



THE CORPORATION OF THE TOWNSHIP OF  
ASHFIELD-COLBORNE-WAWANOSH

**BY-LAW NUMBER 45-2016**

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BEING A BY-LAW TO REGULATE THE PROTECTION, PRESERVATION AND  
REMOVAL OF TREES LOCATED AT OR NEAR THE SHORELINE OF  
LAKE HURON WITHIN THE TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

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**WHEREAS** Section 135 of the *Municipal Act*, 2001, S.O., c. 25, as amended, authorizes a local Municipality to prohibit or regulate the destruction or injuring of trees; and

**AND WHEREAS** the Council for the Township of Ashfield-Colborne-Wawanosh deems it desirable and in the public interest to enact a Shoreline Tree Preservation By-law for prohibiting the clear cutting of and for protecting the living trees within the Shoreline of Lake Huron lying and being within the geographical boundaries of the Township for the purpose of:

- Regulating and controlling the removal, maintenance and protection of trees;
- Protecting significant and sensitive natural areas;
- Maintaining water quality;
- Maintaining and enhancing natural habitat;
- Preventing soil erosion and water run-off; and
- Protecting, promoting and enhancing the aesthetic values within the Township.

**NOW THEREFORE**, the Council of the Township of Ashfield-Colborne-Wawanosh enacts as follows:

**1. DEFINITIONS**

In this By-law:

- (a) (a) **“Building Permit”** means a building permit issued pursuant to the Building Code Act, 1992, S.O. 1992. c. 23, and the regulations thereunder, as amended;
- (b) **“Clerk”** means the Clerk of the Township of Ashfield-Colborne-Wawanosh;
- (c) **“Council”** means the Council of the Township of Ashfield-Colborne-Wawanosh;
- (d) **“County”** means the Corporation of the County of Huron;
- (e) **“Destroy”** includes but is not limited to injury caused by cutting, burning, uprooting, chemical application or other means and includes injury caused by neglect, accident or design and the term “destruction” shall have a corresponding meaning;
- (f) **“Good arboriculture practice”** means the pruning, care and attention necessary to promote and encourage the health, natural growth and form of a tree;
- (g) **“Good forestry practices”** 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 eco-systems, important fish and wildlife habitat, soil and water quality and quantity, forest productivity and health and the aesthetics and recreational opportunities of the landscape;
- (h) **“Injure”** means to destroy, harm, or damage 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, and the term ‘Injury’ and “injuring” shall have a corresponding meaning;

- (i) **“Lake”** means Lake Huron;
- (j) **“Officer”** means a provincial offences officer and includes a person appointed by Council as an Officer for the purpose of enforcing By-Laws enacted by Council from time to time;
- (k) **“OPFA Member”** means a Registered Professional Forester or Associate Member of the Ontario Professional Foresters Association (OPFA) in good standing as defined in the *Professional Foresters Act, 2000*, S.O. 2000. c. 18, as amended;
- (l) **“Order”** means an order issued by Council, a court or tribunal and includes a Stop Work Order issued pursuant to this By-Law;
- (m) **“Owner”** means a person having any right, title, interest or equity in land including a tenant or licensee;
- (n) **“Person”** includes an individual, partnership, or corporation;
- (o) **“Qualified Arborist”** means a person who has successfully completed all of the requirements of a program from the Ontario Ministry of Training, Colleges and Universities designed to train a person as an arborist or a person who is a member in good standing of the International Society of Arboriculture or the American Society of Consulting Arborists;
- (p) **“Qualified Tree Marker”** means:
  - (i) an individual who is a Certified Tree Marker in good standing as designated by the Ontario Ministry of Natural Resources Certified Tree Marker Training Program (the “MNR Program”): or
  - (ii) an OPFA member who has successfully completed MNR Program; or
  - (iii) a Qualified Arborist who has successfully completed the MNR Program;
- (q) **“Silvicultural prescription”** means a site-specific operational plan prepared by an OPFA member or a Qualified Arborist that describes the existing forest conditions and the forest management objectives for an area, and which includes recommendations for harvesting and controlling the establishment, composition, constitution, and growth of trees or forests from seedlings through to the desired endpoint of the treed area in a manner that accommodates other resource values as identified;
- (r) **“Shoreline”** means that area at or near the shores of Lake Huron located within the geographical boundaries of the Township prescribed in section 2 of Ontario Regulation 164/06 made pursuant to the Conservation Authorities Act, R.S.O. 1990, c. C.28 or any successor legislation or regulation;
- (s) **“Site”** means an area that is a Shoreline in which one or more living trees are located;
- (t) **“Tree”** means any species of woody perennial plant of any size, including its root system, which can reach a height of at least 4.5 metres at physiological maturity;
- (u) **“Township”** means the Corporation of the Township of Ashfield-Colborne-Wawanosh or the area up to and including the geographical boundaries of the Township as the context requires.

## 2. AREAS SUBJECT TO THIS BY-LAW

This by-law applies to all trees located within a Shoreline but does not apply to trees located in woodlands and woodlots regulated by the County.

## 3. EXEMPTIONS

- (1) This By-law does not apply to:
  - (a) activities or matters undertaken by the County, a municipality or a local board of the County or of a municipality;

- (b) activities or matters undertaken pursuant to a licence issued under the *Crown Forest Sustainability Act, 1994*; or
- (c) the injuring or destruction of trees by a person licensed under the Surveyors Act to engage in the practice of cadastral surveying or his or her assistant, while making a survey; or
- (d) the injuring or destruction of trees pursuant to an approved site plan, a plan of subdivision or a consent under sections 41, 51 or 53 of the Planning Act or as required by a site plan agreement or subdivision agreement; or
- (e) the injuring or destruction of trees required by 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: or
- (f) 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: or
- (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; or
- (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 a permitted land use under a by-law passed under section 34 of the *Planning Act*: or
- (i) activities or matters undertaken by the provincial or federal government or their authorized agents: or
- (j) 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: or
- (k) the injuring or destruction of trees in accordance with Good Forestry Practices described in a Silvicultural Prescription prepared by an OPFA Member or Qualified Arborist and in accordance with tree marking carried out by a Qualified Tree Marker;
- (l) the destruction or injuring of trees reasonably required to build and maintain structures and install and maintain utilities and services for such structures in respect of which a Building Permit has been issued provided that no tree shall be destroyed or injured that is located more than 5 metres from the outer edge of the structure, utility or service; or
- (m) on property only accessible by water, the destruction or injuring of trees reasonably required to provide a temporary access road no wider than 5 metres to the structure, utility or service for which a Building Permit has been issued: or
- (n) the destruction or injuring of trees that is reasonably required in order to install and maintain a single lane driveway for vehicular access to the structure, utility or service for which a Building Permit has been issued provided that no tree is destroyed or injured that is located more than 2.5 metres from the centreline of the driveway: or
- (o) on property that includes a Shoreline that has no other access to the water, the destruction or injuring of trees necessary to construct and maintain a pathway no wider than 2 metres to provide access to the water: or
- (p) the injury or destruction of trees which are a danger to individuals by reason of storms, high winds, floods, fires, snowfalls, freezes, insects, disease, wildlife or other natural causes: or

- (q) the pruning of tree branches in accordance with good arboricultural practice to maintain but not enlarge an existing view of the Lake.

#### **4. STOP WORK ORDERS**

- (1) If an Officer is satisfied on reasonable and probable grounds that a contravention of this By-Law has occurred or is occurring, the Officer may issue a Stop Work Order substantially in the form attached as Schedule "A" to this By-Law requiring the involved person or persons to immediately stop the injuring or destruction of trees.
- (2) In addition to any other authority an Officer may possess, an Officer has the authority prescribed by section 436 of the Municipal Act, or its successor legislation, to enter upon private property in the performance of his or her duty.
- (3) A Stop Work order issued under this section may be served personally or by registered mail addressed to the last known address of:
  - (i) the registered owner of the property; and
  - (ii) any other person the Officer believes on reasonable and probable grounds is responsible for a contravention of the By-Law.
- (4) Where service of an Order is made by registered mail, the Order shall be deemed to have been served on the fifth day after the Order is mailed.
- (5) Notwithstanding subsection (2), service of the Stop Work Order may be served by posting a copy of the Order in a conspicuous place at or near the site where the contravention is believed to have occurred and such service shall be deemed to be good and sufficient service on the person or persons to whom the Stop Work Order is addressed.
- (6) Service of the Stop Work order may be proved by Affidavit.

#### **5. OFFENCES**

- (1) Except as permitted by this By-Law, no person shall, or cause or permit any other person or persons to, destroy or injure any living tree located within a Shoreline.
- (2) No person shall, or cause or permit any other person or persons to, fail to comply in whole or in part with a Stop Work Order.
- (3) No person shall, or cause or permit any other person or persons to, remove, deface or obscure a Stop Work.
- (4) No person shall, or cause or permit any other person or persons to, obstruct or interfere with an Officer in the execution of his or her duty.

#### **6. PENALTIES**

- (1) Any person who is convicted of an offence contrary to section 5(1) of this By-Law is liable:
  - (a) on their first conviction, to a fine of not more than \$10,000.00 or \$1,000.00 per tree injured or destroyed, whichever is greater; and
  - (b) on any subsequent conviction, to a fine of not more than \$25,000.00 or \$2,500.00 per tree injured or destroyed, whichever is greater.
- (2) Any person who is convicted of an offence contrary to sections 5(2) of this By-Law is liable:
  - (a) on their first conviction, to a fine of not more than \$10,000.00; and
  - (b) on any subsequent conviction, to a fine of not more than \$25,000.00.
- (3) Any person convicted of an offence contrary to section 5(3) of this By-Law is liable to a fine of not more than \$5,000.00.

- (4) Any person convicted of an offence contrary to section 5(4) of this By-Law is liable to a fine of not more than \$25,000.00.
- (5) Upon conviction, in addition to any other penalty imposed, the court in which the conviction is entered or any court of competent jurisdiction thereafter may order, at the expense of the person convicted, that the person convicted restore the area in which the offence occurred in such manner and within such time as the court considers appropriate.
- (6) An officer or director of a corporation who permits, causes or acquiesces to an act or omission of the corporation which contravenes this By-Law is guilty of an offence and, whether or not the corporation has also been convicted of an offence, upon conviction the Court may impose any penalty on that officer or director that could have been imposed upon the corporation.

## **7. CONFLICT WITH OTHER BY-LAWS**

Nothing in this By-law shall exempt any person from complying with the requirements of any other laws or from obtaining any license, permission, permit, authority or approval required under any federal or provincial legislation or other By-Law.

## **8. ADMINISTRATION**

- (1) Schedule A' shall form part of this By-Law.
- (2) In the event a Court of competent jurisdiction should adjudge that any section or sections of this By-Law are not be valid for any reason, such section or sections shall be deemed to be severable from the remainder of the By-Law and the remainder of the By- Law shall stand and be enforceable to the same extent as if the offending section or sections had not been included therein.
- (3) An owner of a property upon which it is alleged a contravention of this By-Law has occurred shall be presumed to have caused or permitted the injury or destruction of a tree or trees located within a Shoreline on their property which presumption may be rebutted by evidence to the contrary on the balance of probabilities.
- (4) An owner of a property upon which it is alleged a contravention of this By-Law has occurred shall be presumed to have caused or permitted the contravention of an Order which presumption may be rebutted by evidence to the contrary on the balance of probabilities.

## **9. SHORT TITLE**

The short title of this By-Law is the "Shoreline Tree Preservation By-law".

**Read a FIRST and SECOND time this 4<sup>th</sup> day of October, 2016.**

**Read a THIRD TIME and FINALLY PASSED this 4<sup>th</sup> day of October, 2016.**

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Original signed by  
**Reeve, Ben VanDiepenbeek**

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Original signed by  
**Administrator/Clerk-Treasurer, Mark Becker**

SCHEDULE "A"

**STOP WORK ORDER**

TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

TO: (NAME AND ADDRESS)

AND TO: (NAME AND ADDRESS)

Pursuant to the SHORELINE TREE PRESERVATION BY-LAW , **YOU ARE HEREBY DIRECTED AND ORDERED TO** forthwith stop, halt, cease, and desist from any and all works associated with the destruction and injury of trees or removal thereof from those lands comprising;

LOT \_\_\_\_\_ CONCESSION: \_\_\_\_\_

MUNICIPALITY: \_\_\_\_\_

DATE OF ORDER: \_\_\_\_\_

SIGNATURE OF OFFICER: \_\_\_\_\_

NAME OF OFFICER: \_\_\_\_\_

**TAKE NOTICE** that it is an offence to fail to comply with this Order.

The Corporation of the Township of Ashfield-Colborne-Wawanosh  
82133 Council Line  
R.R. No. 5,  
Goderich, Ontario

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Fax: 519-524-1951