



TO: Chair Bridgeman and Members of Planning Committee

AUTHOR: David Pink, Director of Development Services & Environmental Sustainability

SUBJECT: By-law Enforcement, Site Alteration and Tree Preservation By-laws

RECOMMENDATION

None. For information purposes only.

REPORT HIGHLIGHTS

This report provides an overview of:

- A legal opinion received in response to the request of Planning Committee;
- Building Permit and By-law statistics year to date; and
- Future continuous improvement initiatives anticipated in the By-law division of the Development Services and Environmental Sustainability Department to address concerns raised by the community and Committee surrounding development activity.

BACKGROUND

Issue

At the July 15/16, 2021 Planning Committee meetings, Committee heard about the Muskoka Lakes Association's (MLA) concerns and recommendations respecting site alteration and tree removal occurring during the development of various properties in the waterfront area. In particular, it is the MLA's contention that the financial penalties within various pieces of provincial legislation at the Township's disposal are insufficient to deter indiscriminate and illegal activities from occurring.

In response, Committee requested that staff:

- obtain a legal opinion respecting the potential ability to revoke or place Stop Work Orders on active Building Permits, or other measures which would stop or delay a development project, where there was a breach of a by-law;
- provide year to date by-law enforcement statistics; and
- submit a staff report on continuous improvement of certain by-laws, policies and procedures as it relates to Site Alteration and Tree Preservation.

ANALYSIS

Building Code Act

Building Permit Issuance, Revocation and Stop Work Orders

Staff are now in receipt of the requested legal opinion and the Township's solicitor identifies that the issuance of a Building Permit can only be refused if the application does not comply with the Building Code Act, or applicable law identified therein, or the Ontario Building Code. While a Zoning By-law and a Site Plan Control By-law are listed as applicable law under the Building Code Act, Tree Preservation and Site Alteration By-laws are not.

Further, once a building permit has been issued, the Chief Building Official does not have the authority to issue a Stop Work Order unless there is non-compliance with an Order to Comply, stemming from a contravention of the Building Code Act or Ontario Building Code (i.e. compliance with Code Standards, or the approved plans forming part of the issued permit).

In regards to the authority to revoke a Building Permit, the Township's solicitor notes that the Building Code Act enables this action to be taken if the permit was "issued on mistaken, false or incorrect information" or if it "was issued in error".

In view of the prescriptive nature of the Building Code Act, it is clear that the building permit process can not legally be used to trigger a stop or delay to a development project if there is a violation of the Site Alteration or Tree Preservation By-laws.

Applicable Law

As noted, a Site Plan Control By-law is applicable law for the purposes of issuing a Building Permit. However, it is understood that this By-law simply identifies which properties and classes of development are required to enter into an agreement prior to the issuance of a Building Permit. As a result, the only circumstance when a permit may not be issued is if an agreement has not been executed. If there was a breach of the agreement (i.e. tree removal or site alteration outside of identified envelopes on the site plan), the first legal course of action, acting reasonably, would be to enforce the site plan agreement itself. If a landowner does not cooperate, the Township could revoke the site plan approval, which could trigger a corresponding revocation of the Building Permit. However, this would be short sighted, as this is typically the primary implementation tool in place that could be used to ensure the site and any remedial works are completed to the Township's satisfaction in such a situation.

Township Statistics

Building Permits

As of the end of June 2021, the Development Services team issued 564 Building Permits. In comparison, at the same point in 2020 and 2019, a total of 421 and 506 Building Permits were issued, respectively.

By-law Compliance

Knowing that even one contravention can significantly disrupt the natural environment or water quality, the goal of the municipality is to achieve full compliance with all by-laws. That said, controlling the actions or behaviour of every individual across the number of properties within the large geography of the Township is not overly feasible or practical. As a result, it is unrealistic to expect that all by-law infractions can be prevented.

Table 1 provides a breakdown of the number of by-law complaints by statute that the By-law division has received to date. It also identifies which complaints have resulted in a file being created and whether there was in fact a contravention found. The number of complaints are further broken down into categories of “Infraction Found” or “No Infraction Found”, based on staff’s investigations.

Table 1: 2021 By-law Complaints

By-Law/Statute	Complaints	Infraction Found	No Infraction
Dark Sky	8	4	4
Zoning	17	7	10
Parks	1	1	0
Site Alteration	23	14	9
Noise	21	17	4
Dog Control	23	23	0
Site Plan	1	0	1
COVID	8	4	4
Parking	9	5	4
Property Standards	5	5	0
Tree Preservation	13	2	11
Docks and Ramps	10	8	2
Signs	1	1	0
Firearms	1	0	1
Business Licensing	2	2	0
Public Lands	3	3	0
Other	15	6	9
TOTAL	161	102	59

To date in 2021, there have been a total of 32 charges laid to 16 individuals. Most of these charges are by way of a summons to court (Part 3), with only 5 Part I charges being laid. There are also additional charges being prepared by staff resulting from other investigations that have not yet been sworn by a Justice of the Peace.

While the number of complaints received (as documented in Table 1) may not capture every contravention of a municipal by-law in the community, these statistics do provide a reasonable representation of best available information of compliance rates. While staff recognize that there have been a small number of significant site alteration infractions this year that have galvanized waterfront community concerns, the statistics show that out of the 564 Building Permits issued, 16 Site Alteration, Tree Preservation and Site Plan Agreement infractions were found. This translates to a compliance rate of 97% in the community, which appears to be very good.

Waterfront Character

At the core of the concerns about waterfront development is a shared desire to protect waterfront character. The notion of character in the waterfront and other areas (rural, community, etc.) in the Township refers to the essence which defines that area and provides a sense of identity.

Character is established over time and is rooted in the following:

- physical setting and landscape characteristics including the unique confluence of water, rocks and trees and scenic landscapes;
- historic development patterns;
- extent and form of development; density, intensity of use and height;
- architecture and design;
- level of services and infrastructure; and
- open space, natural areas and recreational areas and facilities.

The character of the waterfront area stems from its physical setting at the interface of the land and water, and historic water-oriented settlement including cottage and resort development. The specific character of each waterfront area varies as a result of its location, lake or river size, physical and natural attributes and historic development. The varied topography, forested landscape and shorelines, views and panoramas, habitat as well as the access to bodies of water have attracted recreation and leisure oriented settlement, and strongly contribute to the character of the waterfront.

It is important to remember that the character of waterfront areas is not static, but rather it evolves over time, adapting to new circumstances. To ensure that change to the character of an area is incremental over time, rather than fundamental (dramatic and sudden), its important to have appropriate and current planning policies, implementation tools (by-laws and enforcement processes and adequate education and communication. Use of these tools and partnering with community organizations where appropriate, is the best way to ensure all members of the community are aligned in the shared goal of protecting character.

Legislative Framework

As previously noted, the development process and environmental protection framework within which the Township works in the waterfront and other areas, has been set by senior levels of government. As can be seen from the above analysis of the Building Code Act, quite often, the pertinent legislation only addresses the issues related to the matter dealt with by the legislation. There are typically no linkages to connect to other pieces of legislation. As noted at the Planning Committee meeting, this limits the tools the Township can use to address, or react/respond to, the site alteration and tree cutting issue.

Continuous Improvement

As it relates to revising planning policies, the update of the Township's Official Plan is ongoing and to provide a better ability to guide implementation tools, this project should be completed as expeditiously as possible.

Despite the limitation on the tools that are available to address site alteration and tree cutting, our new By-law Enforcement team has identified several areas where existing by-laws, policies and processes could be improved. These together with new educational efforts are identified in

Appendix "I". These outlined enhancements are in essence more specific details of the work plan, or phased review of the By-law Enforcement function that Council endorsed in November 2020.

ALTERNATIVES

This report is information only and no alternatives are required, as Council through resolution PLN-7-15/10/20 has already directed a phased review of Township By-laws and the By-law Enforcement function.

FINANCIAL IMPLICATIONS

There are no financial implications as a result of this report, save for the legal opinion received.

STRATEGIC PLAN

Goal: Preserve and Protect the Natural and Cultural Environment

Action: Continue to preserve and protect the natural features of the Muskoka watershed found within the Township, including water quality

Goal: Enhance and Sustain Public Services and Infrastructure

Action: Maintain a focus on organizational excellence, accountability, and responsibility, strengthen staff engagement, and support staff with training necessary to effectively deliver services to residents

COMMUNICATIONS

This staff report was distributed to Council and all those registered to receive notification through the meeting agenda electronic notification system, and was published on the Township's website in accordance with the Township's Procedural By-law.

ATTACHMENTS

Appendix "I" – Continuous Improvement

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Appendix "I"

Implementation Tool (By-law etc.) Continuous Improvement Initiatives

By-law and Process Updates

A number of By-laws at the Township have not been updated in many years and are in need of review. New municipal by-law staff have begun their review and have a number of ideas which will be brought forward in detail in subsequent reports as time permits. These include:

- Updates to by-laws:
 - Site Alteration By-law – potentially increase its area of coverage beyond 200 feet from navigable waterways and lands zoned Environmental Protection (EP1) to cover a greater area of waterfront properties;
 - Tree Preservation By-law – expand the area to which it applies, as well as consider amendments to the list of permitted exemptions to eliminate a number of potential loopholes;
 - Dark Sky By-law - general language updates to remove ambiguity so that it reads less like policy, resulting in greater clarity for the public and more successful enforcement
 - Property Standards By-law - has not been updated since 1999 and can be expanded to capture new items under the umbrella of property standards.

- Revise the site plan process - Staff had previously prepared a report in February 2020, which outlined a number of measures or enhancements to the process that could be undertaken. While some enhanced measures will require additional resources through the Township budget process, staff have already begun to implement other changes that do not.

- Better address Minor Offences - The majority of municipal by-laws do not currently contain language and set fines in accordance with Part I of the Provincial Offences Act, otherwise known as short-form wording, which would allow municipal by-law staff to issue fines (tickets) for minor offences. This would streamline our system, such that the Part III charges (court) process would not need to be used to address such issues. Respecting fine levels or amounts, legislation stipulates that the Ontario Court of Justice must approve the Part 1 fine amounts within the by-law, with the maximum set by the Act at \$1,000. This would be beneficial for, amongst others, by-laws such as Dark Sky, Tree Preservation and Site Alteration. Staff intends to update these by-laws accordingly, as time permits.

- Review fine levels for Major Offences - Where more egregious violations of municipal by-laws occur, municipal by-law staff have the ability to commence a proceeding by information, otherwise known as charges under Part III of the Provincial Offences Act. Each municipal by-law must contain an authority in which to enact it, and the applicable piece of legislation (Municipal Act, Planning Act, etc.) outline the maximum permitted penalty the municipality can pursue. While the Township is not likely to be awarded the maximum amounts in the case of a first offence, staff intend to review municipal by-laws over time to ensure the maximum amounts are up to date.

- Create a By-law Enforcement Policy - Municipal by-law staff intend to bring forward a By-law Enforcement Policy in the coming months for Committee's review and consideration. This document will allow Council to set the level of service for by-law enforcement and be a guiding document for operations of the division. It would also provide clarity on the use of:

- Orders - Certain legislation provides particular by-laws with the authority to issue Orders, including the Tree Preservation and Site Alteration By-laws. While Stop Work Orders can be effective at halting illegal activity, Orders to Remedy are the most effective approach to effecting remediation of sites disturbed by excessive site alteration or tree removal. Staff's primary goal, over the pursuit of fines through the legal process, is to bring disturbed properties into a satisfactory condition. Orders can include timelines and conditions such as the completion of technical studies by qualified professionals, and staff is always pursuing updates and new language to align with best practices. Please note that the issuance of an Order to Remedy will not negate the ability to pursue other penalties such as a fine or charges, which are used as an additional deterrent to prevent repeat infractions.
- Injunctive Relief - a further enforcement tool available to the Township is the initiation of a Superior Court of Justice proceeding for injunctive relief. While this can be an effective (and more costly) tool to halt activity and require work to be undertaken to remedy any damage, in staff's opinion, the ability of staff to issue Orders as outlined above results in essentially the same outcome. Where a property owner is not in compliance with a Stop Work Order and continues to destroy trees or alter grade in contraventions of the by-laws, pursuing injunctive relief from the Courts may be more effective.
- Consider the development of New By-laws - New By-laws have the ability to address gaps where concerns arise in the community that are not currently regulated. Several of the delegations spoke to the desire of a Blasting By-law. While further research should be conducted by staff, it is noted that the Site Alteration By-law currently prohibits blasting outside of the envelopes of buildings or sewage systems issued a permit. If the intended goal is not to prohibit the activity outright, but instead to implement enhanced protection measures such as tree inventories, sediment barriers and boundary markings during development, the site plan control process can be utilized to implement these measures (and largely currently does), as opposed to an additional By-law that would result in extensive additional administration.

New By-laws that are being researched are Littering and the possibility of a Clean Yards By-law to coincide with a Property Standards By-law. There are statutory differences with Property Standards and Clean Yards as Property Standards falls under the Ontario Building Code while Clean Yards is a stand-alone By-law through the Municipal Act. A Clean Yards By-law does not require the same type of formality of Property Standards and allows staff to quickly have minor exterior property items dealt with such as long grass or excess garbage.

- Communication and Education - Ideally, rather than solely ramping up a reactionary enforcement program, to change the culture of the waterfront development process from payment of penalties and asking for forgiveness after violations are discovered to one of celebrating compliance with municipal by-laws, improvement in the Township's communication of municipal by-laws, and education of the community should occur. Additional resources devoted to by-law enforcement by Council through the 2021 budget will allow staff to undertake these initiatives. It should be noted, however, that the current half of a full time position devoted to communications may pose some limitations. In view of this, partnerships with community advocacy groups should be pursued.