

COMMITTEE OF THE WHOLE (WORKING SESSION) JUNE 21, 2005

REGION OF YORK TREE BY-LAW UPDATE
GENERAL FILE 9.6.31

Recommendation

The Commissioner of Planning and the Commissioner of Community Services in consultation with the Commissioner of Legal and Administrative Services, recommends:

THAT pursuant to the *Municipal Act*, s.135(10), Council delegate its powers under the *Municipal Act* to regulate woodlands that are greater than 0.2 hectares (0.5 acres) up to 1 hectare (2.5 acres) in size on private lands to the Region of York, and that the new Regional Forest Conservation By-law apply to these woodlands in the City of Vaughan;

THAT City of Vaughan staff work with the York Region staff to ensure that the terms and conditions of the Agreement are acceptable; and

THAT a by-law be brought forward to the next Council Meeting to authorize the delegation to York Region authorize the Mayor and the Clerk to execute said agreement.

Economic Impact

Should Council choose to delegate its powers to the Region in accordance with the recommendations of this report, then there are no economic impacts associated with this decision. The costs associated with administering the by-law will be borne by York Region.

Should Council choose to direct staff to enact a tree by-law for Vaughan, a comprehensive analysis of such a program would be necessary, including an assessment of the economic impact of the additional staffing and resources which will be required to implement a tree by-law, including enforcement, appeals, permits issuance and inspections.

Purpose

The purpose of this report is to update Council on the initiatives of the Region of York in reviewing their Tree By-law and to provide Council with options for consideration in addressing tree protection within the City of Vaughan.

Background - Analysis and Options

The Region of York has a Tree By-law (No. TR-1-91-154), under the *Forestry Act* (formerly the *Trees Act*) which governs the destruction of trees in York Region in woodlands greater than 0.2ha (0.5 acre) in area, and promotes good forestry practices. The Region administers this by-law for all the local municipalities within the region, and has done so since the by-law was enacted in 1991.

The *Municipal Act* (2001) now allows both upper and lower-tier municipalities to prohibit or regulate tree cutting on private lands. Upper-tier municipalities may regulate the destruction of woodlands greater than 1 hectare in area, and lower-tier municipalities may prohibit or regulate the destruction or injuring of single trees and woodlands of up to 1 hectare in area. The *Municipal Act* also expands the administrative capabilities in issuing permits, allows for a permit process, appeal mechanism and greater enforcement tools.

The Region is working towards updating their tree by-law to a Forest Conservation By-law under the *Municipal Act*. The Region's update to their tree by-law is significant for Vaughan because the

Municipal Act limits the Regional protection of woodlands greater than 1 hectare (2.5 acres) in size, whereas the Region's current by-law regulates all woodlands greater 0.2 hectares (0.5 acre). This change, will leave a gap in protection of all woodlands less than 1 hectare. The Regional update to their tree by-law provides an opportunity for Vaughan to evaluate options for forest conservation.

Region of York Proposed Forest Conservation By-law

York Region's Tree By-law was enacted by Regional Council in 1991 under the *Trees Act*. The 1991 Tree By-law has been recognized as being one of the most successful Tree By-laws in the Province. York Region's current Tree By-law protects all trees in a woodland greater than 0.2 hectares, or 0.5 acres in size.

York Region's staff of Certified Arborists oversee the implementation of the By-law, review requests for exemptions, and are responsible for enforcement. This function is carried out by the Forestry Division of the Transportation and Works Department.

York Region's Proposed Permit System

The Region's proposed Forest Conservation By-law proposes a permit system which comprises 3 categories of permits as follows:

a) Good Forestry Practices Permit is for sustainable selective harvest activities where the services of a registered professional forester have been secured to prescribe and direct harvest activities. A nominal administrative fee of \$25 is proposed for these permits.

b) Harvest Permit is for sustainable selective harvest activities where a woodlot is marked in accordance with good forestry practices as set out in the By-law. Staff review this application in accordance with the By-law and can issue a permit with conditions. A permit fee of \$250 is proposed to offset staff time and administration.

c) Special Permits are available to consider tree destruction activities which are not consistent with good forestry practices (clear cutting). There are two types of special permits; less than 0.2 hectares of forest clear cutting and greater than 0.2 hectares of forest clear cutting. A permit fee of \$500 is proposed to offset staff time and administrative costs.

The administration of the Good Forestry Practices Permit, Harvest Permit, and the Special Permits (less than 0.2ha of cutting) are delegated to staff for review and approval or refusal. The Special Permits for greater than 0.2ha of cutting are taken to Regional Transportation and Works Committee for decision.

Appeal Process

Under the *Municipal Act*, an applicant for a permit may appeal to the Ontario Municipal Board (OMB) for the Region's failure to issue a permit, or if the applicant objects to any condition attached to a permit. The OMB may confirm the Region's decision, or may require the Region to issue a permit and may attach appropriate conditions. There is no further right of appeal from the OMB decision.

Exemptions

The *Municipal Act* contains statutory exemptions. These include: activities undertaken by a municipality or a local board, activities conducted under the *Surveyors Act*, or according to a *Planning Act* approval. In addition, Regional staff propose the following additional exemptions: exemptions for building permits which affect less than one hectare (2.5 acres) of woodland; and exemptions for personal use, for the equivalent of five cords of wood per 12-month period.

Penalties and Enforcement

The ability of the municipality to appoint a by-law officer and the legislated fines are included under the *Municipal Act*. By-law officers will have the ability to impose stop work orders and have a schedule of ticketable fines.

Harmonization

Under the *Municipal Act*, the new Forest Conservation By-law will allow the Region to prohibit or regulate the destruction of trees in woodlands greater than one hectare (2.5 acres). The legislation now enables local municipalities to regulate tree cutting in woodlands less than one hectare. The Region is proposing that in partnership with the local municipalities, and at their request, the Region would assume local powers to regulate tree cutting in woodlands between 0.2 hectares (0.5 acres) and one hectare (2.5 acres). Once the new Forest Conservation By-law is in place, local municipalities will be advised of individual permit applications as part of the review process.

The intent is for local municipalities to evaluate their needs and define tree protection which best suits their purposes. The Town of Aurora has a new Tree By-law in place, and the Town of Markham, Town of Newmarket are currently reviewing or advancing the development of Tree By-laws under the new *Municipal Act*.

Under the *Oak Ridges Moraine Conservation Act, 2001(ORMCA)*, and the *Greenbelt Act (2005)* local municipalities with lands on the Oak Ridges Moraine and the Protected Countryside may be required to pass Tree By-laws. The Ministry of Municipal Affairs and Housing has initiated consultation with both Regional and local municipalities to ensure this occurs in a consistent and timely manner. An initial workshop and information session was hosted at York Region in March 2003. However, there has been no further information on requirements pursuant to the ORMCA from the province. It is anticipated that the Region's woodlot protection harmonization efforts with local municipalities will reflect the intent of the ORMCA.

Next Steps for York Region

York Region is working toward finalization of the Forest Conservation By-law. The By-law is proposed to be in place by June 2005. Staff have reviewed the Region's proposed Tree By-law and are satisfied with the content and its application within the City of Vaughan.

Options for Vaughan

As a result of the proposed change to the Region's Tree By-law, there will be a gap in the current level of protection of woodlots between 0.2ha (0.5acre) up to 1 hectare (2.5 acres). Council has a number of options for action once this occurs. Council can choose to delegate the City's powers under the *Municipal Act* to York Region to maintain a consistent level of coverage as exists today; or enact a Tree Protection by-law. The two options are discussed further below.

Option 1: Delegate Powers under Municipal Act to York Region

Under the *Municipal Act*, local municipalities are permitted to delegate their powers to pass a tree by-law to regulate the destruction of trees in a woodland of less than 1 hectare to their upper-tier municipality. Should Council choose this route, a by-law could be passed which delegates the protection of trees in a woodland from 0.2 ha to 1 ha to York Region. Vaughan would subsequently enter into an agreement with the Region regarding the terms of the delegation. This would ensure that the same level of tree protection continues as currently exists under the Region's current by-law.

The *Municipal Act*, section 135 (10) states;

“A lower-tier municipality may delegate all or part of its powers to pass a by-law respecting the destruction or injuring of trees to its upper-tier municipality with the agreement of the upper-tier municipality.”

The Region is acceptable to partnering with the local municipalities in assuming this delegation in order to ensure that a consistent level of environmental protection as currently exists continues. If Council selects this route, then the Region’s new Forest Conservation By-law would apply in Vaughan and the administration, and enforcement of the by-law would remain at the Regional level.

The following is an extract from a Regional Council October 21, 2004:

“The Region is proposing that in partnership with the local municipalities, and at their request, the Region would assume local powers to regulate tree cutting in woodlands between 0.2 hectares (0.5 acres) and one hectare (2.5 acres). Once the new Forest Conservation By-law is in place, local municipalities will be advised of individual permit applications as part of the review process.”

This option is an efficient, and cost effective option for Vaughan. It ensure consistency, and continuity, in the administration and enforcement of tree protection. This option continues to reflect Vaughan’s commitment in Vaughan Vision 2007 (A3) to safeguard our environment, while ensuring that, short-term and long-term financial stability is achieved (B1).

The Region has a history through their current tree by-law as the regulators of woodland protection and they have a significant history of by-law both enforcement and administration. This process has proven effective with little to no cost to the City. They have dedicated and certified staff for the administration and enforcement of their Tree By-law and the technical expertise to review and issue permits. The costs associated with administration, public education, and enforcement of the proposed Forest Conservation By-law will be the responsibility of the Region.

To ensure that woodlot protection continues as status quo, Council can pass a by-law to delegate Vaughan’s authority under the *Municipal Act* from 0.2 hectare up to 1 hectare on private lands to York Region. Delegating the authority to the Region could be tailored so that it does not impact the by-law recently passed by Council to protect trees on public lands, or limit Vaughan’s ability to pass a tree by-law to protect trees under 0.2ha on private lands.

The Township of King has opted to delegate its powers under the *Municipal Act* to the Region, and has added a one year monitoring period into the agreement with the Region to provide for consideration of any unforeseen implications. At the one year period, there is an option to review the delegation to the Region. Should Council elect this option, similar wording in the Vaughan/York Region agreement may be advisable. The Town of Markham has also delegated its powers under the *Municipal Act* to York Region.

Option 2: Enact a Tree By-law for Vaughan

The second option for Vaughan is to enact a Tree By-law to prohibit the destruction of woodland up to 1 hectare in size on public property, thereby implementing the authority under the *Municipal Act*.

On April 11, 2005 Council passed by-law 95-2005 which protects trees on public property within the City of Vaughan. This by-law has been passed pursuant to the *Municipal Act*, and is being administered by the City using the existing staff complement and resources.

Council may choose to enact a tree by-law for Vaughan. If Council selects this route, there are a number of options as Council's disposal including:

- a) Enact a by-law covering from single tree up to 1 hectare of woodlands;
- b) Enact a by-law covering 0.2ha up to 1ha to replace coverage as existing under the Region's current Tree By-law which will be uncovered in the new by-law;
- c) Enact a by-law regulating trees under 0.2ha in size to complement the Region's By-law;
- d) Select to regulated only areas within the City i.e., rural area where woodlots are not zoned, or within certain urban areas for the protection of heritage or special trees;

While this option is available to Vaughan under the *Municipal Act*, the City does not currently have the administrative capability to implement and enforce a tree by-law at this time. A tree by-law would necessitate additional administrative and technical responsibilities for the City which would require additional staffing and resources for implementation of the by-law, including enforcement, appeals, permits issuance and inspections.

Within York Region, the Town of Aurora has recently passed a tree by-law, and the Town of Newmarket has approval in principle for a new tree by-law, however are awaiting budget approval before the by-law can be in place. The Town of Markham is currently reviewing the development of a Tree By-law under the new *Municipal Act* for woodlands under 0.2ha in combination with the delegation to the Region to regulate larger treed areas.

Should Council wish to pursue this option, staff should be directed to bring forward a detailed report with a work program toward this end with a variety of options including the above noted involvement with the necessary departments.

Oak Ridges Moraine Conservation Act & Greenbelt Act

The *Oak Ridges Moraine Conservation Act* and *Greenbelt Act* may require that local municipalities pass tree by-laws in accordance with the requirements of the *Municipal Act* for the lands within the Oak Ridges Moraine and in the Protected Countryside, with the specific provisions for these by-law to be prescribed by the Ministry of Municipal Affairs and Housing. It is anticipated by Regional staff that the Region's woodlot protection by-law will reflect the intent of the *Oak Ridges Moraine Conservation Act* and *Greenbelt Act*. However, it is possible, that the Ministry of Municipal Affairs and Housing may still require local municipalities to pass tree cutting by-laws for these lands.

It is anticipated by Regional staff that the Region's woodlot protection by-law will reflect the intent of the *Oak Ridges Moraine Conservation Act* and *Greenbelt Act*. It is uncertain at this point until the Province finalizes the requirements for tree cutting by-laws within the Oak Ridges Moraine and the Protected Countryside. Should this occur, Vaughan may not have to pass a by-law, as the Region's by-law would cover the necessary provisions of the *Oak Ridges Moraine Conservation Act* and *Greenbelt Act*.

Connection to Vaughan Vision 2007

Option 1 and option 2 are consistent with Vaughan Vision 2007 A3 safeguarding our environment by preserving, protecting and enhancing environmental stewardship through responsible leadership and innovative policies, and practices.

Conclusion

York Region is updating Tree By-law TR-1-91-154 to a new Forest Conservation By-law under the *Municipal Act*. The provisions of the *Municipal Act* for upper tier Municipalities to pass tree by-laws limits their jurisdiction to woodlands greater than 1 hectare (or 2.5 acres) in size. Currently,

the Region's By-law protects all woodlands greater than 0.2 hectares (or 0.5 acres). This by-law update would therefore leave a gap in coverage of woodland protection within the Region.

This update provides the lower-tier municipalities within York Region the opportunity to review their woodlot protection needs. Options are presented above for Council's consideration. Staff recommend consideration of Option 1: Delegating Vaughan's powers under the *Municipal Act* to the Region to regulate woodlots on private lands from 0.2ha to 1ha to ensure that a consistent level of woodlot protection is achieved after the Region enacts the new by-law. This option means that woodlot protection as currently exists remains. This option is efficient and cost effective, and it ensures consistency and continuity in the administration and enforcement of tree protection.

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