

COMMITTEE OF THE WHOLE APRIL 4, 2005

PUBLIC PROPERTY TREE PROTECTION BY-LAW

Recommendation

The Commissioner of Community Services in consultation with the Director of Parks and the Director of Legal Services, recommends:

That the following report and Public Property Tree Protection By-Law be approved.

Purpose

To seek Council approval for a Public Property Tree Protection By-law.

Background - Analysis and Options

At the Committee of the Whole of December 6, 2004 Report No. 87, Item 28, Council recommended that:

1. Staff bring forward a report that provides for the necessary mechanism to protect trees on public property, under .2 hectares in size, and that such report be provided to Council, along with a potential by-law, no later than Earth Day 2005, as part of the City's celebration of that event.

Forestry staff have identified many situations where a tree located on public lands is removed, replanted or pruned without notification and/or approval by the City. With the absence of a by-law, the residents are not obligated to contact the City of Vaughan and this has created many inconsistencies with our streetscapes.

The City of Vaughan have reviewed Public Tree By-laws from 5 Municipalities governed under the Municipal Act. The guidelines and offences in the proposed City of Vaughan Public Property Tree Protection By-law are consistent with the other Municipalities. In addition, the Legal Department have reviewed the proposed By-law and their comments have been incorporated.

The Region of York is also in the process of changing their Tree By-Law covered under the Tree Act to a Forest Conservation By-law governed under the Municipal Act. The Region's By-law regulates woodlands greater than .2 of a hectare and higher and it would be consistent with the City of Vaughan proposed By-law.

Relationship to Vaughan Vision 2007

The City of Vaughan will be a model community, placing citizens first through service excellence by protecting our trees and our environment.

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

Staff recommends that Council approves the attached By-law and that the new By-law for Vaughan be announced on or just prior to Earth Day (April 22, 2005).

Attachments

1. DRAFT Public Property Tree Protection By-law

Report prepared by:

Marjie Fraser, Director of Parks, ext. 6137

Respectfully submitted,

Marlon Kallideen
Commissioner of Community Services

DRAFT

BY-LAW NUMBER -2005

A by-law to protect trees located on public property in the City of Vaughan

WHEREAS section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25 (the “Municipal Act, 2001”) provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act, 2001;

AND WHEREAS section 9(1) of the Municipal Act, 2001 provides that section 8 shall be interpreted broadly so as to confer broad authority on municipalities (a) to enable them to govern their affairs as they consider appropriate; and (b) to enhance their ability to respond to municipal issues;

AND WHEREAS section 135 of the Municipal Act, 2001 provides that a local municipality may prohibit or regulate the destruction or injuring of trees;

AND WHEREAS section 427(1) of the Municipal Act, 2001 provides that if a municipality has authority by by-law or otherwise to direct or require that a matter or thing be done, the municipality may, in the same or another by-law direct that, in default of it being done by the person directed or required to do it, such matter or thing shall be done at the person's expense;

AND WHEREAS section 427(3) of the Municipal Act, 2001 provides that the municipality may recover the costs of doing a thing or matter under section 427(1) from the person directed or required to do it and the municipality may recover the costs by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Council of the Corporation of the City of Vaughan deems it expedient to pass a by-law to protect trees located on public property in the City of Vaughan;

NOW THEREFORE the Council of the Corporation of the City of Vaughan enacts as follows:

SHORT TITLE

1. This by-law shall be known and may be cited as the “Public Property Tree Protection By-law”.

DEFINITIONS

2. In this by-law,
 - a) “City” means The Corporation of the City of Vaughan;
 - b) “Director” means the City’s Director of Parks and shall include his or her designate;
 - c) “Person” includes an individual, partnership, association, firm, corporation, business, club, group, organization, or other entity, but specifically excludes the City;
 - d) “Public Property” means any land owned by the City;
 - e) “Tree” and "Trees" includes woody vegetation.

PROHIBITED ACTIVITIES

3. No Person shall do or cause or permit to be done, any of the following:
 - a) Abuse, attach, burn, cut down, carve, damage, destroy, injure, paint, paste, peel, prune, pull up, remove, scrape, tack, top, transplant or trim all or any part of a Tree that is located on Public Property.
 - b) Attach any object to all or any part of a Tree that is located on Public Property including, without limiting the generality of the foregoing, a birdhouse, cable, light, nail, poster, rope, sign, twine, wire or other contrivance.
 - c) Pour any substance that will injure a Tree that is located on Public Property within the drip line of the Tree, being the area at the outer edge of the spread of the Tree's branches.

REGIONAL BY-LAW

4. In accordance with section 135(4) of the Municipal Act, 2001, in the event that an upper-tier municipality by-law in respect of woodlands is in effect in the City of Vaughan, then this by-law is inoperative to the extent that it applies to Trees in the designated woodlands in such upper-tier by-law.

EXEMPTION FROM BY-LAW

5. In accordance with section 135(12) of the Municipal Act, 2001, this by-law does not apply to:
 - a) activities or matters undertaken by a municipality or a local board of a municipality;
 - b) activities or matters undertaken under a licence 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* 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* 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*, 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*; or
 - 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*.

REMEDIAL ACTION AND RECOVERY OF EXPENSES

- 6. a) When the City becomes aware of a contravention of this by-law by any Person, the City may give notice in writing to the Person to rectify and remedy the contravention and to restore the Public Property to its former condition at the expense of the Person.
- b) In the event that the notice in section 6(a) is not complied with by the Person within the time period stipulated in the notice, then the City may take such action as is necessary to rectify and remedy the contravention of this by-law and to restore the Public Property to its former condition at the expense of the Person, and the City may send an invoice to the Person of the expenses incurred by the City thereto. In the event of failure to pay the entire invoice amount within thirty (30) days of the date of the invoice, at the discretion of the City, the outstanding balance of the invoice may be added to the tax roll of the Person's property as municipal taxes and collected in the same manner as municipal taxes.
- c) The City may also recover all expenses owing under this by-law by a court action as a debt due to the City.

OFFENCE

- 7. Every Person who contravenes this by-law is guilty of an offence and on conviction is liable:
 - a) on a first conviction, to a fine of not more than \$10,000 or \$1,000 per Tree, whichever is greater; and
 - b) on any subsequent conviction, to a fine of not more than \$25,000 or \$2,500 per Tree, whichever is greater.
- 8. Despite section 7, where the Person convicted is a corporation:
 - a) the maximum fines in section 7(a) are \$50,000 or \$5,000 per Tree; and
 - b) the maximum fines in section 7(b) are \$100,000 or \$10,000 per Tree.
- 9. If a Person is convicted of an offence for contravening this by-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may order the Person to rehabilitate the Public Property or to plant or replant Trees in such manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the Trees.

GENERAL

- 10. In this by-law, unless the context otherwise requires, words in the singular number shall include the plural, and words in the masculine gender shall include the feminine, and further, the converse of the foregoing also applies where the context so requires.

SEVERABILITY

11. In the event that a court of competent jurisdiction declares any section or part of a section of this by-law to be invalid or to be no force and effect, it is the intention of Council in enacting this by-law that the remainder of this By-law shall continue in force and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

READ a FIRST, SECOND and THIRD time and finally passed this ___ day of _____, 2005.

Michael Di Biase, Mayor

J.D. Leach, City Clerk