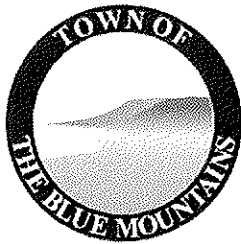


STAFF REPORT:

PLANNING & BUILDING SERVICES



REPORT TO: Planning & Building Committee
MEETING DATE: October 4, 2010
REPORT NO.: PL.10.96
SUBJECT: Draft Tree Preservation By-law
PREPARED BY: David Finbow, Director Planning & Building Services

A. Recommendations

THAT Council receive Staff Report PL.10.96 respecting a "Draft Tree Preservation By-law"; and,

THAT Council enact a Tree Preservation By-law.

B. Background

Frequently, the Town enters into an agreement, such as a Pre-development Agreement, Subdivision Agreement or a Site Plan Agreement, whereby the owner of the land, and their successors, agree to the preservation of specific trees.

In many instances, the preservation of trees is noted as a required condition of Draft Plan Approval by the Niagara Escarpment Commission (NEC) or the Grey Sauble Conservation Authority (GSCA). In these instances, the NEC is relying on various sections of the Niagara Escarpment Plan (NEP) that references development affecting steep slopes and ravines, development affecting water courses and wildlife habitat whereas the GSCA are relying on their role in terms of Natural Hazards (specifically steep slopes).

Section 3.10 of the Town's Official Plan speaks to the preservation and enhancement of landscape amenities in the municipality with wooded areas, ravines, valleys, steep slopes, shoreline, floodplains and other similar natural features essential components of the open landscape character.

Currently, there are a number of subdivisions where Tree Preservation Plans are included. These include PB Holdings, Georgian Bay Estates and Lora Bay. In addition, there are a number of draft approved plans of subdivisions whereby the Draft Conditions include tree preservation provisions. These include Bannerman, Georgian Woodlands Phase 3, PB Holdings (Ph 2), Georgian Glen, etc.

Although it may be preferable to have a comprehensive Tree Preservation By-law that applies to all constraint areas in the municipality (Appendix Map 'A' of the Official Plan), current enforcement service levels do not allow for same. Council can review the extent of comprehensiveness of the By-law at a later date in conjunction with the priorities and service levels of enforcement services is next reviewed..

Town Staff believe that the enactment of a Tree Preservation By-law will facilitate education and awareness and assist in enforcement endeavours when non-compliance is determined.

C. The Blue Mountains' Strategic Plan

Preserving and enhancing natural and environmental features, and cultural heritage of the community.

D. Budget Impact

N/A

E. Attached

1. Draft Tree Preservation By-law
2. Appendix Map 'A' of the Official Plan

Prepared by:

David Finbow
Director, Planning & Building Services

THE CORPORATION OF
THE TOWN OF THE BLUE MOUNTAINS

BY-LAW NO. 2010-_____

Being a By-law to prohibit and regulate the injuring or destruction 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 injury or destruction 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:

DEFINITIONS

1. In this By-law,
 - a) "certified arborist" means an arborist certified by the Certification Board of the International Society of Arboriculture;
 - b) "Clerk" means the Clerk of the Municipality;
 - c) "Council" means the Council of the Municipality;
 - d) "destroy" means the injuring or removal of trees by cutting, burning, uprooting, chemical application or other means;
 - e) "Director" means the Director of Planning & Building Services for the Municipality or his or her designate;
 - f) "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;
 - g) "forest technician/technologist" means a graduate of a post-secondary school forestry and/or ecology based program;
 - h) "forestry consultant" means a forest technician, a forest technologist, a forest/wildlife ecologist, a managed forest plan approver, or a professional forester;

- i) "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;
- j) "harvesting" means the destruction of trees and may be either a single cut or a series of cuts, and shall include logging;
- k) "hazardous tree" means a dead or severely damaged tree that may pose a danger to persons or property;
- l) "infestation" means infestation as defined in The Forestry Act, R.S.O. 1990, cF26, as amended;
- m) "injure" means to do harm, damage, or impair;
- n) "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;
- o) "Municipality" means The Corporation of The Town of The Blue Mountains;
- p) "officer" means an individual appointed by By-law for the administration and enforcement of this By-law;
- q) "official plan" means the Official Plan of the Municipality, as amended or replaced from time to time;
- r) "owner" means the person having the right, title, interest or equity in land;
- s) "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;
- t) "professional forester" means a professional forester as defined in the Crown Forest Sustainability Act, S.O., 1994;
- u) "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;
- v) "tree farm" means land where trees are grown and maintained for sale;
- w) "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;

- x) "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.

AREA OF APPLICATION OF BY-LAW

- 2. 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 forming part of, are referenced in an agreement entered into with the municipality.

EXEMPTIONS

- 3. Section 2 of this By-law does not apply to,
 - a) activities or matters undertaken by a municipality or a local board of a municipality;
 - b) activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
 - c) 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;
 - d) 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;
 - 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;
 - g) 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*;
 - h) 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 permitted land use under a By-law passed under Section 34 of the *Planning Act*.
- i) the maintenance of a tree in accordance with good arboriculture practice;
- l) the removal of a dead, diseased or hazardous tree when certified as such by an individual designated or approved by the Director;
- m) 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;
- n) a tree injured or destroyed in compliance with a tree preservation plan approved by the Director;
- o) 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; and,
- p) the destruction of trees occurring as an integral component of an active farm operation.

ADMINISTRATION

4. The Director 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.

ENFORCEMENT

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

PENALTIES FOR NON-COMPLIANCE WITH BY-LAW

6. (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.

SHORT TITLE

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

VALIDITY OF THE BY-LAW

- 8. 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.

EFFECTIVE DATE OF BY-LAW

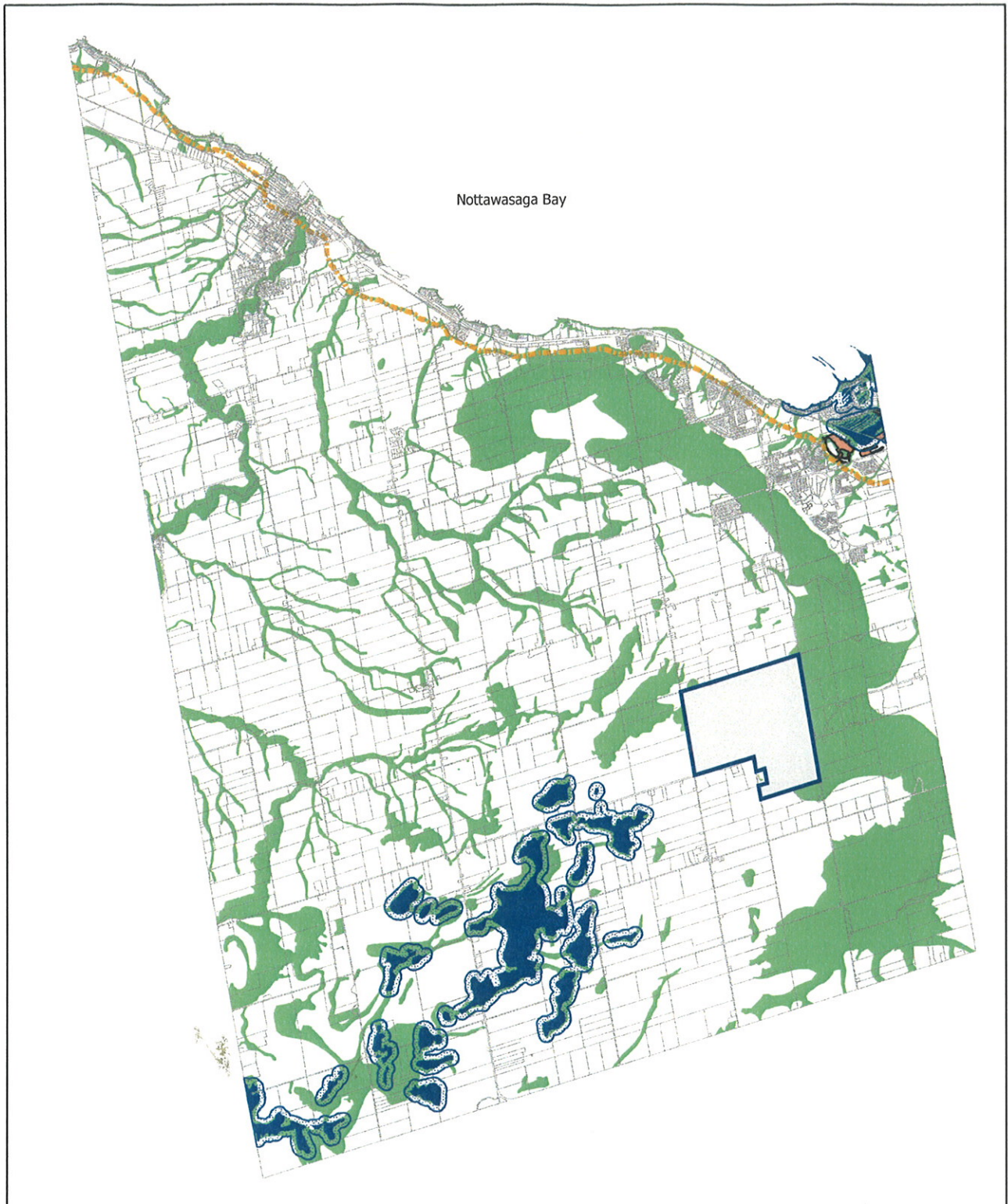
- 9. This By-law shall come into force and take effect on the day of the passing thereof.

Enacted and passed this _____ day of October, 2010.

Ellen Anderson, Mayor




Corrina Giles, Clerk

B.



Town of The Blue Mountains Official Plan

LEGEND

-  Slope, Floodplain and Shoreline Hazards
-  Provincially Significant Wetlands
-  Special Policy Area
-  Adjacent Lands
-  Lake Nipissing Ridge

Appendix Map 'A'
 Hazard Lands, Shoreline Floodplain and
 Provincially Significant Wetlands
 (As Amended by OPA 4)



SCALE 1:80,000
 OCTOBER 2005