

THE CORPORATION OF THE TOWN OF WASAGA BEACH

BY-LAW 2019-82

A by-law to prohibit or regulate the injuring or destruction of trees on private property in the Town of Wasaga Beach and to repeal by-law 2017-71 as amended

WHEREAS Section 135 of the Municipal Act, 2001, as amended, permits the enactment of a By-Law for prohibiting or regulating the injuring or destruction of trees;

AND WHEREAS Section 135 of the Municipal Act, 2001, as amended, permits the delegation of authority from an upper tier municipality to a lower tier municipality;

AND WHEREAS the Corporation of the County of Simcoe have granted delegation of authority to the Corporation of the Town of Wasaga Beach, for the enactment of a By-Law for prohibiting or regulating the injuring or destruction of trees or woodlots within the boundaries of the Corporation of the Town of Wasaga Beach;

AND WHEREAS Council may require that a permit be obtained for the injuring or destruction of trees or any class of tree or any woodlot specified in the By-Law and prescribe fees for the permit and the conditions under which a permit may be issued;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF WASAGA BEACH HEREBY ENACTS AS FOLLOWS:

1. DEFINITIONS

For the purpose of this by-law, the following definitions shall apply:

- a) "**basal area**" means the area of the cross-section of the stem of a tree taken at a point of measurement 1.37 metres (4.5 feet) above the highest point of ground at the base of the tree where the undisturbed ground meets the stump.
- b) "**basal area of a woodlot**" shall mean the ratio of the sum of the basal areas of the trees within the woodlot in square metres to the area of the woodlot in hectares.
- c) "**Clerk**" means the Clerk of the Corporation of the Town of Wasaga Beach or his or her designate.
- d) "**Council**" means the Council of the Corporation of the Town of Wasaga Beach.

- e) "**dbh**" means '**diameter at breast height**' and refers to the diameter of a stem of a tree measured at a point 1.37 metres (4.5 feet) above the ground in an undisturbed state at the base of the tree.
- f) "**destroy**" means the removal of trees or harm resulting in the irreversible injury or death or ruin of trees by cutting, burning, uprooting, chemical application or other means that may result from neglect, accident or design and the term "**destruction**" shall have a corresponding meaning.
- g) "**good forestry practice**" means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the forest and environmental conditions under which they are being applied and that minimize detriments to forest values including significant ecosystems, important fish and wildlife habitats, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape.
- h) "**harvest**" means the removal of a tree or trees by cutting.
- i) "**heritage tree**" means a tree that Council designates as being unique and of importance to the Town in terms of distinctive form, size, age and/or historical significance.
- j) "**injure**" means to harm damage or impair trees and includes harm, damage or impairment caused by changing grades around trees, 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 a corresponding meaning.
- k) "**officer**" means an individual designated in accordance with this By- law for the administration and enforcement of this By-Law.
- l) "**owner**" means the registered Owner(s) of the property.
- m) "**permit**" means the authorization from the Town to injure or destroy trees pursuant to this By-Law.
- n) "**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.
- o) "**Registered Professional Forester**" or "**RPF**" is defined in the Ontario Professional Foresters Act, 2000, S.O. 2000, c.18, as amended.

- p) "**Sensitive Natural Area**" are those areas designated as Natural Heritage System within the Official Plan for the Town.
- q) "**Silvicultural**" means the theory and practice of controlling forest establishment, composition, growth and quality of forests to achieve the objectives of management.
- r) "**Town**" means the Municipality of The Corporation of the Town of Wasaga Beach.
- s) "**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 at physiological maturity.
- t) "**woodland**" means land at least one hectare in area with at least:
 - a. 1,000 trees, of any size, per hectare;
 - b. 750 trees, measuring over five centimeters in diameter at dbh per hectare;
 - c. 500 trees, measuring over 12 centimeters in diameter at dbh per hectare;
 - d. 250 trees, measuring over 20 centimeters in diameter at dbh per hectare.

2. **APPLICATION OF BY-LAW**

Except in accordance with the terms and conditions authorized by permit issued by the Town, no person shall, within the boundaries of the Town, injure, destroy or permit to be injured or destroyed any tree that is:

- a) Located within a woodland as defined herein;
- b) Located on lands shown as Natural Heritage System on Schedule D of the Official Plan of the Town;
- c) On all lands within the Town where the parcel measures 1 hectare in area or greater; or,
- d) On all lands zoned any category of Commercial (C) as shown on the Schedules of the Comprehensive Zoning By-law for the Town.

3. EXEMPTIONS

Section 2 of this By-Law does not apply to:

- a) The removal of damaged or destroyed trees as approved by the Clerk, where the removal is in the interests of public safety, health and general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall, freezes or as a result of disease;
- b) Activities or matters undertaken by the provincial government or federal government or their agents;
- c) Activities or matters undertaken by the Town or a local board acting on behalf of the Town;
- d) Trees located within waste disposal sites as defined in Part V of the Environmental Protection Act. R.S.O. 1990, c.E.19;
- e) 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 distribution system, as those terms are defined in that section;
- f) Activities or matters authorized under the Crown Forest Sustainability Act. R.S.O. 1994;
- g) The injuring or destruction of trees by a person licensed under the Surveyors Act, R.S.O. 1990, c.S.29 to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- h) The injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the Aggregate Resources Act, R.S.O. 1990, c.A.8;
- i) The injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land that has not been designated under the Aggregate Resources Act or a predecessor of the Act, and, on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the Planning Act, R.S.O.;

- j) Trees that are part of plantations for the purposes of an Orchard, Nursery, or Christmas tree farm;
- k) The unavoidable injury or destruction of trees permitted as a condition to the approval of a site plan, a plan of subdivision or, a consent under the Planning Act, or, as a requirement of a site plan agreement or subdivision agreement;
- l) The destruction of trees occurring as an integral component of an active farm operation provided the trees are situated outside of areas designated as Part of the Natural Heritage System - Category 1 and Natural Heritage System - Category 2 lands;
- m) The cutting of firewood within a woodland for personal use to a maximum volume of 12 face chords per year;
- n) The injuring or destruction of trees that is required in order to erect any building, structure or thing in respect of which a building permit has been issued and has taken into consideration the protection of trees surrounding the structure or work within the building envelope;
- o) The injuring or destruction of trees that is required in order to install and provide utilities to the construction or use of the building, structure or thing in respect of which a Building Permit has been issued;
- p) The injuring or destruction of trees that is required in order to install and provide utilities to a single lane driveway for vehicular access to the building, structure or thing in respect of which a Building Permit has been issued;
- q) Ash trees that have become infected with the Emerald Ash Borer.

4. ADMINISTRATION

The Clerk is responsible for the administration of this By-Law and is hereby delegated the authority to receive applications and the required fees and to issue permits and to attach conditions thereto in accordance with this By-law.

5. APPLICATION FOR PERMIT TO INJURE OR DESTROY TREES

Where a permit is required under this By-Law;

- a) The owner shall submit an application to the Clerk containing the information set out in Schedule "A" to this By-Law, in such form as may be approved by the Town from time to time;
- b) Each application shall be accompanied by the prescribed fee as set out in the Towns Fees and Charges By-law;
- c) Where in the opinion of the Clerk, additional information is necessary, the Clerk may require the applicant to submit a report, prepared by a Registered Professional Forester, providing such information as may be specified in Schedule "A" and certifying that the proposed injury to or destruction of the tree(s) is in accordance with good forestry practices; and,
- d) No application shall be considered complete unless accompanied by the information and fee required in accordance with this By-Law.

6. PERMITS

- a) The Clerk may issue a permit to injure or destroy tree(s) where the Clerk is satisfied that:
 - i The injury or destruction of the tree(s) is in accordance with good forestry practice; or
 - i 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 the destruction of the tree(s).
- b) A Permit shall not be issued where:
 - i An Application required under this By-law has not been submitted in full or the required fee has not been paid.
 - i A report, as required by the Clerk, has not been submitted or, in the opinion of the Clerk is not satisfactory;

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- ii. 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. The permit would result in the destruction of a tree that is designated as a heritage tree by Town Council;
 - v. Flood or erosion control, or the ecological integrity of a natural area, will be negatively affected;
 - vi. The permit is not in keeping with the general purpose and intent of this By-law;
 - vii. The destruction or injuring of trees will reduce the number of trees per hectare below the minimum number of trees per hectare required to be considered woodland as defined by this By-law.
- c) The following shall be deemed to be conditions to the issuance of every permit under this By-law:

i. Marking of Trees

Unless otherwise exempted by permit, seven (7) days prior to injuring or destroying any tree the owner shall cause all trees which are to be removed or destroyed to be marked by a Registered Professional Forester with clearly visible marks of yellow paint at breast height and upon the stump to remain after cutting.

ii. Notice of Intent

For at least 7 days prior to injuring or destroying any trees, the owner shall post a sign, having dimensions of not less than 28 cm. (11in) x 43 cm (17 in) in a conspicuous place on the private land that is adjacent to a public road or at such other location designated by the Town and providing the following information:

- Notice that the work will occur in accordance with this By-law;
- The name of the land owner and agent;
- The name of the person or company retained to work on the trees on the land; and
- Name of the Department or Town Contact from whom further information can be obtained.

d) Conditions required by the Clerk

- i. The Clerk may attach conditions to the Permit, which in the opinion of the Clerk are reasonable and related to the purposes of this By-Law or the safety and convenience of the public;
- i. The Clerk may specify tree relocation or compensation costs for replacement to be applied to the reforestation on the property or for reforestation elsewhere in the Municipality.

e) Duration of Permit

- i. Every permit shall be issued to the owner and shall expire twelve (12) months after issuance.
- i. All permits for the injury or destruction of trees within woodlots will be deemed not to be in effect during the period of April 1 through to August 15, due to bird nesting. This period may be extended to August 31 on a case by case basis subject to the nesting period being confirmed by a qualified environmental consultant at the time of application. The Town may grant exemptions to this requirement in writing having regard to the potential for rutting of soil and subsequent damage to the ecology of the woodlot or designated area during the spring break up period.
- i. The Clerk may extend the expiration date of a Permit if a written request for an extension is received by the Clerk a minimum of three (3) working days before the date the Permit expires. Any request which is received after this time may require the submission of a new application.
- iv. An extension to the expiration date of the Permit may be granted for a maximum period of one year, whereupon the Owner may make a further request for extension to the permit subject to Section 6.(e) iii.

7. DESIGNATION OF OFFICERS

In addition to the Clerk and the Town's Municipal By-Law Enforcement Officers, who are hereby designated as Officers for the purposes of administering and enforcing this By-Law, the Town may from time to time, designate other individuals or persons as Officers pursuant to the provisions of this by-law and the Clerk is authorized to issue Certificates of Designation to these individuals, upon such designation by resolution of Council.

8. INSPECTIONS BY AN OFFICER OTHER THAN MUNICIPAL BY-LAW ENFORCEMENT OFFICERS

- a) During daylight hours and upon producing a Certificate of Designation, an officer, other than a Municipal By-Law Enforcement Officer, may enter and inspect any land to which this By-Law applies. A Municipal By-Law Enforcement Officer may at any reasonable time, enter and inspect any land affected by this By-Law to determine whether the By-Law, an order or, a condition of issuance of a permit is, or are, being complied with.
- b) Any person who hinders or obstructs, or attempts to hinder or obstruct, an Officer in carrying out an inspection under this By-Law is guilty of an offence.
- c) Every person who is alleged to have contravened any of the provisions of this By-law shall identify themselves to an Officer upon request, failure to do so shall be deemed to have hindered or obstructed an Officer in the execution of his or her duties.

9. ENFORCEMENT

- a) This By-Law may be enforced by any person designated as an Officer for the purposes of this By-Law;
- b) An Officer may enter land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law is complied with
- c) An Officer may, in carrying out an inspection be accompanied by an assisting person or persons.

10. 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 municipal address or the legal description of the land, the particulars of the contravention and, the period within which there must be compliance with the Order.
- b) A person to whom an order under this section has been directed may appeal the order to Council by filing a written notice of appeal with the Clerk within 30 days after the date of the order. Council may confirm, alter or revoke the order.

- c) As soon as practicable after a notice of appeal is filed, Council shall hear the appeal and may confirm, alter or revoke the order and the decision of Council shall be final.

11. PENALTY

- a) Every person who contravenes any provisions of this By-law, contravenes the terms and conditions of a permit or an Order issued pursuant to this By-law, or every director or officer of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to
 - i) a first offence, to a fine not more than \$10,000.00 or \$1,000 per tree, whichever is greater; and,
 - ii) on a second offence and each subsequent offence, to a fine of not more than \$25,000.00 or, \$2,500 per tree, whichever is greater.
- b) Every person or corporation who contravenes the terms and conditions of a permit is guilty of an offence
- c) Every person who is issued a Part 1 offence notice or summons and is convicted of an offence under this By-law shall be subject to a fine, to a maximum as provided for in the Provincial Offences Act, R.S.O. 1990, C.P.33, as amended.
- d) Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.
- e) If a person or corporation is convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction may, order the person or corporation to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

12. MUNICIPALITY POWER TO REMEDY

- a) Where a person or corporation fails to do a matter or thing as directed or required by an Officer or a court of competent jurisdiction pursuant to this By-law or the Municipal Act, 2001 S.O. 2001, c. 25, as amended, the matter or thing may be done by the municipality at that person's expense which associated costs may be added to the tax roll or the person to be collected in the same manner as property taxes.

- b) Where an officer is satisfied that a person or corporation has failed to comply with an Order issued pursuant to the By-Law, a Municipal Law Enforcement Officer(s) may enter the property at any reasonable time without a warrant in order to conduct the work as set out in the order.

13. CONFLICT WITH OTHER BY-LAWS

- a) If there is a conflict between this by-law and a by-law passed under the Forestry Act, the provision that is most restrictive of the injuring or destruction of trees prevails;
- b) Nothing in this By-Law shall exempt any person from complying with the requirements of any By-Law in force or from obtaining any license, permission, permit, authority or approval required under any By-Law or legislation.

14. SCHEDULES

That Schedule "A" attached hereto forms part of this by-law being Information Required for Application.

15. REPEAL

That by-law 2017-71, as amended is hereby repealed.

16. EFFECTIVE DATE

That this By-law shall come into force and effect on the final passage thereof.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 30th DAY OF JULY, 2019.

THE CORPORATION OF THE TOWN OF WASAGA BEACH

Nina Bifulchi, Mayor

Dina Lundy
Director, Legislative Services and Clerk

Schedule 'A' to By-law 2019-82

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 and qualifications of Registered Professional Forester submitting report as part of application (if required).
4. Names, address and telephone number of person retained to perform work on trees under permit, and contact name if corporation or company.
5. Fax numbers and e-mail addresses for the owner(s), Registered Professional Forester and person performing work on trees where applicable.
6. Municipal address of property (if assigned).
7. Legal Description of property.
8. If deemed required by the Clerk, a statement/ report from an Environmental Consultant confirming nesting period on a site specific basis, subject to acceptance by the Town.
9. If deemed required by the Clerk - A Managed Forest Plan Report prepared by an Registered Professional Forester containing:
 - a) A general description of the history of use of the property.
 - b) Importance of the property to the surrounding landscape.
 - c) A key map of the property showing the location of the property within the Town.
 - d) A detailed map of the property showing the property boundary, vegetation type boundaries, fences, road, access roads or trails, hydro lines, utility lines, windbreaks, watercourses, grass fields, railways, buildings, towers, bridges, quarries, dams treed floods or swamps, mines, brush, marshes, debris piles, shallow rocky areas, orchards, hazard areas, development agricultural lands, plantations, and woodland areas.

- e) A description of the short term and long term objectives of the landowner with respect to environmental protection, income/investment from the woodlot, wildlife habitat, recreation, forest products, or other objectives, the priorities assigned to these objectives and the plans for accomplishing these objectives.
- f) Details with respect to soil types, topography, physical features, water features, drainage, access, wildlife and inventory of trees and tree regeneration, and the method of calculating the inventory of trees with respect to each distinct area or compartment within the woodlot which may be subject to different considerations in accordance with good forestry practice.
- g) A silvicultural prescription for each forest compartment within the woodlot including a description of any trees to be injured, destroyed or removed, together with a statement that the silvicultural prescription is in accordance with good forestry practice.