

December 15, 2021

Township of Muskoka Lakes
1 Bailey Street
P.O. Box 129
Port Carling, ON P0B 1J0

Dear Chair Bridgeman and Planning Committee Members,

**Re: Planning Committee Agenda Item 11a –
Report from Chief By-law Enforcement Officer re: Site Alteration By-law**

The Muskoka Lakes Association (“MLA”) and Friends of Muskoka (“FOM”) have had the opportunity to review the report from Mr. Kennedy, Chief Municipal By-law Enforcement Officer, and the proposed new Site Alteration By-law attached to the report as Appendix II.

As Mr. Kennedy notes, there has been a public outcry over the course of this year about indiscriminate and excessive site alteration during the development process. The MLA and FOM appreciate Staff reviewing the Township’s Site Alteration By-law and proposing changes for Committee’s consideration, especially during this particularly busy time with unusually large demands on your time.

The proposed new Site Alteration By-law includes many changes which we believe will improve enforcement and encourage compliance with the Township’s site alteration rules. However, the Township has three separate by-laws that deal with site alteration (Site Alteration, Site Plan Control and Tree Preservation), and we recommend a comprehensive review of all three to ensure that the type of destruction that occurred on Sugarloaf Island is never able to happen again.

We have a number of suggestions for the proposed new Site Alteration By-law which we have summarized below and noted in the attached mark-up, which we hope you will consider.

Two Scenarios where Illegal Site Alteration Tends to Occur

We are confident that many builders, contractors and property owners comply with the Township’s development rules. Unfortunately, a tremendous amount of damage is being done by those who don’t comply. There are two problem scenarios:

1. A contractor and property owner is not aware of the development rules, which we suggest be addressed as follows:
 - Education/Communication: We agree that better communication and education of the Township’s various by-laws is needed, and that this must occur before development work begins.
 - MLA and FOM Assistance: We repeat our offer to help with the Township’s communications and education by circulating the Township’s materials to our members and hosting a webinar where representatives of the Planning Department could explain the bylaw requirements.

- Planning Department Presentation: We also repeat our suggestion that the Planning Department may wish to host an online presentation similar to the one hosted by Seguin's Planning Department in May 2019, explaining the planning and building regime. Seguin's PowerPoint presentation 'Building in Seguin' is available on its website and is an excellent resource for contractors and landowners in Seguin: <https://www.seguin.ca/en/business-development/resources/Building/Building-Dept-Workshop-2019-website.pdf>
 - Contractor Licensing: We repeat our request that the Township implement a licensing requirement for contractors, arborists and other parties who alter the landscape; before a license is issued, the party will acknowledge receiving and understanding information describing the Township's various development rules.
 - Interim Alternative of Contractor Registration: In the interim before a full licensing program is created, contractors, arborists and other parties who alter the landscape should be required to register with the Township (as is done in Haliburton, for example); a registration requirement will be faster and less costly to implement than a full licensing system, and will also require the party to acknowledge receiving and understanding information describing the Township's various development rules.
2. A contractor (and perhaps the property owner) is aware of the development rules, but chooses to ignore them. This is a particular problem where contractors 'prepare' a site (including through tree cutting and blasting) before applying for a building permit or site plan agreement.
- A particular concern is large scale site alteration carried out before a building permit is received and before a site plan agreement is entered into. The very sad reality is that rock blasted from the Precambrian shield cannot be put back – and large mature trees that have been cut cannot be replaced. As result, the Township rules must motivate contractors and property owners not to blast, cut or otherwise alter the landscape without prior approval.
 - The Draft Site Alteration By-law requires a Permit to do site alteration, including blasting, and includes many changes to help motivate compliance.
 - However, the Draft Site Alteration By-law does not apply when there is a building permit or site plan agreement (SPA).
 - Significant environmental destruction is being done when contractors 'prepare' a site, including through tree cutting and blasting, without receiving a Permit under the Site Alteration By-law, in anticipation of later applying for a building permit or site plan agreement.
 - We recommend that Committee ask Staff to consider how to prevent this preparation work from being done without a Permit. For example, perhaps Staff delays issuing a building permit or site plan agreement when there has been illegal site alteration 'preparation', until remediation work is completed. Please consider asking Staff to address this in their upcoming review of the Site Control By-law.

Comments on Draft Site Alteration By-law

As noted above, we have marked up the draft Site Alteration By-law with our suggested changes (attached). These include the following:

1. Amount of Fines in Schedule C: We recognize that set fines of up to \$1000 may be easier to administer, but we believe **the fines proposed in Schedule C are far too low to be a deterrent to illegal site alteration**. For example, a fine of \$1,000 for items #1 to 7 means that someone is able to cut trees, blast and otherwise alter a site without a Permit, and only have to pay \$1000. Item #13 means that someone may ignore a remediation order or stop work order and only have to pay \$1000. We recommend significantly increase larger fines in order to have any realistic chance of deterring illegal site alteration.

The Staff report suggests that Committee consider obtaining a legal opinion regarding its ability to charge Special fines per Section 429(2)(d) of the Municipal Act which could be over and above the typical maximum of \$100,000. We do not recommend obtaining legal advice on this. The purpose of a Special fine is to eliminate or reduce any economic advantage or gain from contravening the by-law, and this would be extremely difficult for the Township to establish. With continuous offences and multiple offences (provided these terms are defined), the Township will be able to charge fines greater than \$100,000.

2. Denying a Permit based on Detrimental Effect on Natural Environment (s. 6.1(c)(viii)): The by-law continues to give the Director the authority to deny a permit where he/she believes there will be 'a detrimental effect on the natural environment of the area'. Arguably, any amount of blasting or tree cutting damages the natural environment, and we suggest that elected Council members should provide the Director with direction on what amount and type of site alteration is permitted. For example, blasting that changes the landscape visible from the lake, or that changes the character of the natural environment (by removing a rock cliff, for example), should not be permitted.
3. Details in a Permit (s. 6): We recommend that the By-law set out the information that will be included in the Site Alteration Permit. For example, the location of silt fencing, which trees may be removed, the location of permitted blasting, and where Fill will be deposited.
4. Security Deposits (s. 5): We note that the current ability to require a security deposit to accompany an application for a site alteration permit has been removed. The term 'Financial Assurance' has been added in sections 7.3 and 9.7. We recommend that terms be added to define the meaning of Financial Assurance, and set out details such as how the amount of Financial Assurance will be determined, how it is drawn down, when it is returned, and other terms. A precedent which may be helpful is in Schedule A of Newmarket's Site Alteration By-law [here](#).
5. Failure of Owner to Remediate (s. 9.7): We have suggested in the mark-up additional language where a remediation order has been issued and an Owner fails to remediate a property. Our suggesting wording brings this section into line with section 446 of the Municipal Act, and also includes terms from Ottawa's site alteration by-law ([here](#)) that we recommend be included.

6. Contravention of an Order (s. 11): We recommend that contraventions of a Site Alteration Permit or remediation or stop work order also constitute an offence under the By-law, as they are in s. 14(a) of the current site alteration by-law.
7. Enhanced Enforcement (s. 11): We recommend adding a new section providing that the Owner is presumed to have caused or permitted site alteration, similar to Section 11 of the Newmarket site alteration by-law ([here](#)). This will assist with enforcement of the By-law. This will address concerns such as the one that arose with a property on Sugarloaf Island where the owner blamed site alteration on a neighbour's contractor.
8. Tree Inventory in Application (Schedule A): We recommend that an application for a site plan permit include a tree inventory showing the location, species and size of all trees on the property. We believe this will help to prevent illegal tree cutting.
9. Permitted Amount of Blasted Rock (s. 3.1(l)): We question why the limit on the amount of blasted rock for a structure set out in the current Site Alteration By-law (345 cubic metres) has been removed?
10. Quality of Fill (s. 9.2(c)): The Township may wish to provide details of the quality of Fill permitted to be used. Some municipalities have included in their site alteration by-laws provisions to prevent the use of contaminated soil – including soil quality parameters for fill and chain of custody protocols. An example is the Innisfil bylaw [here](#).
11. Name of Permit: We suggest giving the Permit a name that will make it clear that it is issued under this Site Alteration By-law and distinguish it from other permits issued by the Township, such as building permits. For example, "Site Alteration and/or Blasting Permit".
12. Minor changes: We have suggested some minor wording changes and use of capitalized defined terms, which we hope will improve the interpretation of the by-law by the Township and the public. Some examples include Permit, Owner, Site, Alteration, Grade, Officer and Vegetation.

Thank you for considering our comments, which we hope are helpful. Thank you also for your continued efforts to protect Muskoka's natural environment and shorelines on behalf of our community and future generations.

Sincerely,



Susan Eplett
Vice-President and
Chair, Government & Land Use Committee
Muskoka Lakes Association



Ken Pearce
Director and Secretary,
Friends of Muskoka

cc. David Pink, Director of Development Services and Environmental Sustainability
Rob Kennedy, Chief Municipal By-law Enforcement Officer