

A second meeting about the vegetative buffer by-law was held with the municipality and representatives from the various lake associations. The public meeting to review the by-law amendment that was to be held on Saturday April 25th at the municipal offices has been changed to May 23rd to accommodate lake property owners. If you do have concerns about this by-law please plan on attending the May meeting or pass those concerns and comments on to your Lake Association or directly to the Mayor and council of Hastings Highlands.

To help with the understanding of how these changes impact us all, we have taken the proposed amended by-law and annotated it with background and discussions between representatives of Hastings Highlands, representatives of the Lake associations and members of the public.

Prior to the May 6th council meeting Hastings Highlands' staff proposed revisions to the proposed by-law. These were not adopted by council. The revisions have been included at the end of the document with comments.

It is important that any by-law balance between the need to preserve and protect our lakes and the ability to enjoy our properties as wise custodians of our land.

3.253.1 “VEGETATIVE BUFFER”¹ shall mean land within 15 m² (49.2 ft.) of the *high water mark* of a *water body*. No person shall cut or remove trees shrubs or ground cover within the natural vegetative buffer strip except for the removal of hazardous, dead or diseased trees or noxious plants³, a construction permit shall apply⁴. Excludes existing “as-built” buildings or property features⁵. A Shoreline work permit and site plan shall be required for all work within the Vegetative Buffer⁶.

- 1. The vegetative buffer is important to the health of our lakes and rivers since it filters runoff, protects banks from erosion, absorbs nutrients, provides flood control by slowing runoff, provides a canopy and therefore provides shade and acts as a habitat for wildlife. An effective vegetative buffer is critical for lake health. The greater the area of the shoreline covered in vegetation, the better for the lake.**
- 2. 15 metres is the current vegetative buffer width. This conforms to the official plan for Hastings County. The Ministry of Natural resources recommends a buffer of 30 metres. Factors such as soil type and degree of slope affect the width of the buffer required. Most of the cottage construction around our lakes is setback around 15 metres from the high water mark. This prompted a discussion on the impact of moving to a 30 metre buffer. There is a fire safety requirement for a clear area adjacent to structures, widening the vegetative buffer to 30 metres would affect the required setback for new construction. A 30 metre buffer could also interfere with existing septic beds which are typically setback 30 metres from lakes. Vegetation on and around septic beds can clog the weeping tiles.**
- 3. Removal of nuisance plants such as poplar trees was discussed, as was the trimming of vegetation to create sight lines. Other factors discussed were the removal of existing vegetation to allow more desirable plants to grow. The description of maintenance allowed inside the vegetative buffer is not the same as**

in the section on the “Access Corridor” where the wording states that the 3 metres of the buffer at the edge of the property line can not be disturbed. Hastings Highlands was asked to clarify the difference but declined until they have a legal opinion,

4. Clarification is requested on whether a construction permit is required to remove a bush, plants or tree which is not dead, diseased, noxious or hazardous. At present, staff can not answer
5. When the by-law takes effect the current property features of a lot are preserved. “Property features” *includes* layout and other things not specifically mentioned in the by-law. For example if there is grass growing in the vegetative buffer area it can be maintained as is. The structures which may be in the vegetative buffer area are maintained as well. Use of land in the area is limited by the Access Corridors provision. Staff indicated that the property features of the land are preserved if the property is sold. Although construction on the property may impact some property features, this does not mean that the other features are impacted by the by-law.
6. Staff could not clarify the requirements for a shoreline work permit and how this is different from a construction permit as noted in 4 above.

3.2.1 “ACCESS CORRIDOR(S)”⁷ shall mean an area or areas totaling up to a maximum of 20 metres⁸ (65.6 ft.) in width passing through the natural *vegetative buffer*. *Access corridor(s)* shall be permitted to provide access between the permitted use of the land⁹ and the water body. The *access corridor(s)* shall be created in such a way to prevent erosion and run-off to the *water body*¹⁰.

7. In the Access Corridor there are no restrictions on the type and maintenance of vegetation. If the current width of the access corridor on the lot exceeds the maximum width allowed under the proposed by-law, the current width is preserved.
8. Various formulae were discussed for the width of the access corridor. Twenty-five percent of the width of the lot was proposed as well as 25% to a maximum width. It was pointed out that there are currently a number of narrow lots where 25% would mean a tight unworkable Access Corridor. The county is discussing creating wider lots in the future where a per cent formula could lead to excessive Access Corridors.
9. Buildings as permitted by the zoning by-law for example a cottage.
10. Suggestions for the design of an access corridor included curving paths and non hardened surfaces to restrict run off. Hastings Highlands staff need to determine if there would be restrictions under the proposed by-law on some design features such as non porous path ways.

3.228.1 “SHORELINE ACTIVITY AREA” shall mean an area along the *shoreline* of a lot that is designed and used for one or a combination of the following: a boat house, boat launch, dock, a float plane hangar, a beach¹¹.

The *shoreline activity area* shall not exceed the width of the *access corridor* and shall be the area where a dock, boat house or marine facility shall be located. A *shoreline activity area* may be divided where more than one access corridor is developed or constructed provided that the cumulative width does not exceed 20 metres (65.6 ft.).

The shoreline activity area shall not be closer than 3 metres to the side yard property line; no person shall disturb¹² the natural vegetation buffer within 3 metres of either property line¹³.

11. Development in the shoreline area is restricted by municipal zoning by-laws and the Ministry of Natural Resources and would require necessary permits. This list is suggestive of potential uses.

12. It is not clear that these are the same restrictions that apply in the Vegetative Buffer section of the by-law. Disturb can imply a total restriction on any activity such as raking of leaves or cleaning of fallen branches. There is no indication of why it is worded differently. Staff does not have an answer for this.

13. The current by-law calls for a setback of 3 metres from the property line for any structure. With the 3 metre wide vegetative area, a greater setback may be required to allow for a clear area for fire prevention.

4.5 VIOLATIONS AND PENALTIES¹⁴

(1) Penalty. Every person who contravenes this By-Law, and if the person is a corporation, every director or officer of the corporation who knowingly concurs in the contravention, is guilty of an offence and on conviction is liable,

(a) On a first conviction to a fine of not more than \$25,000.00; and

(b) On a subsequent conviction to a fine of not more than \$10,000.00 for each day or part thereof upon which the contravention has continued after the day on which the person was first convicted.

(2) Corporation. Where a corporation is convicted under subsection (1) the maximum penalty that may be imposed is,

(a) On a first conviction a fine of not more than \$50,000; and

(b) On a subsequent conviction a fine of not more than \$25,000 for each day or part thereof upon which the contravention has continued after the day on which the corporation was first convicted,

and not as provided in subsection (1).

3. Order of Prohibition. Where a conviction is entered under subsection (1), 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 make an order prohibiting the continuation or repetition of the offence by the person convicted.

4.5.1 Proceeds of fines. If an offence has been committed under this by-law, and a proceeding in respect of the offence is undertaken by the municipality and a conviction has been entered, the proceeds of any fine in relation to the offence shall be paid to the treasurer of the municipality and section 2 of the

Administration of Justice Act and section 4 of the Fines and Forfeitures Act do not apply in respect of the fine.

14. These are penalties outlined in the Planning Act and are not specific to the by-law for the vegetative buffer. The current wording of section 4.5 is

“Any person who contravenes any provisions of the By-law is guilty of an offence, and for the purposes of this By-law, each day that a breach of this By-law continues shall constitute a separate offence and on summary, the offender shall be liable to be fined under the provisions of the Provincial Offences Act. The conviction of an offender upon the breach of any of the provisions of this By-law shall not operate as a bar to a prosecution against the same offender upon any continued or subsequent breach of any such provision and any court of competent jurisdiction may convict any offender repeatedly for repeated breaches of the By-law.”

It was indicated that revenue from fines and penalties goes to municipal revenues.

Proposed Revision May 6, 2015

The revisions have included a definition of a tree as well as a person. The explicit spelling out of Penalties is replaced by referencing the Planning Act where the penalties are spelled out. The use of the new definitions is illustrated by their inclusion in the Waterfront Residential Zone.

3.2.1 “ACCESS CORRIDOR” shall mean that part or parts of a lot having a cumulative width not greater than 20 metres (65.6 ft.) passing through a vegetative buffer that provides access between the permitted uses of the lot and the abutting waterbody.

3.228.1 “SHORELINE ACTIVITY AREA” shall mean an area located on a shoreline and within an access corridor or the extension of the access corridor into the waterbody that is designed and used for one or a combination of the following: a boathouse, private; boat launch; dock; marine facility; a float plane hangar; or a beach.

3.249.1 “TREE” shall mean a plant of any species of woody perennial including its root system.

3.253.1 “VEGETATIVE BUFFER” shall mean an area consisting of trees, shrubs, ground cover or other form of vegetation located within 15 metres (49.2 ft.) from the high water mark of a waterbody, but which does not include land located within an access corridor or shoreline activity area.

3.184 “PERSON” shall include an individual, association, firm, partnership, corporation, trust, organization, trustee or agent and the heirs, successors, executors or legal representatives of a person.

4.5 VIOLATIONS AND PENALTIES Every person who contravenes any of the provisions of this By-law and, if the person is a corporation, every director or officer who knowingly concurs in the contravention, shall be guilty of an offence and, on conviction, shall be liable to the penalties provided in the Planning Act, R.S.O. 1990, CHAPTER P.13, as amended, or any successor thereto.

Section 10 WATERFRONT RESIDENTIAL ZONE:

10.3(c)(ii) No person shall injure, damage or destroy any tree, shrub, ground cover, or other forms of vegetation located within a vegetative buffer.

10.3(c)(iii) Section 10.3(c)(ii) shall not apply with respect to the minimal pruning of any tree, shrub, ground cover or other forms of vegetation or the removal of any hazardous, dead or diseased tree and/or noxious vegetation. For the purposes of this subsection, “pruning” shall mean the cutting away of parts of a tree for reasons including but not limited to safety concerns, maintenance of legislated clearances, tree health and vitality, disease control, and the removal of deadwood or crown thinning for tree health.

10.3(c)(iv) No person shall construct or install an access corridor in a manner which results in the erosion of soil, ground, gravel, rock or sand into a waterbody.

10.3(c)(v) Despite the definition of vegetative buffer provided in section 3.253.1, the Municipality may require that a vegetative buffer of more than 15 metres from the high water mark of a waterbody be established or maintained if required by any legislation or by-law.

10.3(e) Shoreline Activity Area 10.3(e)(i) No shoreline activity area shall be located within 3 metres of any side lot line or the extension of the side lot line into the waterbody.

10.3(e)(ii) No shoreline activity area shall exceed the width of an access corridor. A shoreline activity area may, however, be divided where more than one access corridor is developed or constructed provided that the cumulative width does not exceed 20 metres (65.6 ft.). 10.3(e)(iii) A boathouse, private, boat launch, dock, marine facility and a float plane hangar shall only be located within a shoreline activity area.