

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT

REPORT TO: Finance & Administration
Committee

MEETING DATE: February 17th, 2009

REPORT NO.: SRB.09.04

SUBJECT: Draft Fortification By-law

PREPARED BY: Sharon Long, Admin. Assistant ,
Building & By-law

A. Recommendations

THAT Council enact a By-law so as to regulate the fortification of land and to prohibit excessive fortification of land and to prohibit the application of excessive protective elements to land within the municipality.

B. Background

During the course of review of our Comprehensive Property Standards By-law, it became apparent through discussion with other municipalities that it would be prudent to enact a "Fortification of Land By-law".

The purpose of a "Fortification of Land By-law" is to ensure that land and/or buildings are not excessively fortified so as to enable activities that would run counter-productive to law enforcement.

Although we are not aware of any properties within the municipality that would be affected by this By-law, it is Staff's opinion that it is best to be proactive before we were confronted with a situation requiring a By-law of this nature.

The enactment of this By-law is supported by the Ontario Provincial Police.

C. The Blue Mountains' Strategic Plan

Providing a strong, well managed municipal government.

D. Budget Impact

N/A

E. Attached

Draft "Fortification of Land By-law"

Prepared by:

Respectfully submitted:

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David Finbow
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**CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**

BY-LAW NO. 2009 -

**Being a By-law to regulate and/or prohibit with respect to the fortification
of land or excessive protective elements being applied to land in relation of the
use of the land**

WHEREAS the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes the Council of a municipality of pass by-laws to regulate in respect of the fortification of and protective elements applied to land in relation to the use of land, and to prohibit the excessive fortification of land or excessive protective elements being applied to land in relation of the use of the land.

NOW THEREFORE the Council of The Corporation of the Town of The Blue Mountains hereby enacts as follows:

1. INTERPRETATION

- 1.1** In this By-law,
- a) **"Act"** means *The Municipal Act, 2001*, S.O. 2001, c. 25 as amended;
 - b) **"Apply"** or **"Application"** means the erection, installation, extension or material alteration or repair of or application to Land and includes Construct and Construction;
 - c) **"Blue Mountains"** means the geographical area under the jurisdiction of the Town;
 - d) **"Building Code Act"** means *The Building Code Act, 1992*, S.O. 1992, c. 25 as amended;
 - e) **"By-Law"** means this By-law, including its recitals and schedules and all future amendments including successor by-laws;
 - f) **"Chief Building Official"** means the officer or his or her designate, appointed by Council as the Chief Building Official pursuant to Section 3 of the Building Code Act;
 - g) **"Committee"** means the Development Services Committee of the Council.
 - h) **"Construct"** or **"Construction"** means to do anything in the erection, installation, extension, or material alteration or repair of a building or structure, and includes the installation of any part of a building or structure fabricated or moved from elsewhere;
 - i) **"Council"** means the Council of the Town of The Blue Mountains.
 - j) **"Day Nurseries Act"** means *The Day Nurseries Act, R.S.O. 1990, c. D.2*;
 - k) **"Education Act"** means *The Education Act, R.S.O. 1990, c. E.2*;
 - l) **"Excessive Fortification"** and **"Excessively Fortify"** means the construction of devices, barriers or materials applied to land and includes, but is not limited to:
 - i) The Application of steel plates, steel bars, bullet-resistant shutters, laminated glass or heavy gauge wire mesh to a window, door or any other opening on any level of any building or structure other than the basement level of such building or structure.
 - ii) The Application of concrete block, brick, or other masonry or similar product to partially or completely

- obstruct or seal any window, door or other exterior entrance or egress to Land;
- iii) The Application of steel sheeting or plates or other similar products to the interior or exterior walls of a building or structure such as to reinforce walls or create a secondary wall such as to protect against firearms artillery, explosives, vehicle contact, shock, and any other similar intrusions;
 - iv) Armour plated or reinforced doors, whether exterior or interior, designed to resist against impact of firearms artillery, explosives, battering rams, shock or vehicle contact;
 - v) Pillars, cones or barriers constructed of concrete, steel, or any other building material that are designed to obstruct, hinder, restrict, or deny access to Land by conventional means of access or modes of transportation; and
 - vi) An observation tower designed to enable a visual observation of surrounding areas beyond the perimeter of the Land whether the tower is occupied by an individual or a surveillance camera or like equipment.
- m) **"Excessive Protective Elements"** means devices, objects, material components or any contrivance applied to Land and includes but is not limited to the Application of:
- i) Perimeter warning devices such as "laser eyes" or other types of advanced warning systems designed to forewarn of the encroachment onto the perimeter of Land from adjoining lands or roadways but excluding similar applications to forewarn of entry into a building or structure on Land;
 - ii) Electrified fencing or other similar barrier including hidden traps, electrified doors or windows, land mines or other explosive devices or any weapon or thing that may cause injury or death when triggered or activated; and
 - iii) Visual surveillance equipment, including video cameras, night vision systems, or electronic surveillance devices capable of permitting either stationary or scanned viewing or listening beyond the perimeter of the Land.
- n) **"Fire Protection and Prevention Act"** means the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended;
- o) **"Fortification" and "Fortify"** means the Construction of devices, barriers, or materials in a manner designed to strengthen or to provide defensive works to Land and includes Excessive Fortification;
- p) **"Land"** means land, including buildings, mobile homes, mobile buildings, mobile structures, outbuildings, fences, erections, physical barriers and any other structure on the land or on or in any structure on the land;
- q) **"Law Enforcement Officer"** includes:
- i) a Police Officer as defined in Section 2 of the Police Services Act.
 - ii) a Municipal Law Enforcement Officer appointed by Council pursuant to Subsection 5 (1) of the Police Services Act.
 - iii) the Chief Building Official.
 - iv) an inspector appointed by Council pursuant to Subsection 3(2) of The Building Code Act.
 - v) the "Fire Marshall" as defined in Subsection 1(1) of The

- vi) Fire Protection and Prevention Act.
- vii) an assistant to the Fire Marshall as defined in subsection 11(1) of The Fire Protection and Prevention Act who is also an employee of the Town;
- viii) an "officer" as defined in Subsection 1(1) of The Building Code Act who is also an employee of the Town; and
- viii) a "member" as defined in subsection 2(1) of The Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10.
- r) **"Order"** means an order made pursuant to Subsection 133(7) of the Act.
- s) **"Person"** includes a corporation and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law.
- t) **"Police Services Act"** means The Police Services Act, R.S.O. 1990, c. P. 15.
- u) **"Protective Elements"** includes surveillance equipment and Excessive Protective Elements.
- v) **"Town"** means The Corporation of the Town of The Blue Mountains.

2. APPLICATION AND GENERAL PROHIBITIONS

2.1 This By-law applies to all Land within Blue Mountains, unless specifically exempted by this By-law or by statute or regulation.

2.2 Subject to the provisions of this By-law, no Person shall:

- a) Excessively Fortify any Land;
- b) Apply Excessive Protective Elements to land, or
- c) Fail to perform remedial work as required by this By-law or by an Order.

3. EXEMPTIONS

3.1 Section 2.2 does not apply to any part of Land solely occupied by:

- a) a "financial institution" as defined in Section 2 of the *Bank Act*, S.C. 1991, c. 46, as amended;
- b) a detention centre zoned for such use and otherwise permitted by law;
- c) a "police force" as defined in Section 2 of the *Police Services Act*.
- d) the Royal Canadian Mounted Police;
- e) the federal Department of National Defence;
- f) a "school" as defined in Subsection 1(1) of the *Education Act*; or
- g) a "day nursery" as defined in Subsection 1(1) of the *Day Nurseries Act*.

3.2 Despite Section 3.1, Section 2.2 applies to:

- a) a "private school" as defined in Subsection 1(1) of the *Education Act*
- b) a "private-home day care" as defined in Subsection 1.1 of the *Day Nurseries Act*.

3.3 Section 2.2 does not apply to any part of Land occupied by:

- a) the Ministry of the Attorney General for Ontario for the purpose of a courthouse.

4. SCOPE AND LIMITATION OF BY-LAW

4.1 Section 2.2 does not prohibit:

- a) the use or Application of commercially marketed security devices designed and applied to provide reasonable protection from theft or other criminal activity against a Person or property of a Person;
- b) the reasonable use of Protective Elements such as a "laser eye" or

- other advance warning devices on windows or doors of a dwelling for the purpose of providing a warning to an occupant of the dwelling or of dispatching emergency services personnel where an entry into a dwelling has occurred; or
- c) a "normal farm practice" as defined in Subsection 1(1) of the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1.

5. REMEDIAL WORK

- 5.1 An owner of Land shall, at the owner's expense, perform remedial work in respect of the Land so that the Land is in conformity with this By-law even though the Fortification or Protective Elements were present on the Land before this By-law came into effect.
- 5.2 An Order shall be deemed to have been served upon all owners of the Land to which the Order relates by any of the following methods and on the earliest of the following dates:
- the date on which a copy of the Order is personally delivered to an owner or occupant of the Land;
 - the third (3rd) day following the date of mailing by regular letter mail or by registered mail of a copy of the Order addressed to the last known address of an owner or an occupant of the Land; and
 - the date on which a copy of the Order is posted in a conspicuous place on the Land.
- 5.3 If the work required by an Order is not done in compliance with the Order and within the time specified by the Order, the Town may cause the work to be done at the expense of each owner of the Land.

6. APPLICATION FOR PARTIAL OR COMPLETE EXEMPTION

- 6.1 Any Person wishing to obtain a partial or complete exemption from the provisions of this By-law must file with the Chief Building Official a written application containing at least the following:
- date of application;
 - proof that the Person is the sole owner of the Land or, alternatively, each owner's written authorization to submit the application;
 - the Land's legal description and municipal address;
 - particulars of the existing use(s) of the Land, and of the intended use(s) if any change in use is anticipated;
 - a sketch or survey of the Land and structures;
 - particulars of all existing and proposed Fortification and Protective Elements including the date or dates of Application of existing Fortification and Protective Elements;
 - particulars of each exemption requested, including the reasons for requesting the exemption; and
 - payment of the fee from time to time prescribed by the Town's General Fees and Charges By-law No. 200-90, as amended, or superseded.
- 6.2 The Chief Building Official shall review the application and, for that purpose, may make any further inquiries of any Person, agency, board, department, ministry or public body that the Chief Building Official deems necessary and, further, may require the submission of additional information and documents at the applicant's expense.
- 6.3 The Chief Building Official shall, upon completion of the review contemplated by Section 6.2 of this By-law, prepare a report to the Committee including the Chief Building Official's recommendation.
- 6.4 The Committee shall consider the Chief Building Official's report and shall make a recommendation to Council.
- 6.5 Council shall consider the Committee's recommendation and shall:
- approve the application for exemption in whole or in part, with such restrictions or conditions as Council may deem appropriate; or

b) deny the application.

7. PENALTY AND ENFORCEMENT

7.1 Each Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to the penalties from time to time prescribed by the *Provincial Offences Act*, R.S.O. 1990, c. P. 33.

8. GENERAL

8.1 The Chief Building Official is responsible for the administration of this By-law.

8.2A Law Enforcement Officer may enforce this By-law, including entering and inspective Land pursuant to Subsection 133(6) of the Act and making Orders.

8.3A decision of a Court of competent jurisdiction that any part of this By-law is invalid does not affect the validity of the remainder of this By-law.

8.4 This By-law may be cited as the "Fortification By-law."

AND FURTHER that this By-law shall come into force and take effect upon the enactment thereof.

Enacted and passed this _____ day of _____ 2009.

Ellen Anderson, Mayor

Stephen Keast, Clerk

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