

THE CORPORATION OF THE TOWN OF AJAX

BY-LAW NUMBER 137-2006

WHEREAS the Municipal Act, R.S.O. 2001, S.O. 2001, c.25, as amended, permits the enactment of a By-law by the Council to prohibit or regulate the destruction or injuring of trees;

AND WHEREAS Council may require that a permit be obtained to injure or destroy trees specified in the By-law and impose conditions on a permit, including conditions relating to the manner in which destruction occurs and the qualification of persons authorized to injure or destroy trees;

AND WHEREAS Council has determined that it is desirable to enact such a By-law:

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF AJAX HEREBY ENACTS AS FOLLOWS:

1. SHORT TITLE

1.1 This by-law may be cited as the Tree Protection By-law.

2. INTERPRETATION

2.1 The necessary grammatical changes required to make the provisions hereof apply to corporations, partnerships, trusts and individuals, male or female, and to include the singular or plural meaning where the context so requires, shall in all cases be assumed as though fully expressed.

2.2 Schedules "A" and "B" to this by-law form part of this by-law.

2.3 Any reference in this by-law to any statutes, regulations or by-laws shall be deemed to be a reference to such statutes, regulations or by-laws, as amended, restated or replaced from time to time.

2.4 Measurements are stated in the metric system.

3. DEFINITIONS

3.1 In this By-law:

- (a) "Act" means the Municipal Act S.O. C.25;
- (b) "application" means an application for a Permit and "applicant" means the person applying for the Permit;
- (c) "Director" means the Director of Legislative and Information Services or his designate;
- (d) "destroy/destruction" means to remove a tree, cut down a tree or in any other way injure a tree to such an extent that it is deemed necessary to remove or cut down the tree;
- (e) "emergency work" means drain repairs, utility repairs and structural repairs to a building of an emergency nature;
- (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 and the production of agricultural crops;
- (g) "farmer" means an individual, family or designated representative involved with or responsible for the management of a farm operation;

- (h) “good forestry practices” means the proper implementation of harvesting, renewal and maintenance activities known to be appropriate for a woodlot and which minimize detriments to woodlot value;
- (i) “injure/injury” means any act which will harm a tree’s health in any manner;
- (j) “Officer” means a Municipal Law Enforcement Officer, the Manager of Environmental Services for the Town, the Area Supervisor (Parks) for the Town or an arborist employed by the Town;
- (k) “Order” means an order issued pursuant to Section 11 of this by-law and the Act;
- (l) “ornamental tree” means plants cultivated for their beauty and intended to be managed or clipped on an annual or biannual basis, rather than for their natural use, including but not limited to foundation shrubbery, clipped hedges and fruit trees that produce fruit for human consumption;
- (m) “Owner” means the registered owner of a lot, his representative successors and assigns or his authorized agents;
- (n) “Permit” means a Permit required by this By-law to injure or destroy a tree on private property within the Town;
- (o) “Region” means The Regional Municipality of Durham;
- (p) “street” means a common or public highway, road, street, lane or any road allowance or portion thereof under the jurisdiction of the Town; and,
- (q) “Town” means The Corporation of the Town of Ajax.

4. GENERAL PROVISIONS

- 4.1 No person shall destroy or injure, or cause or permit the destruction or injury of any living tree on any lands designated in Section 4.2 of this by-law without a Permit, unless otherwise permitted by this by-law.
- 4.2 The provisions of this by-law shall apply to:
 - (a) Any land in the area described in Schedule “A” to this by-law;
 - (b) Any land or part of land in an area designated as Environmental Protection, Open Space, Town-Wide Park, Community Park, or Neighbourhood Park pursuant to Schedule “A” of the Town’s Official Plan; and
 - (c) Any land or part of land in an area zoned as Private Open Space pursuant to the Town’s Zoning By-laws.
- 4.4 No person shall contravene or permit the contravention of the terms of a Permit issued under this by-law or the conditions attached thereto.
- 4.5 No person shall fail to comply with an Order or permit an Order to be contravened.
- 4.6 No person shall remove, pull down, or deface any Order or permit any Order to be removed, pulled down or defaced, after an Officer has caused it to be placed in a prominent position on any lands, except with the written consent of the Officer.
- 4.7 No person shall obstruct an Officer or a person acting under the Officer’s instructions who is carrying out an inspection under this by-law.

5. EXEMPTIONS

- 5.1 In addition to the exemptions set out in section 135 (12) of the Act, this by-law shall not apply to:
 - (a) The injury or destruction of trees by the Town, Region, a crown agency or Ontario

Hydro;

- (b) Activities authorized under a subdivision or site plan agreement with the Town, provided that the tree(s) must be injured or destroyed in order to facilitate construction in accordance with plans approved by the Town;
- (c) Activities undertaken in a woodlot pursuant to The Durham Region Tree Conservation By-law and in accordance with good forestry practices;
- (d) The injury or destruction of up to 5 trees each calendar year by a farmer where the injury or destruction of a tree occurs as an integral component of an active farm operation;
- (e) A tree located on a lot of less than 1.2 ha which has a single dwelling thereon with the exception of land zoned Private Open Space pursuant to a Zoning By-law of the Town;
- (f) An Orchard, Christmas Tree Farm or Tree Nursery;
- (g) Removal of a diseased, dead, or hazardous tree;
- (h) Pruning of a tree in accordance with good arboricultural practice to maintain the health of the tree;
- (i) Pruning of tree branches that interfere with utility conductors;
- (j) Pruning or removal of ornamental trees; or,
- (k) Emergency work.

6 APPLICATION FOR A PERMIT

- 6.1 An Owner who intends to injure or destroy a tree where a Permit to do so is required by this by-law shall first submit an application to the Director on the prescribed form along with the prescribed fee as set out in Schedule "B" to this by-law.
- 6.2 Notice of an application to destroy healthy trees shall be posted on the property where the tree(s) are located in a manner and form satisfactory to the Director.

7. ISSUANCE OF A PERMIT

- 7.1 The Director shall review all completed applications and may issue a Permit in the following circumstances:
 - (a) Trees that are likely to cause structural damage to existing load-bearing structures;
 - (b) Trees that are in declining or poor condition and cannot be maintained in a healthy and safe condition;
 - (c) Trees on property where a Building Permit or Committee of Adjustment approval has been obtained, provided that the tree(s) must be injured or destroyed to facilitate construction in accordance with plans approved by the Town;
 - (d) Trees on a property where a use permitted by the Official Plan or the Zoning By-law is being expanded provided that the Director is satisfied that the intended use of the Official Plan and Zoning By-law is maintained and that there is no alternative to the destruction of the trees;
 - (e) Activities undertaken by a farmer where the destruction of a tree occurs as an integral component of an active farm operation; or,
 - (f) Trees that are growing in inappropriate locations, and cannot be maintained on a routine basis due to restrictive site condition.
- 7.2 Where a tree or trees are to be destroyed, the Director may issue a Permit subject to conditions that ensure that all other trees are protected in accordance with good arboricultural practices and may require a replanting plan to replace any trees removed.

8. PROHIBITIONS

- 8.1 The Director shall not issue a Permit to destroy a tree or trees where:
- (a) The tree is healthy, unless the Director is satisfied that the applicant has undertaken to implement a satisfactory replanting plan to replace any tree removed;
 - (b) Significant vistas and/or views will not be adequately protected and preserved;
 - (c) An environmentally sensitive area will not be adequately protected and preserved;
 - (d) Natural land forms or contours will not be adequately protected and preserved;
 - (e) An ecological system, including natural areas, features and functions, will not be adequately protected and preserved;
 - (f) Flood and erosion control will be negatively impacted; or,
 - (g) The tree is an endangered species.

9. REPLACEMENT TREES

9.1 Where a tree or trees are to be destroyed, the Director may issue a Permit subject to conditions ensuring that:

- (a) the replacement trees are planted to the satisfaction of the Director and in accordance with the replanting plans submitted; and
- (b) the tree or trees are protected in accordance with good aboricultural practices.

9.2 Where replacement planting is not physically possible on the property where the tree is located, the Director may:

- (a) require replacement trees planted at another location; or
- (b) accept a cash in lieu payment for the planting of trees at another location.

9.3 Where a property is not subject to site plan approval, the Director may obtain a written undertaking to ensure that the replacement planting is carried out and, where substantial replanting is required or where the applicant has previously violated conditions to a Permit under this section, the Director may require an applicant to post a letter of credit, in a form satisfactory to the Director of Finance for the Town, in an amount equal to 120 percent of the total cost of replanting and maintaining the trees for a period of two years.

10. APPEAL OF DECISION

10.1 An applicant may, within 14 days of the date of:

- (i) the date of decision by the Director to refuse to issue a Permit or to issue a Permit with conditions, or,
- (ii) the making of an Order,

appeal to a Committee of Council in writing setting out the reasons for the appeal and request to be heard by the Committee. Such application for an appeal shall include the non-refundable fee as set out in Schedule "B: to this By-law.

10.2 On an appeal the Committee may direct the Director to issue a Permit subject to such conditions the Committee may determine.

11. INSPECTION

11.1 An Officer and any person acting under the instruction of an Officer may, at all reasonable times, enter and inspect any land to determine if this by-law, or an Order or any condition of a Permit is being complied with.

- 11.2 If, after inspection, the Officer is satisfied that there is a contravention of this by-law or a Permit, the Officer may make an Order setting out particulars of the contravention and requiring the person to comply with this by-law or the Permit.

12. ADMINISTRATION AND ENFORCEMENT

- 12.1 This by-law shall be administered by the Town's Legislative and Information Services Department, Planning and Development Services Department and Operations and Environmental Services Department and enforced by an Officer.
- 12.2 If a Court of competent jurisdiction should declare any section or part of a section of this by-law invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of the by-law shall be valid and shall remain in force.

13. OFFENCE

- 13.1 Any person who contravenes a section of the by-law is guilty of an offence and is liable,
- (a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per tree, whichever is greater; and
 - (b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per tree, whichever is greater.

13.2 Corporations

Despite Section 13.1, where the person convicted is a corporation,

- (a) the maximum fines in clause 13.1 (a) are \$50,000 or \$5,000 per tree; and,
- (b) the maximum fines in clause 13.1 (b) are \$100,000 or \$10,000 per tree.

- 13.3 Where this By-law or a Permit issued under this By-law directs or requires any matter or thing to be done by a person, in default of its being done by the person directed or required to do it, the matter or thing may be done under the direction of the Director, and the Town may recover the costs incurred by adding the costs to the tax roll and collecting them in the same manner as taxes.

- 13.4 If a person is convicted of an offence under this by-law, in addition to any other remedy or any penalty provided by law, 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 to plant or replant trees in such a manner and within such a period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

14. REPEAL

- 14.1 That By-law #69-98 be repealed.

READ a first and second time this
Tenth day of October, 2006

READ a third time and passed this
Tenth day of October, 2006

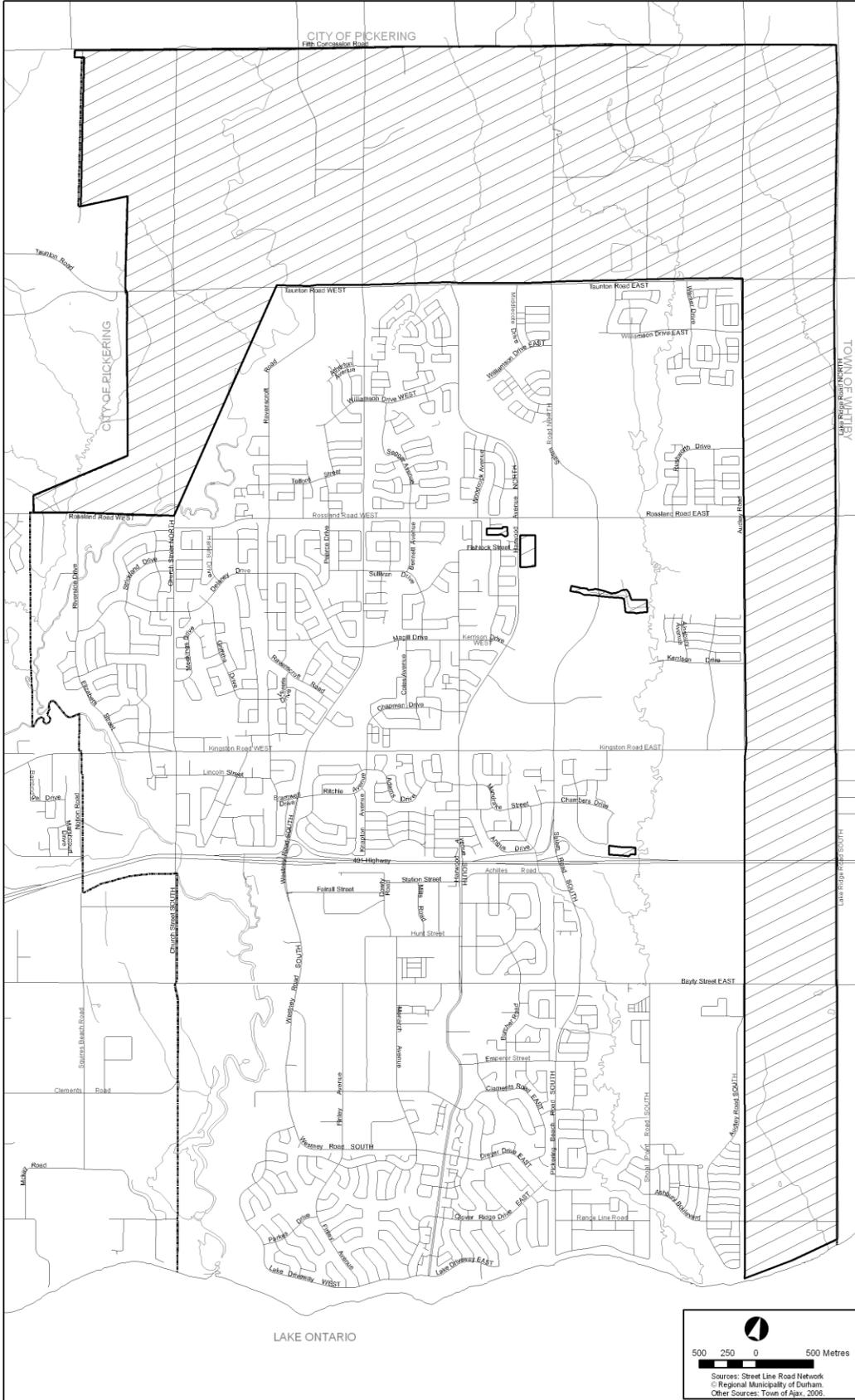
Mayor

Clerk

Schedule "A"

BY-LAW NUMBER 137-2006

SCHEDULE "A" TO BY-LAW _____



SCHEDULE "B"
TO BY-LAW NUMBER 137-2006

APPLICATION FEES

The following fees shall be payable:

13. An Application to destroy or injure \$25.00
a tree during one calendar year
14. An Application to destroy more than one \$100.00
tree during one calendar year
3. An Application submitted by a farmer to \$25.00
cut more than five trees in a calendar year
4. Where the applicant wishes to appeal a decision to Council \$500.00

If more than one fee is applicable, the Applicant shall only pay the greater of the applicable fees.

Schedule "C" BY-LAW 137-2006

SCHEDULE "C" TO BY-LAW _____

