

Staff Report 2021-0300

Meeting Date: July 6, 2021

Subject: Proposed Amendments to Woodland Conservation By-law 2000-100 for Administration and Enforcement Purposes

Submitted By: Dain Watson, Analyst, Municipal Law Enforcement

RECOMMENDATION

That a by-law be enacted to amend Woodland Conservation By-law 2000-100, as amended, for the purposes of administrative and enforcement updates as outlined in Staff Report 2021-0300.

REPORT HIGHLIGHTS

- The Municipal Act, 2001 allows a municipality to pass by-laws to prohibit or regulate the injury or destruction of trees
- The Woodlands By-law 2000-100, as amended provides administrative processes for permits to destroy trees in a woodland as well as regulation of tree cutting in a woodland
- Municipal Law Enforcement has seen a steady increase in complaints investigated relating to cutting of trees in woodlands
- A review of the definition of *forestry consultant* was completed and the definition does not align with the Professional Foresters Act, 2000, S.O. 2000, c.18
- Provisions regarding obstructing an officer and non-compliance with an order need to be included in the appropriate Sections
- Ontario Municipal Board is no longer in existence and thus an appeal option to this tribunal should not be included
- Penalty provisions do not allow for the issuing of Part I tickets, nor do they provide specific direction on court imposed remedial action and thus need to be updated
- Attached as Schedule A to this Report sets out the details of the proposed amendments to the Woodland Conservation By-law

DISCUSSION

Background

The Woodland Conservation By-law prohibits and regulates the destruction of trees in woodlands. Staff has seen a steady increase in the number of complaints investigated throughout the last few years regarding the destruction of trees in woodlands:

Year	Complaints Investigated
2018	4
2019	11
2020	19
2021	12 and counting

With this steady increase, there are several enforcement challenges with the Woodland Conservation By-law as presently constructed – most notably the inability to issue Part I tickets to any person who contravenes the By-law. Therefore, the purpose of this report is to provide the attached proposed by-law amendment for Council's consideration and outline the improvements made to help ensure successful enforcement and protection of woodlands throughout the Town.

The Woodland Conservation By-law

The Town's Woodland Conservation By-law includes regulation of tree cutting in woodlands in Caledon, various administrative processes with respect to permits to destroy trees and penalty guidelines to be imposed upon conviction.

Currently, the definition of *forestry consultant* includes "a person who specializes in the assessment of forest ecosystem functions and includes a Registered Professional Forester or a person with similar qualification". In consultation with the Ontario Professional Foresters Association (OPFA), they have advised that this definition should be updated as the Professional Foresters Act, 2000, S.O. 2000, c.18 prohibits any similar qualification to a Registered Professional Forester or Associate RPF in Ontario. As such it is recommended that the definition be amended to only recognize a Registered Professional Forester or Associate RPF as "*forestry consultant*" in the By-law.

Further, the provisions as outlined in Subsection 5.2 of this By-law do not include provisions regarding hindering or obstructing an officer conducting an inspection. This should be updated to ensure that there are penalties should anyone attempt to hinder or obstruct an Officer from investigating a potential contravention of the Town's Woodland By-law. Such a provision is consistent with other Town by-laws such as the Fence By-law 2017-68 and the Animal Care and Control By-law 2019-43.

The schedules outlined in the Woodland Conservation By-law are antiquated and thus should be removed from the By-law as they do not reflect the significant changes made to the application, fee and permit over the years nor are they necessary. The proposed By-law amendments can achieve the same intent and results without reliance on the attached schedules and provide a greater flexibility to make changes to the administrative aspects on the processing of applications.

Section 8 Appeal to the Ontario Municipal Board provides conditions under which an applicant may submit an appeal to the Ontario Municipal Board (OMB). The OMB no longer exists as of 2017 and the current adjudicative tribunal that has since replaced it (Ontario Land Tribunal) does not hear appeals for woodland permit disputes. The By-law should be updated to ensure there are no appeal provisions to non-existent adjudicative tribunal boards.

In addition, a person's obligation to comply with an order issued under this By-law is not explicitly outlined in Section 9 Non-Compliance with By-law. This should be updated to ensure a clear positive compliance obligation on the Order recipient and to help assist with any enforcement actions. This approach is consistent with other Town by-laws such as the Fill By-law 2007-059 and the Animal Care and Control By-law 2019-43.

Further, the penalty provisions in the By-law do not allow for the issuing of Part I tickets to persons contravening the By-law. This significantly comprises officer's ability to effectively enforce the By-law, as Part III charges often take several months and years to resolve, whereas a Part I ticket can be issued immediately at the time of a By-law contravention being discovered. Further Part I tickets can be issued each and every time a contravention is found and may provide a more effective means of achieving compliance in certain circumstances. The short form wording and set fines that would be submitted to the Ministry of the Attorney General would follow similar fine ranges as the City of London, who have approved fines ranging from \$750.00 to \$1000.00. In addition, the language in the penalty provisions with respect to court imposed remedial action is ambiguous and should be updated to be more prescriptive with respect to the replacement of trees taking into consideration the quantity, size and species of tree replacement.

Review of Other Municipalities

As part of this review, Staff has considered by-laws regarding the regulation of tree cutting from other municipalities including the City of Brampton, City of London, Wellington County, Simcoe County and Durham Region to determine common best practices of obstructing officer and compliance with order provisions. Similarly, Staff has considered such by-laws from the Town of Oakville and Durham Region to determine best practice of having more prescriptive penalties relating to court imposed remedial action.

Proposed Amendments

In order to align the Woodland Conservation By-law with the updates as outlined in this report, the following changes are being recommended:

Updating Section 2 (Definitions):

- Updating definition of *forestry consultant* to include Associate Registered Professional Forester instead of "person with similar qualification"

Updating Section 5 (Administration and Enforcement):

- Including provisions against hindering or obstructing an officer

Updating Section 6 (Applicant for Permit to Destroy Trees):

- Enhancing Subsection 6.1.1 to better reflect the changes made to the application to destroy trees and the applicable fees

- Deleting Subsection 6.1.3
- Updating Subsection 6.2.1 so there is no reference to the Schedules in the by-law

Deleting Section 8 (Appeal to the Ontario Municipal Board) in its entirety

Updating Section 9 (Non-Compliance with By-law):

- Renumbering as Section 8
- Addition of compliance with order provision
- Deleting Subsection 9.3

Updating Section 10 (Penalty):

- Renumbering and replacing as Section 9
- Addition of Part I penalty provisions
- Enhancing court imposed remedial action to include replanting of comparable number, size and species of trees.

Deleting Section 12 Schedules, along with Schedules “A” “B” and “C”

A full review of the Woodland Conservation By-law may be required within the next year, which may involve repealing and replacing. In the interim, to improve administration and enforcement of the By-law and to protect woodlands throughout the Town, Staff recommend that the proposed amendments as set out in Schedule A of this Staff Report be enacted and take effect on the day of its passing.

FINANCIAL IMPLICATIONS

There are no immediate financial implications associated with this Staff Report. The change in enforcement activities for this by-law is not expected to result in a significant amount of fine revenue and therefore is expected to have little impact on the Town's budget.

COUNCIL WORK PLAN

Connected Community – preserve heritage and natural areas.

Good Governance – update and standardize by-laws, including implementation, to meet best practices of other municipalities.

ATTACHMENTS

Schedule A: Proposed Amending By-law