



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 60-04

BEING A BY-LAW TO REGULATE THE DESTRUCTION, INJURY AND HARVESTING OF TREES IN THE TOWN OF FORT ERIE

WHEREAS Section 135(1) of the *Municipal Act*, S.O. 2001, c. 25 (the "Act"), as amended, provides that a local Town may prohibit or regulate the destruction or injuring of trees, and

WHEREAS Section 135(7) of the Act provides that a by-law may require that a permit be obtained to injure, destroy, or harvest trees or impose conditions to permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees, and

WHEREAS the Regional Municipality of Niagara By-law No. 8541-96 regulates the destruction of trees within woodlands of 1 hectare or more in size in the Region and woodlands of 0.2 hectares or more in the Region located within the urban area boundary, and

WHEREAS Council of the Corporation of the Town of Fort Erie recognizes and values the importance of maintaining the ecological integrity of the municipality's natural areas, and

WHEREAS Council of the Corporation of the Town of Fort Erie deems it necessary to regulate, by permit, the injury or destruction of trees within the Town of Fort Erie, and

WHEREAS Council considers that reasonable notice of this By-law has been given, by publication of notice of Council's intent to enact this By-law in the Fort Erie Times Newspaper on April 3, 2004 and April 10, 2004, and the holding of a public meeting on April 13, 2004, and

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

PART 1 DEFINITIONS

1. In this By-law,
 - (a) "Agent" means anyone who has received written confirmation by the owner of a property to act on behalf of the owner of a property.
 - (b) "Applicant" means the owner of land named in a permit application form;
 - (c) "Application" means a tree permit application form provided by the Town;
 - (d) "Basal area" means the area of the cross-section of the stem of a tree taken at a point of measurement 1.4 metres (4.5 feet) above the highest point on the tree where the ground meets the stump;

- (e) "Basal Area of the Forest Stand" means the sum of the individual tree basal areas of all the trees which comprise a forest stand;
- (f) "By-law Enforcement Officer" means an officer appointed by the Town of Fort Erie to enforce the provisions of this By-law;
- (g) "Christmas Tree Farm" means a plantation established for the purpose of producing Christmas trees.
- (h) "Clerk" means the Clerk of the Corporation of the Town of Fort Erie;
- (i) "Community Significant Tree" means a tree(s) designated by Council by by-law as having "community significance" for the reasons stated in the by-law;
- (j) "Council" means the Council of the Corporation of the Town of Fort Erie;
- (k) "Destruction" means the removal, harm or ruin of a tree by cutting, burning, uprooting, chemical application or other means, and Destroy has a corresponding meaning;
- (l) "Diameter at Breast Height (DBH)" means the diameter of the stem of a tree measured at a point that is 1.4 metres (4.5 feet) above the ground.
- (m) "Director" means the Director of Community Planning and Development Services of the Town of Fort Erie or his/her appointed designate.
- (n) "Endangered Species" means a native species at risk of extinction or extirpation throughout all or a large part of its Ontario range if the limiting factors are not reversed.
- (o) "Environmental Impact Study" means an environmental impact study that meets the criteria set out by the Town of Fort Erie.
- (p) "Forest Stand" means a contiguous group of trees sufficiently uniform in species composition, arrangement of age classes, and condition to be a homogeneous and distinguishable unit. A woodland may contain more than one forest stand.
- (q) "Forestry Consultant" means a Registered Professional Forester or other forestry professional as defined under the Professional Foresters Act, 2000 (Chapter S.O. 2000, c.18), a Certified Arbourist as defined by the International Society of Arboriculture, or a Certified Tree Marker as defined by the Ministry of Natural Resources.
- (r) "Good Forestry Practice" means the proper implementation of harvest, renewal, and maintenance activities known to be appropriate for the continued integrity of the forest and environmental conditions under which it is being applied and which minimizes detriments to forest values, including: significant ecosystems; important fish habitat; soil and water quality and quantity; forest productivity and health; and the aesthetic and recreational opportunities of the landscape. Good forestry practice includes the cutting and removal of hazardous, severely damaged, diseased and insect infested trees which must be removed in order to prevent contamination or infestation of other trees, or which no longer contribute to the achievement of forest values.

- (s) "Harvesting," means the extraction of some type of product from the forest, generally associated with a cutting that follows Good Forestry Practices.
- (t) "Heritage Tree" a tree or trees having historical or community significance and designated by Council as recommended by the Fort Erie Heritage Committee (LACAC) under Part IV of the Ontario Heritage Act (R.S.O.1990, CHAPTER O.18)
- (u) "Injuring" includes any action or treatment which causes irreversible harm or damage to a tree and includes the injury of trees by changing the grade around trees, impacting soil over root areas, or the removal of bark and injury as a corresponding meaning;
- (v) "Locally Significant Natural Area" means lands as determined by the Town of Fort Erie's 2002 Natural Areas Inventory that possess significant species, habitat or attributes that are considered of high quality or are considered rare in the Region, Province, or Nation and includes lands of Provincial Interest such as Provincially Significant Wetlands and Areas of Natural and Scientific Interest.
- (w) "Officer" means a municipal by-law enforcement officer designated by the Town for the purpose of enforcing municipal by-laws;
- (x) "Person" includes a partnership, corporation, association or other body or entity and the heirs, executors, administrators or other legal representatives of a person to whom the context can apply according to law;
- (y) "Owner" means the registered owner of a lot, his or her respective successors and assigns or his or her authorized agent;
- (z) "Region" means the Regional Municipality of Niagara;
- (aa) "Stewardship Plan" means a plan that integrates the management, protection, and enhancement of the Woodland's resources, in a manner that meets a landowner's needs and objectives while incorporating Good Forestry Management practices and an ecosystem approach to managing woodlands.
- (bb) "Tree" means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 meters at physiological maturity.
- (cc) "Woodlands" means an ecosystem of different trees, shrubs, ground vegetation and soil complexes that provide habitat for plants and animals that is at least 0.5 hectares (1.2 acres) or more in area containing at least:
 - (i) 1000 trees of any size per hectare
 - (ii) 750 trees measuring more than 5 centimetres dbh per hectare; or
 - (iii) 500 trees measuring more than 12 centimetres dbh per hectare; or
 - (iv) 250 trees measuring more than 20 centimetres dbh per hectare;
 - (v) but does not include a cultivated fruit or nut orchard, a horticultural nursery, or a Christmas Tree Farm.

PART II GENERAL PROHIBITIONS

- 2.1 No person shall injure, destroy, or harvest a tree(s) within a woodland, or a tree(s) identified by the municipality as having heritage or community significance without first obtaining a permit pursuant to the provisions of this By-law.
- 2.2 The injury, destruction, or harvest shall not reduce the mean average basal area of the forest stand in which the tree is located below 20 square metres per hectare.
- 2.3 No person shall injure, destroy or harvest a tree if such injury, destruction or harvest will reduce the number of trees in the woodland below the minimum number of trees necessary to constitute a woodland.
- 2.4 No person shall fail to comply with conditions attached to a Permit issued under this By-law.
- 2.5 No person shall fail to comply with an Order issued under this By-law.
- 2.6 (a) No person shall hinder or obstruct a municipal by-law enforcement officer appointed under this By-law or employed to enforce this By-law from carrying out an inspection of land.
(b) No person shall obstruct any employee or agent authorized to carry out work for the Town specified in an order issued hereunder.

PART III APPLICATION FOR PERMIT

- 3.1 The Director is responsible for the administration of this By-law and is hereby delegated the authority to issue permits and attach conditions thereto in accordance with the provisions of this By-law.
- 3.2 Any person making an Application for a permit under this By-law shall submit same to the office of the Director and file the following documents:
 - (a) a completed Application for permit in the form provided in Schedule "A";
 - (b) a plan or drawing of the lot to the satisfaction of the Director illustrating the tree or trees which is/are to be injured or destroyed;
 - (c) payment of the required fee set out in Schedule "C" of this By-law;
 - (d) a Registered Professional Forester, a Professional Forestry Technician, a Certified Arborist, or a Certified Tree Marker report, or any combination of such, if required by the Director;
 - (e) a Tree Saving and/or Replanting Plan, if required by the Director;
 - (f) where the trunk of the tree straddles a property line, the written consent of the adjoining owner to the issuance of the permit; and

- (g) where the person is an agent for the property owner of the property, written authorization of the owner consenting to the Application.

3.3 The Director may issue a permit based on the following criteria:

- (a) the tree(s) is dead or dying;
- (b) the tree(s) is a hazard;
- (c) the tree(s) location conflicts with proposed building plans that are in compliance with an approved Draft Plan of Subdivision or Site Plan Application for the subject parcel;
- (d) a Stewardship Plan, prepared by a qualified Forestry Consultant and acceptable to the Director, has been issued for the subject parcel;
- (e) there will be no negative impact on flood control, erosion or slope stability; or
- (f) the injury, destruction, or harvest of the tree(s) is in accordance with Good Forestry Practices, involves input from a qualified Forestry Consultant, and is otherwise acceptable to the Director.

3.4 Notwithstanding the provisions of Sections 3.1 or 3.2 above, the issuance of a permit shall not be authorized for the injury or destruction of a tree(s) in circumstances where:

- (a) the Application for a Permit (Schedule "A" to this By-law) has not been fully completed;
- (b) the tree(s) to be injured, destroyed, or harvested have not been marked by a qualified Forestry Consultant;
- (c) applications for subdivisions under Section 51 of the Planning Act, or site plans under Section 41 of the Planning Act in relation to the subject property on which the tree(s) is located, have been submitted to the Town and final approval has not yet been received;
- (d) the tree(s) is an endangered species as defined in the *Endangered Species Act* or successor legislation;
- (e) the tree(s) is within a Locally Significant Natural Area or an area of Provincial Interest and an Environmental Impact Study to the satisfaction of the Director has not yet been completed.
- (f) The tree(s) has been identified by the municipality as having heritage and/or community significance and other means of preserving the tree(s) have not been investigated to the satisfaction of the Director;

- 3.5 (a) A permit issued under this By-law may be subject to conditions that may include, but are not limited to the requirements for replacement and maintenance of trees and/or woodlands on such terms as the Director may require.
- (b) The Director may impose as a condition of a permit that monies or a letter of credit, in the form satisfactory to the Town, be delivered to the Director to cover the cost of the replacement and maintenance of a trees and/or woodlands for a period of up to five (5) years. The monies or a letter of credit collected above shall be used for the replacement or maintenance of trees and/or woodlands.

PART IV APPEAL TO COUNCIL

- 4.1 An Applicant for a Permit under this By-law may appeal to the Council of the Town of Fort Erie:
- (a) where the Director refuses to issue a permit, within ten (10) days after the refusal; or
- (b) if the Director fails to make a decision on the complete Application, within thirty (30) days after the Application is received by the Director, or
- (c) if the Applicant objects to a condition in the permit, within thirty (30) days after the issuance of the permit.

PART V APPEAL TO THE ONTARIO MUNICIPAL BOARD

- 5.1 Notwithstanding Section 4.1, an Applicant for a Permit under this By-law may appeal to the Ontario Municipal Board:
- (a) where the Town refuses to issue a permit, within thirty (30) days after the refusal; or
- (b) if the Town fails to make a decision on the complete Application, within thirty (30) days after the Application is received by the Director, or
- (c) if the Applicant objects to a condition in the permit, within thirty (30) days after the issuance of the permit.

PART VI PERMIT APPROVALS

- 6.1 The approval of a permit is valid for the duration of the injury, destruction, or harvesting activities.

PART VII PERMIT FEES

- 7.1 This bylaw prescribes fees for the issuance of a permit as set out in Schedule "C" hereof.

PART VIII POSTING OF PERMIT

8.1 The approved permit (Schedule "B" to this By-law) shall be posted on the property from which the tree or trees is/are to be injured, destroyed, or harvested in a location visible from the street edge for the period during which the tree(s) are being injured, destroyed, or harvested.

PART IX EXEMPTIONS

9.1 This By-law does not apply to:

- (a) activities or matters undertaken by a public agency or its agent or a public utility or its agent;
- (b) activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act*, 1994;
- (c) the injuring, destruction, or harvesting of 10 or less trees by a person who has been the registered owner of land for at least two years and intends to use the tree(s) for personal use that will not involve the sale, exchange or other disposition of the trees that are cut.
- (d) the injuring, destruction, or harvesting of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- (e) the injuring, destruction, or harvesting of trees imposed as a condition to the approval of a site plan, a plan of subdivision under section 41, or 51 respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (f) the injuring, destruction, or harvesting of trees imposed as a condition to 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;
- (g) trees cut under a Tree Saving or Preservation Plan approved by the Town of Fort Erie under the provisions of a subdivision agreement, a site plan agreement or a development agreement;
- (h) the injuring, destruction, or harvesting 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;
- (i) the injuring, destruction, or harvesting 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*;

- (j) the injuring, destruction, or harvesting 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

PART X ORDERS

- 10.1 Pursuant to Section 137 of the *Municipal Act* or its successor, where a By-law Enforcement Officer is satisfied that a contravention of this By-law has occurred, the By-law Enforcement Officer may make an order requiring a person who contravened the By-law or who caused or permitted the injuring or destruction of trees to stop the injuring or destruction of trees.
- 10.2 An order issued pursuant to Section 10.1 above shall include:
 - (a) the municipal address or legal description of the land;
 - (b) reasonable particulars of the contravention;
 - (c) the period within which there must be compliance with the order.
- 10.3 An order issued under Section 10.1 may be served personally or by regular mail to the last known address of the owner of the land.
- 10.4 Where service of an order is made by regular mail, service shall be deemed to be made on the fifth day after mailing.

PART XI ENFORCEMENT

- 11.1 The Town may, at any reasonable time, enter and inspect any land to determine whether a by-law, order or condition to a permit is being complied with.

PART XII OFFENCES

- 12.1 Every person who contravenes any provision of this By-law or an Order issued under Section 10.1 is guilty of an offence and is liable:
 - (a) on first conviction, to a fine of not more than \$10,000.00 or \$1,000.00 per tree, whichever is greater;
 - (b) on any subsequent conviction, to a fine of not more than \$25,000.00 or \$2,500.00 per tree, whichever is greater; and

(c) where the person convicted is a corporation, the maximum fines in Section 12.1(a) are \$50,000 or \$5,000 per tree, and the maximum fines in Section 12.1(b) are \$100,000 or \$10,000 per tree.

12.2 If a person is convicted of an offence for contravening this By-law or an Order issued under Section 10.1, the Court in which the conviction has been entered and any Court of competent jurisdiction thereafter may order the person to rehabilitate the land or plant or re-plant trees in such manner and within such period as the Court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

PART XIII SCHEDULES

13.1 Schedules "A", "B", "C" attached hereto are made part of this bylaw.


PART XIV GENERAL PROVISIONS

14.1 If any term of this By-law or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this By-law and/or the application of such term to circumstances other than those which it is held to be invalid or unenforceable, shall not be affected thereby and each term of this By-law shall be separately valid and enforceable to the fullest extent permitted by law.


14.2 This by-law shall be known as the "Woodland and Heritage Tree Preservation By-law".

14.3 This by-law comes into force and effect on the date of its passing and enactment.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 19th DAY OF APRIL, 2004.



 MAYOR



 CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 60-04 of the said Town. Given under my hand and the seal of the said Corporation this day of _____, 200 .

SCHEDULE "A" TO BY-LAW 60-04

TOWN OF FORT ERIE

WOODLAND AND HERITAGE TREE PRESERVATION BYLAW

PERMIT APPLICATION

1. Land Owner (list all owners – Use additional sheets if necessary.)

Name: _____

Address: _____

City/Town: _____ Prov/State: _____

Postal Code: _____

Telephone: Business _____ Home _____

Fax: _____ Email: _____

2. Tree Cutting Contractor

Name: _____

Address: _____

City/Town: _____ Prov/State: _____

Postal Code: _____

Telephone: Business _____ Home _____

Fax: _____ Cell: _____

3. Description of Land

Lot: _____ Concession: _____ Township: _____

Municipal Street Address: _____

4. Information on Property and Trees/Woodlands

Attach proper drawings and survey showing:

- Limits of applicant's property
- Adjacent roads and road names
- Man-made features on the property including fence lines, drive/pathways, buildings, etc.
- Natural features such as creeks, shoreline, wetlands

- Location extent and size of woodlands where trees are to be damaged or destroyed

Describe the trees to be injured, destroyed, or harvested:

- Number
- Species
- Size (dbh)
- Approximate age
- Location on property

Describe the type of woodlands:

Deciduous
 Mixed Wood
 Conifer Plantation (Pine, Spruce, etc.)
 Other, Describe _____

5. Time period of cut:

Expected Starting Date: _____

Expected Completion Date: _____

6. Has a forestry consultant marked this tree/woodland for cutting?

Yes: _____ No: _____ Company: _____

Contact Person _____ Telephone: _____

7. Describe the purpose or reason for the tree damage/destruction and the method of destruction (i.e. cutting, burning, etc.)

8. A copy of any report prepared by a forestry consultant respecting the injury, destruction, or harvesting of trees subject of this application shall accompany this application.

9. Where the tree cutting contractor is different from the applicant, a copy of any contract between the applicant and the tree cutting contractor respecting the injury, destruction, or harvesting of trees subject of this application shall accompany this application.

10. Certification of Forestry Consultant

I _____ am a _____ that is defined as a forestry consultant in this bylaw. I do hereby certify that the injury, destruction, or harvesting of trees detailed in this application constitutes good forest practices as defined in this bylaw.

Signature: _____

Address: _____

Telephone: _____

Fax: _____

Cell: _____

11. STATUTORY DECLARATION OF APPLICANT

Note: The applicant must be the owner of the lands. If there is more than one owner, only one owner shall be considered the applicant and the other owners must complete the owner's authorization form.

I, _____

Being the registered owner of the lands subject to this Application, solemnly declare that all of the above statements contained in this Application are true, and make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of "The Canada Evidence Act". I agree that the work to destroy trees will be conducted in accordance with the Town of Fort Erie Woodland and Heritage Tree Preservation By-law No. 60-04. I also agree to allow the Town of Fort Erie, its employees and agents to enter upon the subject lands for the purposes of conducting any inspections that may be necessary for this Application.

Declared before me at _____

In the Region of _____

This _____ day of _____ 20____.

A Commissioner of Oaths

Owner

SCHEDULE "B" TO BY-LAW 60-04

TOWN OF FORT ERIE

WOODLAND AND HERITAGE TREE PRESERVATION BYLAW

PERMIT TO DESTROY, INJURE, OR HARVEST TREES

Permit No: _____

PERMIT ISSUED TO: _____

Name: _____

Address: _____

Postal Code: _____

Telephone: Home _____ Business: _____

Facsimile: _____ Cell: _____

DESCRIPTION OF LAND:

Lot: _____ Concession: _____ Township: _____

Municipal Street Address: _____

DESCRIPTION OF AUTHORIZED WORK:

TREE CUTTING CONTRACTOR:

Name: _____

Address: _____

CONDITIONS:

The unnecessary destruction of any tree not authorized by this permit is hereby prohibited; this permit shall be null and void in the event that the destruction of trees not authorized by this permit occurs.

Upon completion of the removal and/or harvesting of destroyed trees, specified trees shall be replanted in accordance with replanting plans approved by the Director.

All requirements of a Stewardship Plan, as approved by a Forestry Consultant and as approved by the Director, shall be complied with.

The destruction of trees and any required site restoration or replanting plans authorized or required by this permit shall be complied with on or before the expiration of this permit.

This permit shall be null and void if the work or a portion of the work authorized by this permit is undertaken by a Tree Cutting Contractor other than that indicated on this permit.

SCHEDULE "C" TO BY-LAW 60-04

PERMIT FEE SCHEDULE

1. One to Ten Trees (in calendar year)..... NO CHARGE
2. Ten to Twenty Trees \$25.00
3. Twenty to Thirty Trees..... \$50.00
4. Over Thirty Trees \$100.00