



REPORT ADM-2017-042

TO: Mayor and Members of Council
FROM: Karen Landry, CAO/Clerk
MEETING DATE: December 6, 2017
SUBJECT: Outdoor Swimming Pool Enclosure By-law
Our File: CO1OUT

RECOMMENDATIONS

That Report ADM-2017-042 regarding Outdoor Swimming Pool Enclosure By-law be received; and

That Council hold a public meeting on February 15, 2018 at 7:00 p.m. to seek input on the proposed by-law; and

That staff report back to Council with the results of the public meeting and a proposed outdoor swimming pool enclosure by-law.

DISCUSSION

Purpose

The purpose of this Report is to schedule a public meeting regarding an outdoor swimming pool enclosure by-law.

Background

Council at its meeting held on February 1, 2017 as part of its Term of Council 2014-2018 Goals and Objectives identified the need to enact an outdoor swimming pool enclosure by-law in 2017.

Township records indicate the Township adopted the practice in the 1980's to require the owner of an outdoor swimming pool to obtain a permit.

The Township's current Zoning By-law contains a provision that states "Every open swimming pool shall be fully enclosed by an unclimbable fence, wall or other barrier not less than 1.5 metres in height, and all openings through such barrier shall be protected by latched gates."

Upon review of the legislation, it is essential for the Township to enact a by-law to establish a framework for the requirement to apply for and obtain an outdoor swimming pool enclosure permit for the health, safety and well-being of the inhabitants of the Township.

General By-law Provisions

The proposed by-law which is attached as Schedule A to this report:

- Requires the owner of lands to obtain an outdoor swimming pool enclosure permit prior to construction of an outdoor swimming pool
- An outdoor swimming pool is defined as a body of water which is:
 - Located outdoors above ground or in-ground on privately owned property
 - Contained in whole or in part by artificial means
 - Designed to contain water to a depth of 600 mm (24 inches) or more and does not include a storm water management pond or a pond located on lands zoned agricultural by the Township's zoning by-law
- Requires the owner of the lands to maintain the outdoor swimming pool enclosure in good repair and in compliance with the by-law
- Requires the outdoor swimming pool enclosure to be:
 - a minimum height of 1.5 metres (4 feet 11 inches)
 - located a minimum of 1.0 metre (3 feet 3 inches) from any other fence, wall or structure which may facilitate climbing over the outdoor swimming pool enclosure
 - composed of the following construction:
 - chain link fence; or
 - vertical board fence; or
 - wrought iron fence; or
 - such other equivalent alternative approved by the Township
- The gate that forms part of the outdoor swimming pool enclosure shall be self-closing, and equipped with a self-latching and locking device
- In the case of an outdoor swimming pool that is a hot tub, spa or whirlpool the outdoor swimming pool enclosure is not required provided the hot tub, whirlpool or spa is equipped with a substantial cover, capable of holding 90.72 kg (200 lbs), which is fitted to the hot tub, whirlpool or spa and is equipped with a locking device
- Not be directly accessible from a door of building unless the door is equipped with a locking device

Wellington County municipalities

All municipalities in Wellington County have passed an outdoor swimming pool enclosure by-law under the authority of the Municipal Act.

FINANCIAL IMPLICATIONS

In accordance with the Township's User Fee By-law, a fee for a swimming pool enclosure permit is \$210.00.

APPLICABLE LEGISLATION AND REQUIREMENTS

Municipal Act, 2001
Fees By-law 2017-075

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

BY-LAW NUMBER 2018-XX

A by-law to regulate enclosures for outdoor pools

WHEREAS Section 11 (2), paragraph 6, of the *Municipal Act, 2001*, S.O. 2001, c. 25 (hereinafter *the "Municipal Act 2001"*) authorizes a municipality to pass by-laws respecting the health, safety and well-being of persons;

WHEREAS Section 11 (3), paragraph 7, of the *Municipal Act 2001*, authorizes a municipality to pass by-laws respecting structures, including fences and signs;

WHEREAS Section 8 (3) of the *Municipal Act 2001*, authorizes a municipality to regulate or prohibit in respect of matters within their jurisdiction and to provide for a system of obtaining permits in relation to those matters;

WHEREAS the Council for the Corporation of the Township of Puslinch deems it necessary to regulate enclosures for outdoor pools within the Township of Puslinch;

NOW THEREFORE the Council for the Corporation of the Township of Puslinch enacts as follows:

1. DEFINITIONS

In this by-law:

"finished grade" means the level of the proposed or finished ground adjoining the **outdoor swimming pool** or a part of the **outdoor swimming pool enclosure**.

"Officer" means a police officer, municipal law enforcement officer or other person appointed by by-law to enforce the provisions of this By-law.

"Owner" includes a registered owner of the land and includes a lessee, tenant, mortgagee in possession or the person in charge of the land;

"Permit" means a permit issued pursuant to this By-law by the Township.

"Person" includes an individual, sole proprietorship, partnership, limited partnership, trust, corporation, and an individual in his or her capacity as a trustee, executor, administrator, or other legal representative;

"outdoor swimming pool" includes a body of water which is:

- (a) located outdoors above ground or in-ground on privately owned property,
- (b) contained in whole or in part by artificial means, and
- (c) designed to contain water to a depth of 600 mm (24 inches) or more,

and does not include a storm water management pond or a pond located on lands zoned agricultural by the applicable zoning by-law.

“**outdoor swimming pool enclosure**” means a fence, wall or other structure, together with any included doors or gates completely surrounding an **outdoor swimming pool**.

“**Township**” means the Corporation of the Township of Puslinch or the land within the geographic limit of the Corporation of the Township of Puslinch as the context requires.

2. GENERAL PROVISIONS

- (1) No **Person** shall excavate or construct, or cause or permit the excavation or construction of an **outdoor swimming pool** without an **outdoor swimming pool enclosure Permit**.
- (2) No **Person** shall place, cause or permit to be placed water in an **outdoor swimming pool** unless a final inspection has been completed under an **outdoor swimming pool enclosure Permit**.
- (3) No **Person** shall erect, cause or permit to be erected an **outdoor swimming pool enclosure** other than in accordance with approved plans.
- (4) The **Owner** of an **outdoor swimming pool** shall maintain an **outdoor swimming pool enclosure** in good repair and in compliance with the requirements of this By-law.
- (5) The **Owner** of an **outdoor swimming pool** shall ensure that a gate or a door of a building that forms part of the **outdoor swimming pool enclosure** is locked when the area is not in active use.
- (6) The **Owner** of an **outdoor swimming pool** that is a hot tub, whirlpool or spa shall ensure that the lid is closed and locked when not in active use.

3. PERMIT

- (1) Every **Person** making an application for a **Permit** for an **Outdoor Swimming Pool Enclosure** shall:
 - (a) submit a complete application in the form provided by the **Township**;

- (b) submit plans for the **outdoor swimming pool enclosure** showing the **outdoor swimming pool enclosure**, gate locations, materials and height of the **outdoor swimming pool enclosure**;
- (c) submit any other documents as may be required by the **Township**;
- (d) submit the required **permit** fee in accordance with the **Township's Fee By-law**.

4. **PREVIOUSLY APPROVED OUTDOOR SWIMMING POOL ENCLOSURE**

- (1) An **outdoor swimming pool enclosure** approved by the **Township** by a **Permit** issued prior to the passing of this By-law shall be deemed to be in compliance with this By-law provided the **outdoor swimming pool enclosure** is maintained in good repair.
- (2) The replacement of an **outdoor swimming pool enclosure** is subject to the provisions and **Permit** requirements outlined in this By-law.

5. **GENERAL REQUIREMENTS FOR AN OUTDOOR SWIMMING POOL ENCLOSURE**

- (1) An **outdoor swimming pool enclosure** shall:
 - (a) Have a minimum vertical height of 1.5 metres (4 feet 11 inches), measured from the **finished grade** on the outside of the **outdoor swimming pool enclosure**;
 - (b) Be located a minimum of 1.0 metre (3 feet 3 inches) from any other fence, wall or structure which may facilitate climbing over the **outdoor swimming pool enclosure**;
 - (c) Have a gap no greater than 100 mm (4 inches) between the bottom of the **outdoor swimming pool enclosure** and the **finished grade**;
 - (d) Be located at least 1.2 metres (3 feet 11 inches) from the edge of the water of the **outdoor swimming pool**; and
 - (e) Be composed of the following construction:
 - i) chain link fence; or
 - ii) vertical board fence; or

- iii) wrought iron fence; or
- iv) such other equivalent alternative approved by the **Township**

- (2) Notwithstanding Section 5 (1) (c), (d) and (e), an **outdoor swimming pool enclosure** for an above ground **outdoor swimming pool** may consist of the vertical sides of the above ground **outdoor swimming pool** or any deck or other assembly forming part of the above ground **outdoor swimming pool** provided the requirements of Sections 5 (1) (a) and (b) are met and provided:
 - (a) such vertical sides and assemblies are constructed and maintained in such a manner to prevent the climbing thereof; and
 - (b) any ladder or stair assemble providing access to the above ground **outdoor swimming pool** or to any deck of other assembly forming part of the above ground **outdoor swimming pool** is hinged and constructed in a manner so as to be latched in an upright position or gated, thereby preventing entry to the above ground **outdoor swimming pool**.
- (3) An **outdoor swimming pool enclosure** shall not:
 - (a) Use or incorporate barbed wire, electrification, or other features designed to cause injury;
 - (b) Enclose a utility meter, a furnace oil filler pipe or other utility reading device which requires periodic inspection or attendance by utility or service personnel;
 - (c) Be directly accessible from a door of a building unless the door is equipped with a lockable device;
 - (d) Notwithstanding any other provision of this By-law, an **outdoor swimming pool** that is a hot tub, whirlpool or spa is not required to have an **outdoor swimming pool enclosure** provided the hot tub, whirlpool or spa is equipped with a substantial cover, capable of holding 90.72 kg (200 lbs), which is fitted to the hot tub, whirlpool or spa and is equipped with a lockable cover.

6. GATES

- (1) A gate that forms part of an **outdoor swimming pool enclosure** shall:
 - (a) Be self-closing, and equipped with a self-latching and locking device placed at the top and on the inside of the gate so the device latches when the gate is in the closed position.;
 - (b) Operate on hinges sufficient to support the gate either open and unlatched or closed and latched; and
 - (c) Be of such construction and height that complies with the **outdoor swimming pool enclosure** requirements of this by-law.

7. STANDARDS OF CONSTRUCTION

- (1) An **outdoor swimming pool enclosure** of chain link construction shall:
 - (a) Have a mesh with openings not greater than 38 millimetres (1 ½ inches);
 - (b) be supported by minimum 38 millimetres (1 ½ inches) galvanized steel posts spaced not more than 2.5 metres (8 feet 2 inches) apart, firmly embedded into the ground; and
 - (c) have top and bottom rails firmly fastened to the upright posts, made of a minimum 32 millimetres (1 ¼ inches) steel pipe, provided that in place of the bottom rail there may be substituted a steel tension rod.
- (2) An **outdoor swimming pool enclosure** of vertical board construction shall:
 - (a) Have vertical boarding not less than 19 millimetres by 89 millimetres (1 inch by 4 inches) and shall have no openings on the exterior face with a dimension greater than 100 millimetres (4 inches);

- (b) Be supported by posts at least 89 millimetres by 89 millimetres (4 inches by 4 inches) square, or 89 millimetres (4 inches) in diameter, spaced not more than 2.5 metres (8 feet 2 inches) apart. Such posts shall be firmly embedded into the ground and that portion of the post below grade shall be treated with a wood preservative; and
 - (c) Have top and bottom rails of at least 38 millimetres by 89 millimetres (2 inches by 4 inches), and spaced to provide a minimum clearance of 1.0 metre (3 feet 3 inches) between the rails.
- (3) An **outdoor swimming pool enclosure** of vertical board shadow fence construction shall not have board spacing greater than the board width.
- (4) An **outdoor swimming pool enclosure** of wrought iron or of other approved similar construction shall:
 - (a) Have no openings of a dimension greater than 100 millimetres (4 inches) between vertical members;
 - (b) Be supported by posts spaced not more than 2.5 metres (8 feet 2 inches) apart. Such posts shall be firmly embedded into the ground; and
 - (c) Have top and bottom rails spaced so that a minimum clear space of 1.0 metre (3 feet 3 inches) is provided between the rails.

8. ENFORCEMENT AND PENALTY PROVISIONS

- (1) The enforcement of this By-law shall be conducted by an **Officer**.
- (2) An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law is complied with.
- (3) Every person who contravenes any provision of this By-law and every director or officer of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to:
 - (a) on a first offence, to a fine not more than \$50,000.00; and
 - (b) on a second offence and each subsequent offence, to a fine of not more than \$100,000.00
- (4) Every person who is issued a Part 1 offence notice or summons and is convicted of an offence under this By-law shall be subject to a fine, to a

maximum as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

- (5) No person shall hinder or obstruct, or attempt to hinder or obstruct, any **Officer** exercising a power or performing a duty under this By-law.
- (6) Every person who is alleged to have contravened any of the provisions of this By-law, shall identify themselves to an **Officer** upon request, failure to do so shall be deemed to have hindered or obstructed an **Officer** in the execution of his or her duties.
- (7) Upon conviction any penalty imposed under this By-law may be collected under the authority of the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

9. SEVERABILITY

- (1) If a court of competent jurisdiction declares any section or part of the By-law invalid, it is the intention of Council of the Township that the remainder of the By-law shall continue in force unless the court makes an order to the contrary.

10. SINGULAR AND PLURAL USE

- (1) In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS XXXX DAY OF MARCH, 2018.

Dennis Lever, Mayor

Karen M. Landry, CAO/Clerk