (k) The pruning of tree branches in accordance with good arboricultural practice to maintain, improve, or protect tree health and surrounding forest health while maintaining the tree's natural shape;
- (l) The injuring or removal of trees that is required in order to erect any building, structure or thing in respect of which a building permit is issued and has taken into consideration the protection of trees surrounding the structure or work within the building envelope, provided that no tree is removed or injured that is located more than 5 m (15 ft) from the outer edge of the building, structure, septic system, or thing;

- (m) The injuring or removal of trees that is required to erect any structure or thing permitted as an exemption to the front yard setback in the Comprehensive Zoning By-law provided that no tree is removed or injured that is located no more than 3m (10 feet) from the outer edge of the structure or thing;
- (n) The injuring or destruction of as a condition of the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53 of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (o) The injuring or destruction of trees imposed as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation;
- (p) The injuring or destruction of trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distributor system, as those terms are defined in that section;
- (q) The injuring or destruction of trees undertaken on land described in a license for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act;
- (r) The injuring or destruction of trees 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 a by-law passed under Section 34 of the Planning Act.
- (s) The injuring or destruction of trees necessary for one driveway no wider than 4.5m (15 ft.) to access a property in an area zoned as a Scenic Corridor or Scenic Area in the Township's Comprehensive By-law.
- (t) The injuring or destruction of trees for the purpose of one temporary access road no wider than 4.5m (15 ft.) on properties only accessible by water.

5. APPLICATION FOR PERMIT TO INJURE OR DESTROY TREES

A permit is required under this By-law as follows:

- (a) A permit is required under this By-law for lands outside of the Shoreline Vegetative Buffer but within 200 feet of the high water mark of a navigable waterway.
- (b) Every person who intends to injure or destroy a tree where a permit to do so is required under this By-law shall first complete and submit an application to the Township containing the information set out in Schedule "A" to this By-law, in such form as may be approved by the Director;
- (c) Each application shall be accompanied by the prescribed fee payable in accordance with Schedule "B", to this by-law;
- (d) As part of the application for a Permit, the owner shall permit an officer to enter upon his or her property and undertake such site inspections as may be required to consider the application. An officer may undertake a site inspection prior to, during and after the proposed activity.
- (e) An application for a Permit shall be deemed incomplete, and no Permit be issued if;
 - (i) The application has not been completed in full;
 - (ii) The owner/applicant has not signed the application;
 - (iii) The party who will be undertaking or responsible for the injuring or destruction of trees has not signed the application;
 - (iv) The application fee has not been paid; or
 - (v) Any required inspections have not been undertaken.

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 Tree Inventory and Preservation Plan, relies upon the Tree Inventory and Preservation Plan for the Site that is referenced in the existing Permit.

7. ISSUANCE OF PERMIT

- (a) Subject to Paragraph 8 (b) the Director may issue a permit to injure or destroy tree(s) where the Director is satisfied that:
 - (i) The intent of the by-law is maintained, or
 - (ii) the injury or destruction of tree(s) is required to permit the establishment or extension of a use permitted by the Zoning By-law and there is no reasonable alternative to the injury or destruction of the tree(s).
- (b) A Permit shall not be issued where:
 - (i) an Application required under this By-law is incomplete;
 - (ii) a report as required by Paragraph 4 (d) has not been submitted or in the opinion of the Director is not satisfactory;
 - (iii) the permit would result in the destruction of a tree that is an endangered species as defined in the Endangered Species Act, R.S.O. 1990, c. E.15, or successor legislation;
 - (iv) flood or erosion control, or the ecological integrity of a natural area, will be negatively affected.

8. CONDITIONS TO PERMIT

The following shall be deemed to be conditions to the issuance of every permit under this By-law:

- (a) **Marking of Trees**

At least seven days prior to injuring or destroying any tree, but not prior to the issuance of the permit, the owner shall cause all trees which are to be removed or destroyed to be marked with clearly visible marks of yellow paint at breast height and upon the stump to remain after cutting.
- (b) **Limitation of Damage to Residual Trees**

During the course of injuring or destroying trees pursuant to a permit issued in accordance with this By-law, no person shall:

 - (i) cause Major Damage to trees forming more than 10% of the total residual basal area of the portion of the property which is the subject of the permit;
 - (ii) cause Major Damage to trees forming more than 15% of the residual basal in the size class of 10 cm DBH or more in the portion of the property which is the subject of the permit;
 - (iii) cause Major Damage to trees forming more than 15% of the residual basal area in the size class of 10cm DBH or less in the portion of the property which is the subject of the permit;
 - (iv) create or permit skid trails covering more than 20% of the ground area in the portion of the property that is the subject of the permit.
- (c) **Prior to commencement of any work that would result in injury to or destruction of trees authorized pursuant to this By-law, the person causing such work to be carried out shall ensure that the permit is posted in a conspicuous place within the property or it is available on site and can be produced upon request by an officer. The failure to post or produce a permit as required shall constitute an offense.**
- (d) **Conditions Required by the Director**
 - (i) In addition to the above conditions, the Director may attach conditions to the Permit which in the opinion of the Director are reasonable and related to the purposes of this By-law or the safety and convenience of the public that may include but are not limited to the following:
 1. the manner and timing in which the injuring and destruction of trees is to be carried out;
 2. the qualifications of persons authorized to injure or destroy trees;
 3. the species, size, number, and location of replacement trees to be planted; and
 4. measures to be implemented to mitigate the direct and indirect effects of the injuring or destruction of trees on the natural environment including

protected trees adjacent to or on the land where the tree destruction or injury is to take place.

- (e) 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. DURATION OF PERMIT

- (a) Every permit shall be issued to the applicant and shall expire twelve (12) months after issuance. For greater certainty, to the extent that the expiry date would occur during the restricted period between March 15 to April 30 in any year as provided in Paragraph 7(b) below, the expiry date in the permit shall be deemed to have been extended to a date in the month next following the restricted period that would have the effect of granting the permit to an owner for a full twelve month period clear and not including the restricted period.
- (b) All permits for the injury or destruction of trees will be deemed not to be in effect during the period of March 15 to April 30. The Director may grant exemptions to this requirement in writing having regard to the potential for rutting soil and subsequent damage to the ecology.
- (c) The Director may extend the expiration date of a Permit if a written request for an extension is received by the Director a minimum of 10 working days before the date the Permit expires. Any request that is received after this time may require the submission of a new application. In no case shall the Director extend a Permit for a period of greater than one year.

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 a complete Application, within thirty (30) days after an 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 "B" 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. INSPECTIONS 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 stop the injuring or destruction of trees and shall set out the particulars of the contravention. The Order shall set out the information contained in Schedule "D".
- (b) Where the Director is satisfied that a person has contravened any provisions of this By-law, the Director may make a Repair 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, including any silvicultural treatment necessary to re-establish the trees.
- (c) An Order issued under this section may be served personally or served by sending it by registered 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 injuring, destroying or harvesting a tree or trees.

- (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 who contravenes any provision of this By-law, or contravenes the terms or conditions of a permit, or an Order issued under Section 13 is guilty of an offence and on the conviction is liable:
 - (i) To a fine of not more than \$10,000.00, and
 - (ii) In the case of a continuing offence a fine of not more that \$25,000.00 for each 10 day or part of a day that the offence continues.
- (b) Despite subsection 14 (a) (i)(ii), where the person convicted is a corporation:
 - (i) On a first conviction to a fine of not more than \$50,000.00 or \$5,000.00 per tree, whichever is greater; and
 - (ii) On any subsequent conviction to a fine of not more than \$100,000.00 or \$10,000.00 per tree, whichever is greater.
- (c) If a person is convicted of an offence for contravening this By-law or the terms or conditions of a permit or an Order issued under Section 12, the Court in which the conviction is entered, and any court of competent jurisdiction thereafter, may order the person to rehabilitate the land or to plant or replant trees in such a manner any within such a period as the court considers appropriate, including and silvicultural treatment necessary to re-establish the trees.

15. CONFLICT WITH OTHER BY-LAWS

- (a) If there is a conflict between this By-law and a By-law passed under the Forestry Act or Municipal Act by an upper tier municipality, the provisions of the upper tier By-law prevail;
- (b) Nothing in this By-law shall exempt any person from complying with the requirement of any other By-law in force or from obtaining any license, permission, permit, authority or approval required under any other By-law or legislation.

16. ADMINISTRATION

- (a) Schedules "A-D" 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 "Tree Preservation 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 work on trees under permit, and contact name if corporation or company.
4. Municipal Address of property (if assigned)
5. Legal description of property

AND

6. A Tree Inventory and Preservation Plan (where required) 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 boundary vegetation type boundaries, fences, road, access roads or trails, hydro lines, utility lines, watercourses, grass fields, railways, buildings, marshes, shallow rocky areas, and topography.
 - d. A map showing the extents of the areas of preservation, conditional preservation, vegetation removals and restoration where applicable
 - e. A plan for tree preservation measures, including monitoring, notes, specifications and details for the duration of active development on the property.

SCHEDULE "B"

Fee Schedule

\$250 per application

SCHEDULE "C"

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.) Director of Planning;
 - (ii.) Senior Planner;
 - (iii.) By-law Officer.

SCHEDULE "D"

**STOP WORK ORDER
TOWNSHIP OF MUSKOKA LAKES**

Under the authority of Section 13 of By-law 2008-55 YOU ARE HEREBY DIRECTED AND ORDERED TO forthwith stop, halt, cease, and desist from any and all works associated with the destruction of trees or removal thereof from 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 (2008-55) 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