



CORPORATION OF THE TOWN OF NEWMARKET

BY-LAW NUMBER 2007-71

A BY-LAW TO PROHIBIT OR REGULATE THE DESTRUCTION OR INJURING OF WOODLOT TREES.

WHEREAS Sections 135 to 140 of the *Municipal Act, 2001* as amended (the "**Act**") provide authority to local municipalities to regulate and prohibit with respect to trees;

AND WHEREAS Section 425(1) of the *Act* provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

AND WHEREAS Section 425(3) of the *Act* provides that a municipality may pass a by-law providing that a director or officer of a corporation who knowingly concurs in the contravention of a by-law by the corporation is guilty of an offence;

AND WHEREAS Section 429 of the *Act* authorizes a municipality to establish a system of fines for offences under a by-law;

AND WHEREAS Section 436 of the *Act* provides that a municipality may pass a by-law providing that the municipality may enter upon land for the purpose of carrying out inspections;

AND WHEREAS Section 446 of the *Act* authorizes a municipality to direct that in default of any work being done by a person required to do the work under a by-law, that the work may be done at the person's expense and the cost collected in like manner as taxes;

AND WHEREAS Council has determined that it is desirable to enact such a by-law for the purpose of achieving the objectives of the Community Strategic Plan and the Official Plan through environmental protection and natural heritage preservation while also having regard to best management practices of Arboriculture and Urban Forestry;

THEREFORE BE IT ENACTED by the Municipal Council of the Corporation of the Town of Newmarket ("**Council**") as follows:

1. DEFINITIONS

1.1 In this by-law:

- (a) "**Arboriculture**" means the art, science, technology and business of tree care. It deals with the tree as a basic management unit. Arboriculture is practiced by Arborists trained to promote tree health, discern tree problems and take measures to correct them.
- (b) "**Arborist**" means a person who is a specialist or expert in the area of the care and maintenance of trees and includes an arborist qualified by the Ontario Training and Adjustment Board Apprenticeship and Client Services Branch, a certified arborist qualified by the International Society of Arboriculture, a consulting arborist registered with the American Society of Consulting Arborists, a registered professional forester or a person with other similar qualifications as approved by the Commissioner.
- (c) "**Commissioner**" means the Commissioner of Legal and Development Services and his or her designate(s).
- (d) "**Emergency Work**" means work required to be done immediately in order to prevent imminent personal injury or imminent property damage including soil erosion, drain repairs, utility repairs, and structural repairs to a building.

- (e) **"Injure"** and **"Injuring"** means to cause lasting damage to a tree which has the effect of inhibiting or terminating its growth, but does not include pruning or removing branches for maintenance purposes using best management practices of Arboriculture and Urban Forestry.
- (f) **"Multiple Offence"** for the purpose of this by-law means an offence in respect of two or more acts or omissions each of which separately constitutes an offence and is a contravention of the same provision of this by-law.
- (g) **"Permit"** means a permit to injure or destroy trees issued under this by-law.
- (h) **"Permit Holder"** means an applicant who has been issued a permit.
- (i) **"Protected Tree"** means any tree situated within a woodlot;
- (j) **"Regular Fine"** means a fine levied pursuant to Section 13.5.
- (k) **"Replacement Tree Planting Fund"** means the fund set aside for the purpose of planting trees in locations within the Municipality other than the property where a tree has been injured or destroyed.
- (l) **"Special Fine"** has the meaning set out in Subsection 13.6(c).
- (m) **"Town"** means the Corporation of the Town of Newmarket.
- (n) **"Tree"** means any species of woody perennial plant, including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity, provided that where multiple stems grow from the same root system, the number of trees shall be the number of stems that can be counted at a point of measurement 1.37 metres from the ground.
- (o) **"Tree Protection Plan"** means a plan that identifies the location, species and size of trees on a property and provides tree protection measures, including but not limited to protective barriers and hoarding.
- (p) **"Urban Forestry"** means the sustained planning, planting, preservation, protection, maintenance, and care of trees, forests, green spaces and related resources in and around the Town of Newmarket.
- (q) **"Woodlot"** means any of the lands designated as a woodlot on Schedule "A" hereto.

2. EXEMPTIONS

2.1 This by-law does not apply to:

- (a) activities or matters undertaken by a municipality, utilities as approved by the commissioner, or a local board of a municipality;
- (b) activities or matters undertaken under a license issued under the *Crown Forest Sustainability Act, 1994*;
- (c) the injuring or destruction of trees by a person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying, or his or her agent, while making a survey;
- (d) the injuring or destruction of trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under Section 41, 51, or 53, respectively, of the *Planning Act*, as amended or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- (e) the injuring or destruction of trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under Section 70.2 of the *Planning Act*, as amended or as a requirement of an agreement entered into under the regulation;

- (f) the injuring or destruction of trees by a transmitter or distributor, as those terms are defined in Section 2 of the *Electricity Act, 1998*, as amended for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- (g) the injuring or destruction of trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*;
- (h) the injuring or destruction of trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that Act; and
 - (ii) on which a pit or quarry is a permitted land use under a by-law passed under Section 34 of the *Planning Act*, as amended; and
- (i) Emergency Work.

3. PROHIBITION

3.1 No person shall cause or permit the injuring or destruction of a protected tree;

- (a) unless exempted by Section 2.1 of this by-law; or
- (b) except in accordance with a permit.

3.2 No person shall:

- (a) contravene this by-law;
- (b) contravene the terms or conditions of a permit;
- (c) cause or permit the contravention of the terms or conditions of a permit;
- (d) fail to comply with an order issued under this by-law; or
- (e) remove or deface any notice or order that has been posted pursuant to this by-law.

4. PERMITS

4.1 Unless otherwise exempted by this by-law, every person who intends to injure, destroy or remove a protected tree shall apply for a permit.

4.2 The Town hereby delegates to the Commissioner, the power to issue a permit and to impose conditions to such permits in accordance with best management practices of Arboriculture and Urban Forestry.

5. APPLICATION PROCESS

5.1 Every person who intends to injure or destroy a protected tree where a permit to do so is required shall first complete and submit an application for a permit in the form approved by the Commissioner.

5.2 An application for a permit shall:

- (a) be accompanied by the non refundable fee prescribed in the Town of Newmarket's Fees and Charges By-Law;
- (b) state the purpose for which the permit is required;
- (c) contain a description of the proposed activity;

- (d) include a survey showing the location of all trees on the property;
 - (e) if required by the Commissioner, include an Arborist's report identifying the location, species, size and condition of all trees on the property and describing protection measures to be implemented;
 - (f) if required by the Commissioner, include a Tree Protection Plan identifying the location, species and size of trees on the property and illustrating details of protection measures including protective barriers and hoarding to be implemented to protect trees that are to be retained, if required by the Commissioner;
 - (g) include landscaping and replanting plans;
 - (h) contain the written consent of the adjacent property owner if the base of the tree to be injured or destroyed straddles a property line with that adjacent owner; and
 - (i) contain the written consent of the owner of the property where the subject trees are located, if the applicant is not the owner of that property.
- 5.3 If an applicant does not provide all the documentation required by the Commissioner within the timeframe specified by the Commissioner, or if the application is two (2) years old and the applicant has not taken any action to provide the Commissioner with all of the required documentation in the last six months, the applicant shall be deemed to withdraw its application and shall not be entitled to any refund of any payments made. The Commissioner may close the application file when the applicant withdraws or is deemed to withdraw the application.
- 5.4 Upon receipt by the Town of an application for a permit, the owner of the subject property shall allow the Commissioner to enter upon his or her property and undertake such site inspections as may be required to consider the application. The Commissioner, and any assistant, may undertake a site inspection prior to, during and after the performance of the activity proposed in the permit application.

6. ISSUANCE OF A PERMIT

- 6.1 The Commissioner shall not issue a permit for the injury or destruction of a protected tree where:
- (a) the application is incomplete;
 - (b) the information required by Section 5.2 has not been provided to the satisfaction of the Commissioner;
 - (c) Trees are healthy; or
 - (d) environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved.
- 6.2 Notwithstanding Section 6.1(c) the Commissioner may issue a permit if:
- (a) Trees are causing or are likely to cause structural damage to load bearing structures or roof structures;
 - (b) Trees are in poor condition and cannot be maintained in a healthy and safe condition;
 - (c) Trees are growing in inappropriate locations, as certified by the Commissioner, and cannot be maintained on a routine basis due to restrictive site conditions;
 - (d) Trees are located on property where a building permit has been obtained, provided that the trees must be injured or destroyed to facilitate construction in accordance with plans approved by the Town; or
 - (e) Injury or destruction is required in order to remediate contaminated soil.

7. PERMIT CONDITIONS

7.1 The Commissioner may issue a permit subject to those conditions that s/he deems necessary, including but not limited to:

- (a) the manner and timing in which the injuring or destruction of trees is to be carried out;
- (b) the qualifications of persons authorized to injure or destroy trees;
- (c) the protection of trees in accordance with best management practices of Arboriculture and Urban Forestry;
- (d) the requirement of compliance with the *Migratory Birds Convention Act, 1994* (Canada), and the regulations thereunder;
- (e) the requirement for the planting and maintenance of replacement trees in accordance with landscaping and replanting plans submitted by the applicant and approved by the Commissioner;
- (f) monies or a letter of credit in a form satisfactory to the Commissioner be delivered to the Town in an amount sufficient to cover the costs of any replacement trees, and the maintenance of the replacement trees for up to two (2) years; and/or where replacement is not physically possible on site, the Commissioner may require that replacement trees be planted at another suitable location or require that payment for each replacement tree not replanted on the property be made into the Town's Replacement Tree Planting Fund. The payment for each such tree shall be the cost of each street tree planting as set out in the Town's Fees and Charges By-Law;
- (g) where a property is not subject to site plan approval, the applicant shall provide a written undertaking and release to ensure that any work is carried out and maintained in accordance with landscaping and replanting plans approved by the Commissioner;
- (h) specifying measures to be implemented to mitigate the direct and indirect effects of the injuring or destruction of trees on the natural environment; and/or
- (i) that the owner of the property enter into an agreement which may be registered on title to the subject lands containing such conditions that the Commissioner considers necessary to ensure that the proposed activity will be undertaken in accordance with the plan approved by the Commissioner.

7.2 A permit issued pursuant to this by-law shall expire one year after the date of issuance, provided that the Commissioner may, upon the request of the owner, renew the permit for a further period of one year.

7.3 A decision regarding an application for a permit shall not be made by the Commissioner until such time as all the required documents have been filed, the applicable fee has been paid and any required inspections have been undertaken.

7.4 An application for a permit shall not be deemed to be received by the Town until such time as all requirements under Section 5.2 of this by-law have been fulfilled by the applicant.

8. COMPLIANCE

8.1 A permit holder shall comply or ensure the compliance with all of the provisions and conditions of the permit and this by-law.

8.2 A permit holder shall ensure that the permit is securely posted on the property from which the trees are to be injured or destroyed, in a location visible from the street for the period during which work is undertaken to injure or destroy a tree.

- 8.3 Failure to comply with any provision or condition of a permit or an order issued under this by-law or any other provisions of this by-law may result in the revocation of the permit by the Commissioner, in addition to any other enforcement proceedings against the permit holder as permitted by law.
- 8.4 The Commissioner may revoke a permit at any time if it was issued because of mistake, or if the permit holder provided false or incorrect information.
- 8.5 Where a permit has been revoked, the permit holder shall immediately cease or ensure the immediate cessation of all activities for which the permit was issued.

9. PROPERTY OF THE TOWN

- 9.1 A permit is the property of the Town and is not transferable unless authorized by the Commissioner.

10. POWERS OF ENTRY

- 10.1 The Town may enter on a property at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- (a) the provisions of this by-law;
- (b) an order issued under this by-law; or
- (c) an order made under Section 431 of the *Act*.

- 10.2 Where an inspection is conducted by the Town, the person conducting the inspection may,

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies and extracts;
- (c) require information from any person concerning a matter related to the inspection including their name, address, phone number and identification; and
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

- 10.3 The Town may undertake an inspection pursuant to an order issued under Section 438 of the *Act*.

- 10.4 The Town's power of entry may be exercised by an employee, officer or agent of the Town or by a member of a police force with jurisdiction, as well by any person under his or her direction.

11. ORDERS AND REMEDIAL ACTION

- 11.1 If a person injures or destroys a protected tree in contravention of any of the provisions of this by-law, the Town may issue an order to the person, and to the owner of the property on which the tree is being injured or destroyed, to discontinue the contravening activity. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the property on which the contravention occurred, and the date by which there must be compliance with the order.

- 11.2 If a person has contravened a provision of this by-law, the Town may issue a work order to the person who contravened or permitted the contravention of the by-law, as well as to the owner of the property on which the contravention occurred, to do work to correct the contravention. The order shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the property on which the contravention occurred, and the date by which there must be compliance with the order. The order may also provide that if the person or owner fails to correct the contravention, the Town may do the work to correct the contravention, including the planting of replacement trees, at the expense of the person and the owner.
- 11.3 If the Town has issued an order directing or requiring that a person or an owner do a matter or thing to correct a contravention of this by-law, and the person or owner fails to correct the contravention, the Town may enter upon the property between the hours of 7:00 a.m and 8:00 p.m any day of the week to do all work necessary to correct the contravention, including the planting of replacement trees, and the Town may recover the cost of the doing of the matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll of the owner and collecting them in the same manner as property taxes.
- 11.4 An order may be served by:
- (a) delivering it personally to the owner and/or the person conducting work on the owner's property;
 - (b) sending it by registered mail to the last known address of the owner, which service shall be deemed effective five (5) days after mailing, which deemed service may be rebutted by the person proving on the balance of probabilities that they did not receive the order; or
 - (c) posting it on the owner's property.

12. APPEALS

- 12.1 An applicant for a permit may appeal to Council:
- (i) if the Commissioner refuses to issue a permit, within 30 days after the refusal;
 - (ii) if the Commissioner fails to make a decision on the application, within 45 days after the application is deemed to have been received by the Commissioner; or
 - (iii) if the applicant objects to a condition in the permit, within 30 days after the issuance of the permit.
- 12.2 Where an order has been served, the owner or the person to whom the order is being served may apply for a hearing to appeal the order to Council within thirty (30) days of being served with the order.

13. OFFENCE

- 13.1 Any person who contravenes any provision of this by-law; the conditions of a permit; or an order issued under this by-law; is guilty of an offence.
- 13.2 Any officer or director of a corporation who knowingly concurs in the contravention of any provision of this by-law; the conditions of a permit; or an order under this by-law; is guilty of an offence.
- 13.3 If a condition of a permit issued under this by-law has not been complied with, the contravention of the permit shall be deemed to be a continuing offence for each day or part of a day that the permit condition is not complied with.
- 13.4 If an order has been issued under this by-law, and the order has not been complied with, the contravention of the order shall be deemed to be a continuing offence for each day or part of a day that the order is not complied with.

- 13.5 Every person who is guilty of an offence under this by-law shall be subject to the following penalties:
- (a) upon conviction, to a fine of not less than \$500 and not more than \$100,000;
 - (b) upon conviction for a continuing offence, to a fine of not less than \$500 and not more than \$10,000 for each day or part of a day that the offence continues. The total of the daily fines may exceed \$100,000.
 - (c) upon conviction of a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$500 and not more than \$10,000. The total of all fines for each included offence is not limited to \$100,000.
- 13.6 In addition to any other remedy of penalty provided by law, the court in which the conviction has been entered, or any other court of competent jurisdiction may make an order:
- (a) prohibiting the continuation or repetition of the offence by any person;
 - (b) requiring the person to replant or have replanted such trees in such manner and within such time period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees;
 - (c) require the person to pay a special fine, in addition to a regular fine, which fine shall eliminate any economic gain or advantage derived by the person as a result of contravening this by-law.

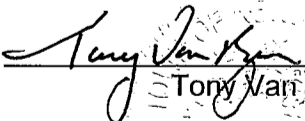
14. VALIDITY AND INTERPRETATION

- 14.1 Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the by-law requires otherwise.
- 14.2 If a court of competent jurisdiction declares any provisions of this by-law to be invalid or to be of no force and effect, it is the intention of Council in enacting this by-law that the remainder of the by-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

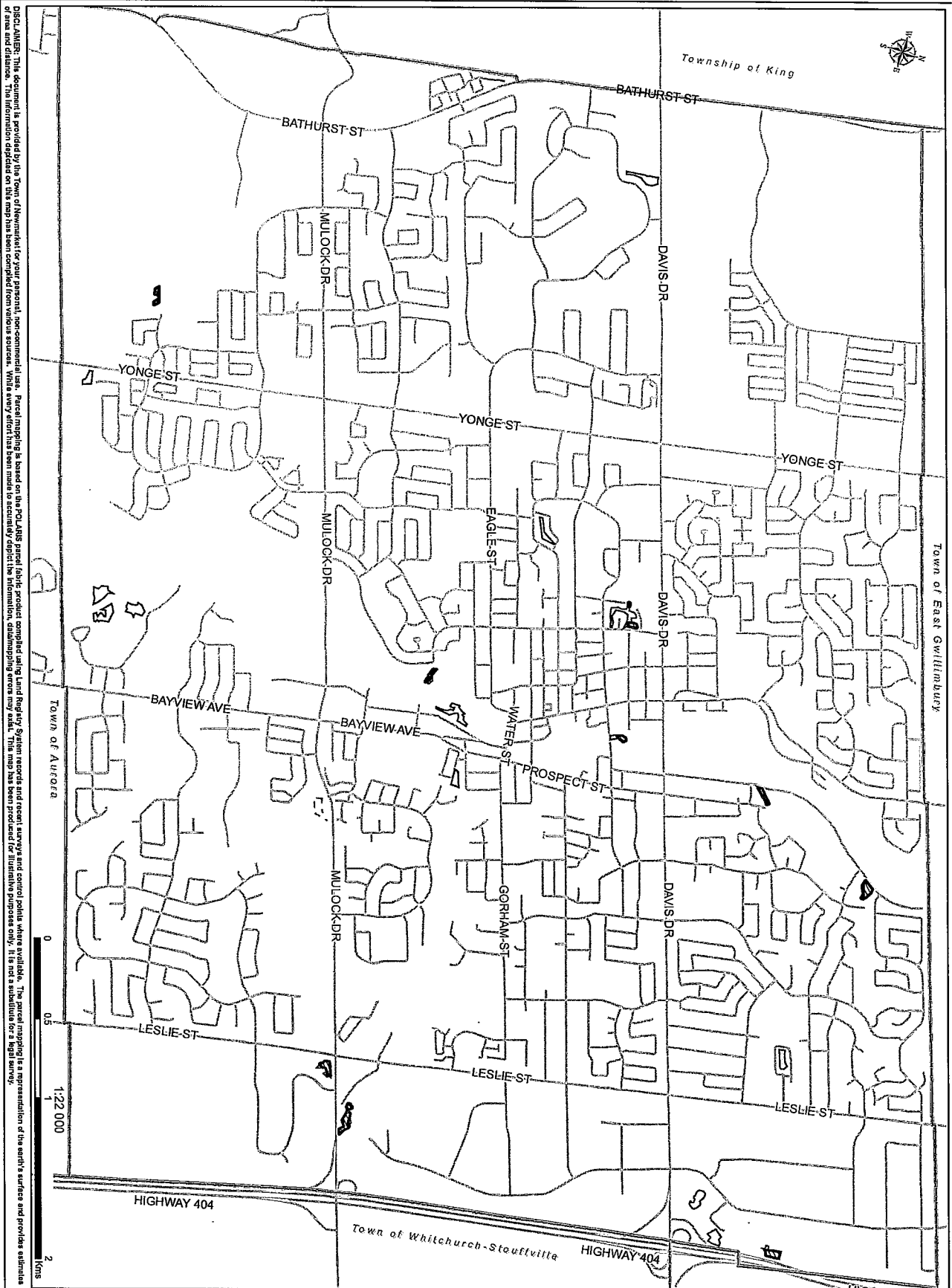
15. GENERAL

- 15.1 Schedule "A" shall form part of this by-law.
- 15.2 The short title of this by-law is the "Woodlot Preservation By-law"
- 15.3 This by-law shall come into effect on the date of its enactment.

ENACTED THIS 25TH DAY OF JUNE, 2007.


Tony Van Bynen, Mayor


Anita Moore, Town Clerk



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Town of Newmarket
**Woodlots -
 0.2ha to 1.0ha**

Legend

- Town Owned Woodlots - 0.2ha to 1.0ha (10)
- Woodlots - 0.2ha to 1.0ha (20)
- Roads
- Proposed Road
- Municipal Boundary



Designed & Produced by
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 Department of The Regional Municipality of York, 2005
 Town Owned Lands - The Town of Newmarket, 2008
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