

**THE CORPORATION OF
THE TOWN OF THE BLUE MOUNTAINS**

BY-LAW NO. 2010- 68

**Being a By-law to prohibit and regulate the destruction or injuring of
certain trees in The Town of The Blue Mountains**

WHEREAS, Section 135 of the *Municipal Act*, R.S.O. 2001, c. 25, provides Council with the authority to pass by-laws for prohibiting or regulating the destruction or injury of trees and to require that a permit be obtained for the injuring or destruction of trees specified in the By-law and prescribing fees for the permit, and prescribing conditions under which a permit may be issued;

NOW THEREFORE, the Council of The Corporation of The Town of The Blue Mountains enacts the following:

1. DEFINITIONS

In this By-law,

- a) "certified arborist" means an arborist certified by the Certification Board of the International Society of Arboriculture or who possess appropriate certification from the Ministry of Training, College and Universities;
- b) "destroy" means the injuring or removal of trees by cutting, burning, uprooting, chemical application or other means;
- c) "Diameter" refers to the diameter of the stem of a tree at a height of 1.37m from the ground, in accordance with the Forestry Act, R.S.O. 199, c. F26;
- d) "Director" means the Director of Planning & Development Services for the Municipality or his or her designate;
- e) "farm operation" means an agricultural or horticultural operation that is carried on in expectation of gain or reward, and includes the cultivation of land, the raising of livestock and poultry, the production of agricultural crops and maple syrup production;
- f) "forest technician/technologist" means a graduate of a post-secondary school forestry and/or ecology based program;
- g) "forestry consultant" means a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester;
- h) "good forestry practice" means the proper implementation of harvest, renewal and maintenance activities known to be appropriate for the woodlands and the environmental conditions under which it is being applied and which minimize detriments to woodlands values, including: significant ecosystems, important fish and wildlife habitat, soil and water quality and quantity, woodlands productivity and health, and the aesthetic and recreational values of the landscape and includes the cleaning and thinning of trees for the purposes of stimulating tree growth and improving the quality of the woodlands without permanently breaking the canopy; the cutting and removal of hazardous, severely damaged, diseased and insect-infested trees in order to prevent injury, damage, contamination or infestation of other trees; and the cutting or removal of trees which no longer contribute to the achievement of woodlands values;
- i) "harvesting" means the destruction of trees and may be either a single cut or a series of cuts, and shall include logging;
- j) "hazardous tree" means a dead or severely damaged tree that may pose a danger to persons or property;
- k) "infestation" means infestation as defined in The Forestry Act, R.S.O. 1990, cF26, as amended;
- l) "injure" means to do harm, damage, or impair;
- m) "landscape architect" means a graduate of a post secondary school landscape architect program and who is a member of The Ontario Association of Landscape Architects;
- n) "Municipality" means The Corporation of The Town of The Blue Mountains;
- o) "officer" means an individual appointed by By-law for the administration and enforcement of this By-law;
- p) "owner" means the person having the right, title, interest or equity in land;
- q) "Permit" means the written authorization of the director to destroy or injure trees, with or without conditions, at the sole discretion of the Director.

- q)r) "person" means an individual, a corporation and the heirs, executors, administrators, or other legal representatives of a person to whom the context can apply according to law;
- r)s) "professional forester" means a professional forester as defined in the Crown Forest Sustainability Act, S.O., 1994;
- s)t) "tree" means any species of single-stemmed perennial woody plant, which has reached or can reach a height of at least 4 metres at physiological maturity;
- t)u) "tree farm" means land where trees are grown and maintained for sale;
- t)v) "tree preservation plan" means a plan prepared by an arborist, a landscape architect, a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester which determines trees to be preserved through an assessment process which identifies trees, shrubs and other specific areas of natural habitat and their ecological function or importance, and determines the impacts of development on the trees, shrubs, and other specific areas of natural habitat and their ecological function or importance and such plan shall determine mitigation measures and measures to protect and manage trees to be preserved and proper practices to remove trees to be destroyed;
- w) "woodlands or forest management plan" means a plan for a woodlands prepared according to guidelines set by the Ministry of Natural Resources or other recognized guidelines, which set out objectives and management practices to ensure the sustainability of the woodlands, and approved by a forestry consultant.
- x) "woodland" means land that is one hectare or more in area with at least:
- (i) 1000 trees, of any size, per hectare;
 - (ii) 750 trees, measuring over five (5) centimetres/1.96 inches in Diameter at DBH, per hectare;
 - (iii) 500 trees, measuring over twelve (12) centimetres/4.72 inches, in Diameter at DBH, per hectare; or
 - (iv) 250 trees, measuring over twenty (20) centimetres/7.87 inches in Diameter at DBH, per hectare;

but does not include a cultivated fruit or nut orchard or a plantation established for the purpose of producing Christmas trees.

2. AREA OF APPLICATION OF BY- LAW

- a) No person, shall, within the boundaries of the Municipality, destroy or permit or cause to be destroyed any tree that is identified as a tree for preservation on a tree preservation plan or an area of tree preservation forming part of, or referenced, in an agreement entered into with the municipality.
- b) No person shall, within the boundaries of the Municipality, destroy or cause to be destroyed any tree that is located on land owned, controlled or managed by the Municipality or the County of Grey or any local board thereof.
- c) No person shall, within the boundaries of the Municipality, destroy or cause to be destroyed, any tree that is located on a parcel with a minimum area of 0.5ha, without first obtaining a Permit pursuant to this By-law. Subject to Section 3 of this By-law, a Permit shall be obtained from the Town in the following cases:
- i) When the applicant proposes to destroy five (5) or more trees simultaneously or in a given calendar year, regardless of diameter; and
 - ii) When the applicant proposes to destroy a tree with a minimum diameter of thirty (30) cm or more.
- d) A Permit pursuant to this By-law shall generally not be issued to destroy a tree within the following land use designations of the Official Plan, unless supported by appropriate studies and reports, such as a Certified Arborist Report, Environmental Impact Study, or any other report that the Director deems necessary:
- Future Secondary Plan Area;
 - Special Study Area;
 - Escarpment;
 - Wetlands;

- Hazard Lands;
- Major Open Space;
- Areas identified as containing Provincially Significant Areas of Natural and Scientific Interest;
- Other areas identified as potentially containing significant or sensitive natural heritage features.

e) A Permit pursuant to this By-law shall generally not be issued to destroy trees identified for preservation in an approved Tree Preservation and Retention Plan;

f) A Permit pursuant to this By-law shall generally not be issued to destroy trees located on lands where there is no active development application under review by the Municipality.

3. EXEMPTIONS

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

- a) Lands parcels which are less than 0.5ha in size;
- a)b) activities or matters undertaken by the Municipality or the County of Grey or any local board thereof;
- b)c) activities or matters undertaken by a conservation authority as defined by the *Conservation Authorities Act*;
- e)d) activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- d)e) the injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying of his or her agent, while making a survey;
- e)f) the injuring or destruction of trees imposed 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 a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- f)g) 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;
- g)h) the maintenance of a tree in accordance with good arboriculture practice;
- h)i) the removal of a dead, diseased or hazardous tree when certified as such by an individual designated or approved by the Director;
- j) The removal of a tree that necessitates removal as a result of being considered locally as an invasive species;
- i)k) the removal of a damaged or destroyed tree, when certified as such by an individual designated or approved by the Director, where the removal is in the interest of public safety, health or general welfare following any man-made or natural disasters, storms, high winds, floods, fires, snowfall or freezes;
- j)l) a tree injured or destroyed in compliance with a tree preservation plan approved by the Director;
- k)m) a tree on land covered by a woodlands management plan approved by a forestry consultant, a copy of which has been submitted to the Director, provided such work is undertaken in accordance with good forestry practice and the woodlands management plan;
- n) The cutting of firewood for personal use to a maximum volume of twenty (20) face cords per calendar year;
- o) The injury or destruction as necessary to clear land in accordance with a normal farm practice conducted by a farm operation for its own agricultural activity, provided that the trees are not located within one of the designations of the Official Plan outlined under Section 2(d) of this By-law;
- h)p) A tree may be injured or destroyed, without the issuance of a permit, where:
 - i) The applicant proposes to injure or destroy four (4) or fewer trees simultaneously or in a given calendar year, each with a diameter between fifteen (15) cm and thirty (30) cm; or
 - ii) The tree has a diameter of less than fifteen (15) cm.
- m)q) Any tree which is subject to the County of Grey Forest Management By-law No. 4341-06

4. ADMINISTRATION

The Director is responsible for the administration of this By-law and is hereby delegated the authority to receive applications and the required fees, if applicable, and to issue permits and/or approvals and to attach conditions thereto in accordance with this By-law.

5. ENFORCEMENT

As assigned by the Director, An officer may, during daylight hours and upon producing a certificate of designation, enter and inspect any land to which this By-law applies. An Officer may, in carrying out an inspection, be accompanied by an assisting person.

6. PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

- (1) Any person who contravenes any provision of this By-law or an order is guilty of an offence and on conviction is liable,
 - a) on a first conviction, to a fine of not more than \$10,000.00 or \$1,000.00 per tree, whichever is greater; and
 - b) on any subsequent conviction, to a fine of not more than \$20,000.00 or \$2,500.00 per tree, whichever is greater.
- (2) Where a person is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed by the By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted or any other person.
- (3) Where a person is convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the person to replant or have replanted such trees in such manner and within such a period of time as the court considers appropriate, including any silvicultural treatment necessary to re-establish the tree or have the tree re-established.

7. SHORT TITLE

This By-law may be referred to as 'The Tree Preservation By-law'.

8. VALIDITY OF THE BY-LAW

Where a court of competent jurisdiction declares any section or part of a section of this By-law to be invalid, the remainder of this By-law shall continue in force unless the court makes an order to the contrary.

9. EFFECTIVE DATE OF BY-LAW

This By-law shall come into force and take effect on the day of the passing thereof.

Enacted and passed this day of October, 2010.