

The Town of Niverville
Bylaw No. 857-23

A Bylaw of the Town of Niverville to conserve, prohibit, protect, restrict, and regulate the protection, preservation and removal of trees and vegetation and site alterations on shoreline and site alterations on public or private land within the Town of Niverville.

Section 232(1) of "*The Municipal Act*", C.C.S.M. c. M225 provides as follows:

"S.232(1) Council may, for municipal purposes, make by-laws respecting the following matters:

- (a) the safety, health, protection and well-being of people, and the safety and protection of property;
- (b) people, activities and things in, on or near a public place or a place open to the public, including parks, municipal roads, recreation centres, restaurants, facilities, retail stores, malls, and private clubs and facilities that are exempt from municipal taxation;
- (f) property adjacent to highways or municipal roads, whether the property is publicly or privately owned;
- (h) drains and drainage on private or public property;
- (o) the enforcement of by-laws."

And Whereas the Council for the Town of Niverville deems it desirable and in the public interest to enact a Site Alteration and Shoreline and Tree Preservation Bylaw for the environmental well-being of the Town; preserving trees and shrubs and protecting areas adjacent to the shorelines of retention ponds for the purpose of:

- Minimizing the destruction or injuring of natural vegetation and natural areas;
- Regulating and controlling the removal, maintenance and protection of natural vegetation;
- Improving water quality;
- Preventing soil erosion and provide bank stabilization;
- Creating a buffer zone for maintenance purposes;
- Protecting, promoting and enhancing the aesthetic values of land; and
- Minimizing geese populations.

THE TOWN OF NIVERVILLE, in Council assembled, enacts as follows:

Short Title

1. This By-law may be cited as "*The Site Alteration, Shoreline and Tree Preservation Bylaw*."

Definitions

2. In this By-law:

“Adjacent” shall mean abutting or contiguous;

“Alteration or Site Alteration” means a change in elevation from Existing Grade or Finished Grade resulting from:

- a) The placing or dumping of fill;
- b) The removal of topsoil;
- c) Placing, dumping, removal, or blasting of rock;
- d) Any other action that alters the Grade of land including the Altering in any way of a Natural Drainage Course on a Site; or
- e) Any combination of the above activities;

“Council” shall mean the Council of the Town of Niverville;

“Designated employee” means the person appointed by the Chief Administrative Officer to enforce or administer all or part of this By-law;

“Destroy” shall mean the removal of trees, shrubs and ground cover or harm resulting in the death, ruin or removal of trees, shrubs and ground cover by cutting, burning, uprooting, chemical application or other means including irreversible injury that may result from neglect, accident or design and the term “destruction” shall have a corresponding meaning; and means the removal of natural vegetation or harm resulting in the death, ruin or removal of natural vegetation by any means that may result from accident or design or site alteration. This definition will also mean the cutting or trimming of vegetation;

“Dumping or Dump” shall mean the depositing of fill in a location other than where the fill was obtained or the movement and depositing of fill from one location on a property to another location;

“Erosion” shall mean the detachment and movement of soil, sediment or rock fragments by water, wind, ice or gravity;

“Fill” shall mean any type of material capable of being removed from or placed on lands, including, but not limited to soil, stone, sod, turf, concrete, wood, stumps, rock, asphalt, granular material, either singularly or in combination;

“Grade” shall mean the elevation of the ground surface;

“Land (Lot)” shall mean a parcel of land, the boundaries of which are defined in the last registered instrument by which legal or equitable title to the said parcel was lawfully and effectively conveyed or which is a whole lot as shown on a Registered Plan of Subdivision subject to the provisions of the Planning Act;

“Municipality” shall mean the Town of Niverville.

“Officer” shall mean a person designated by Council as an Officer for the purposes of enforcing bylaws and for the purposes of exercising any power of entry under this Bylaw;

“Order” shall mean a directive requiring a person to stop the injuring or destruction of trees and vegetation, rehabilitate the land or plant or replant trees, shrubs, ground cover and vegetation in such a manner and within such a period as the Officer considers appropriate, including any treatment necessary to re-establish the trees, shrubs and ground cover and the natural vegetation of the shoreline;

“Owner” includes:

- a) The person who, for the time being, receives the rent of, or manages or pays the Municipal taxes on the property in question whether on their own account or as agent or trustee of any other person; or
- b) Any person, firm or corporation having control over any portion of the building or property under consideration and includes the persons in the building or property; or
- c) A purchaser of such land under an agreement for sale who has paid any Municipal taxes thereon after the date of execution of the agreement by both the vendor and purchaser; or

- d) A lessee, tenant or other occupant of the property who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of property;

“Permit (permitted, permitting) (verb)” shall mean to allow (an activity) without opposing or prohibiting;

“Person” shall mean any human being, association, firm, partnership, commercial enterprise, private club, incorporated company, corporation, contractor, agent, or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law, and the singular shall include the plural;

“Placing (place or placed)” shall mean the distribution of fill on lands;

“Private Land” shall include land which is owned by a Developer and where ownership is designed to transfer to the Town at a future date, including a retention pond and its shoreline;

“Proposed Grade” shall mean the proposed elevation of ground surface of land upon which fill is proposed to be placed or dumped, the grade altered, topsoil or rock removed;

“Public Land” shall include land which is owned or under the control of the Town, including a retention pond and its shoreline;

“Remove” means

- a) To move from a place or position occupied; or
- b) To transfer or convey from one place to another; or
- c) To take off; or
- d) To take away; withdraw; or
- e) To do away with; eliminate; or
- f) To mow down;

****Note:** “Removing” in reference to site alteration means any type of material extracted and taken away from lands and includes, but is not limited to, sand, soil, rock, stone, granular material, concrete, asphalt, either singularly or in combination;

“Retention Pond” shall mean a natural or human-made drainage or irrigation channel;

“Shrub” means a woody plant smaller than a tree and having a very short stem with low branches;

“Shoreline” means the land surrounding a retention pond with landscaped banks and/or vegetation, designed to provide additional storage capacity during rainfall events;

“Site” shall mean the area of land located within a shoreline:

- a) Containing any trees, shrubs and ground cover proposed to be injured;
Containing natural or native vegetation; and/or
- b) Where alteration will occur;

“Soil” shall mean material commonly known as earth, topsoil, loam, clay, subsoil, sand or gravel;

“Town” means the Town of Niverville;

“Tree” means any species of woody plant which, at maturity, is usually 5 or more metres in height, having one or more self-supporting trunks and includes the roots, branches, trunk, crown and all parts thereof.

“Vegetation” means plants growing around the perimeter of retention ponds and includes bulrushes, cattails and natural grasses.

“Vegetative buffer” shall mean rows of trees and shrubs planted next to buildings, roads, fences or other features.

2.0 Application of this Bylaw

2.1 This Bylaw shall apply to all public or private land and retention ponds within the Town of Niverville that are owned by the Town of Niverville or designed to have ownership transfer to the Town at a future date.

3.0 Prohibitions General

3.1 No person shall remove, damage or destroy any trees or shrubs, or forms of vegetation or permit or cause any other person to damage or destroy any forms of vegetation growing around the perimeter of retention ponds unless exempt by Section 4.0 of this Bylaw.

3.2 No person shall carry out or conduct development or permit another person to carry out or conduct development within a vegetative buffer.

3.3 No person shall leave, throw or deposit any refuse, waste or litter on any public or private shoreline.

3.4 No person shall continue to engage in any type of activity prohibited by this Bylaw when directed to stop by an Officer.

3.5 No person shall obstruct, hinder or otherwise interfere with an Officer while carrying out an investigation, making inquiries, or performing an inspection for the purposes of enforcing this Bylaw.

3.6 No person shall fail to comply with an Order issued under this Bylaw.

3.7 No person shall remove or deface an Order posted under this Bylaw.

3.8 No person shall place or remove fill, or cause or permit any site alteration on lands within the area defined as the shoreline in this Bylaw, except as noted in Section 4.0.

3.9 No person shall permit any site alterations within any areas designated as Wetlands in the Town.

3.10 No person shall permit or cause to be permitted any site alteration activities contrary to this Bylaw, unless exempt by Section 4.0 of this Bylaw.

3.11 Where a person has carried out a site alteration activity contrary to this Bylaw, that person or the owner shall be responsible for, and/or each be jointly responsible for the restoration of the site to the pre-existing conditions or to the satisfaction of the Town, or alternately provide payment to the Town to cover the cost of restoration.

4.0 Exemptions

- 4.1 The provisions of Section 3.0 of this Bylaw do not apply to:
- a) Activities or matters undertaken by the Town;
 - b) Activities or matters authorized by the Town;
 - c) The destruction or injury of trees required in the exercise of the rights or powers of a hydroelectric corporation or any public utility board or commission;
 - d) Activities or matters undertaken by the provincial government or federal government or their authorized agents;
 - e) Activities or matters authorized by the provincial government or federal government or their authorized agents;

5.0 Inspections

5.1 In accordance with the conditions set out in Sections 252(1) of The Municipal Act, an Officer 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) this Bylaw;
- b) a direction, requirement or Order made under this Bylaw; or
- c) an Order made under Section 242(1) of The Municipal Act in respect of a contravention of this Bylaw.

6.0 Enforcement

6.1 The Town or other person authorized by the Chief Administrative Officer to enforce the Municipality's by-laws may determine compliance with and enforce this by-law, and in the course of this activity may conduct any inspection they deem necessary.

6.2 Any person guilty of a breach of this by-law shall be liable for a penalty, the fees of which are outlined in the Niverville Fees & Fines Schedule. Response to the issued Offence Notice, payment or contestation, shall be made in accordance with directions provided on the front of the issued Office Notice. Voluntary payment of the set penalty may also be made at the Niverville Town Office.

6.3 Any person violating any provision of this by-law shall be liable for a penalty and if the penalty remains unpaid, the Town may add the cost to the property taxes of that person and collect those property taxes in the same manner as other property taxes.

6.4 If any term or provision of this Bylaw or the application thereof to any person shall to any extent be held to be invalid or unenforceable, the remainder of this Bylaw or the application of such term or provision to all persons other than those to whom it was held to be invalid or unenforceable, shall not be affected thereby and each term and provision of this Bylaw shall be separately valid and enforceable to the fullest extent permitted by law.

6.5 Bylaw 852-23 is hereby repealed upon the passing of this Bylaw.

DONE AND PASSED as a by-law of the Town of Niverville at Niverville in the Province of Manitoba this 3rd day of October 2023.

Mayor

Chief Administrative Officer

Read a first time this 19th day of September A.D. 2023.

Read a second time this 3rd day of October A.D. 2023.

Read a third time this 3rd day of October A.D. 2023.