

COMMITTEE OF THE WHOLE MAY 28, 2007

PRIVATE PROPERTY TREE PROTECTION BY-LAW

Recommendation

The Commissioner of Community Services and the Commissioner of Legal and Administrative Services in consultation with the Director of Parks and Forestry Operations, the Director of Legal Services and the Director of Corporate Communications recommend:

That the following report be received and Private Property Tree Protection By-law be enacted for implementation in October 2007.

Economic Impact

There is an economic impact of \$5,000 to the Parks and Forestry Operating Budget that has not been budgeted for in 2007. However, efforts will be made to absorb this cost in the 2007 Operating Budget.

Communications Plan

The by-law, permit and application process will be available online on the City's website as well as advertised on the city page of the newspaper. Corporate Communications together with Information & Technology Management will place the application on the City's website and also assist with the posting of notifications.

To further engage and educate the public on the benefits of trees, literature on the new By-law will be incorporated into departmental brochures as well as on the Parks and Forestry website.

Purpose

To seek Council approval to proceed with implementation of the Private Property Tree Protection By-law.

Background - Analysis and Options

At the Council meeting of April 23, 2007, Council directed staff to prepare a by-law including a public education program for the protection of trees on private property in the City of Vaughan.

The City of Vaughan has reviewed Private Tree By-laws from 4 Municipalities including two within York Region that have by-laws.

The purpose of this by-law is to protect large, healthy trees growing on private property, and to encourage replacement and new tree plantings. The by-law states that no person shall injure or destroy more than four (4) trees each with a diameter greater than 30 centimetres at 1.4 meters from the existing grade on a lot within any one year period without first obtaining a permit pursuant to this by-law. With the maximum of four (4) trees allowed to be removed within one year, it provides Vaughan residents the opportunity to expand their dwellings, and enhance their landscapes without going through a permit process, while safeguarding against excessive tree removal. Permits will typically be issued for dead or dying trees and trees that may be a hazard. This by-law will not affect the process presently in place for applications submitted to the Planning Department.

The by-law allows an owner to apply for a permit which will be reviewed by the Manager in accordance to established criteria. The department will consider the following before issuing a permit to remove or injure a tree:

- species, size and health of a tree
- property limitations and reasons for removal
- the number of trees on site
- the landscaping plan for replanting (may include a letter of credit).

A major component of the Private Property Tree Protection By-law is public education and how it directly relates to the preservation of trees. Staff has recommended an implementation date of October 2007 in order to provide the public sufficient notification of the implementation date, permit application process and permit costs. It is anticipated that the cost to implement, along with the public education will be \$5,000 and will be ready for a media release date in October 2007.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council specifically addresses:

A-2 "Promote Community Safety Health and Wellness"

A-3 "Safeguard Our Environment"

Regional Implications

This report is consistent with other By-laws in York Region and has no direct implications to the Region.

Conclusion

Staff recommends that Council approve the attached By-law as well as the implementation date for October 2007.

Attachments

1. Private Property Tree Protection By-law

Report prepared by:

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Respectfully submitted,

Marlon Kallideen
Commissioner of Community Services

Janice Atwood-Petkovski
Commissioner of Legal & Administrative
Services

Frank Miele,
Commissioner of Economic/Technology Development
and Communications

BY-LAW NUMBER -2007

A by-law to prohibit or regulate the destruction or injuring of trees located on private property in the City of Vaughan.

WHEREAS section 135(1) of the of the *Municipal Act, 2001* authorizes a local municipality to prohibit or regulate the destruction or injuring of trees;

AND WHEREAS section 135(7) of the *Municipal Act, 2001* provides that a by-law passed may require that a permit be obtained to injure or destroy trees and may impose conditions to a permit, including conditions relating to the manner in which destruction occurs and the qualifications of persons authorized to injure or destroy trees;

AND WHEREAS the Council of The Corporation of the City of Vaughan recognizes the ecological and aesthetic value of trees and is desirous of managing the destruction and injuring of trees;

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

DEFINITIONS

1. In this by-law,

"application" means a tree permit application form provided by the City;

"arborist" means a person with a diploma or degree involving arboriculture from an accredited college or university, a Registered Professional Forester, an accredited Certified Arborist under the International Society of Arboriculture, or a person with a demonstrated history of tree preservation experience;

"arborist report" means a report prepared by an arborist which provides details on the species, size and health of a tree to be destroyed, injured or removed;

"base diameter" means the measurement of the diameter of the trunk of a tree from outside the bark at the existing grade of the ground adjoining its base or where there are multiple stems on a tree, means the total of the diameters of the three (3) largest stems measured at existing grade;

"City" means The Corporation of the City of Vaughan;

"Clerk" means the Clerk of The Corporation of the City of Vaughan or duly appointed designate;

"Council" means the Council of The Corporation of the City of Vaughan;

"dead" means a tree that has no living tissue;

"dying" means a tree that is infected by a lethal pathogen or where 70% or more of its crown is dead;

"emergency work" means the work necessary to terminate an immediate threat to life or property;

"golf course" means an area of land laid out and operated as a golf course and includes putting greens and driving ranges;

"hazard" means a tree that is a potential hazard to property or life but not an immediate threat;

"injure or destroy a tree" means the injury or destruction of a tree by removal, cutting, girding of the tree or roots, interfering with the water supply, application of chemicals, compaction and regrading within the drip line of the tree, or by other means including irreversible injury which may result from neglect, accident or design but does not include pruning;

"lands" means a lot only and does not include a building;

"lot" means a parcel of land having specific boundaries which is capable of legal transfer;

"Manager" means the Director of Parks Operations & Forestry or his/her duly appointed designate;

"nursery" means a lot on which the principal business of selling plants, shrubs and trees occurs;

"officer" means a person authorized to perform inspections pursuant to this by-law;

"Owner" means the registered owner of a lot, his/her respective successors and assigns or his/her duly authorized agent;

"permit" means a permit required by this by-law to injure or destroy a tree on private property within the City;

"person" means an individual, his/her executors and administrators and his/her respective successors and assignees and includes a corporation and its directors and officers;

"private property" means any property not owned by the City;

"pruning" means the appropriate removal in accordance with good arboricultural practices of not more than one-third of the live branches or limbs of a tree or more than one-third of the live branches or limbs on a tree as part of a consistent annual pruning program;

"tree" means a self-supporting woody plant which has reached or will reach a height of at least 4.5 metres at maturity;

"tree diameter" means the measurement of the diameter of the trunk of a tree from outside the bark 1.4 metres above existing grade of the ground adjoining its base or where there are multiple stems on a tree, means the total of the diameters of the three (3) largest stems measured approximately 140 centimetres above existing grade.

SCOPE

2. This by-law shall apply to all private property located in the City of Vaughan.

PERMIT REQUIREMENTS AND EXCEPTIONS

3. (1) No person shall, within the City's boundaries, injure or destroy more than four (4) trees having a diameter of thirty (30) centimetres or more measured at one and four-tenth (1.4) metres above ground level or having a base diameter greater than 40 centimetres on a lot within any one year period unless authorized by permit to do so pursuant to this by-law.
- (2) Despite subsection (1), a permit is not required:
 - (a) for emergency work;

- (b) for the pruning of a tree;
- (c) for the removal of dead branches;
- (d) to injure or destroy trees located on rooftop gardens, interior courtyards, or solariums; or
- (e) to injure or destroy trees on a nursery or golf course.

FILING FOR A PERMIT

4. An Owner who applies for a permit shall submit to the Manager the following:
- (1) a completed application;
 - (2) a plan or drawing of the lot to the satisfaction of the Manager illustrating which trees are to be injured or destroyed;
 - (3) payment of the required fees as prescribed by the City;
 - (4) an arborist report, if required by the Manager;
 - (5) where the base of a tree straddles a property line, the written consent to the permit issuance from the affected adjacent property owner; and
 - (6) where the person is not the Owner, the written authorization of the Owner consenting to the application.

REVIEW OF PERMIT APPLICATIONS; CRITERIA

5. (1) The Manager shall review all completed applications based on the following criteria:
- (a) the application form is complete;
 - (b) the applicant has paid all required fees;
 - (c) the condition of the tree;
 - (d) the location of the tree;
 - (e) the protection of environmentally sensitive areas;
 - (f) the protection of natural landforms or contours;
 - (g) the protection of ecological systems;
 - (h) erosion and flood control;
 - (i) the protection of significant vistas;
 - (j) the trees are a hazard;
 - (k) the tree location conflicts with any of the following:

- (i) proposed building permit plans that comply with the zoning of the land;
 - (ii) a proposed pool enclosure; or
 - (iii) the expansion of parking areas that complies with the zoning of the land;
- (l) whether or not a tree is a heritage tree or should be protected as a heritage tree; and
 - (m) the lot is designated under the *Ontario Heritage Act*.

APPLICATIONS: FORM AND CONTENT

6. An owner who wishes to injure or destroy a tree shall submit to the Manager an application on the prescribed form and shall provide the following:
- (a) the name, address and telephone number of the applicant;
 - (b) the purpose for which the permit is required;
 - (c) a tree survey showing the location of trees on the property;
 - (d) an arborist report identifying the location, species, size and condition of trees on the property and describing protection measures to be implemented;
 - (e) 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;
 - (f) landscaping and replanting plans.

POWERS AND DUTIES OF MANAGER

7. The Manager is authorized to:
- (a) issue permits for the destruction of trees in accordance with the criteria and subject to the conditions set out in this by-law;
 - (b) issue permits for the injury of trees in accordance with the criteria and subject to the conditions set out in this by-law;
 - (c) refuse to issue permits for the injury or destruction of trees; and
 - (d) subject to the provisions of any other by-law, the Manager may provide relief from the requirements of these tree protection measures or require tree protection measures above and beyond the tree protection measures prescribed in this by-law having regard to the variety and location of the tree and any circumstances surrounding the site alteration that may pose a particular hazard to the tree.

CONDITIONS OF THE ISSUANCE OF A TREE PERMIT

8. The City of Vaughan may issue a permit and impose conditions.

PERMIT REFUSAL

9. The City of Vaughan shall not issue a permit for the injury or destruction of trees where:
- (a) the application form is not complete;
 - (b) the information required has not been provided to the satisfaction of the Manager;
 - (c) the information received from the Owner is false or incorrect;
 - (d) trees are healthy and not exempt under Sections 3 & 18;
 - (e) environmentally sensitive areas, ecological systems, natural landforms or contours will not be adequately protected and preserved;
 - (f) erosion or flood control will be negatively impacted; or
 - (g) significant vistas will not be adequately protected and preserved.

PERMIT APPROVALS

10. The approval of a permit shall be valid for only six (6) months from the date of issuance. In extenuating circumstances a permit may be extended by the Manager.

POSTING OF PERMIT

11. The approved tree permit shall be posted on the lot from which the trees are to be injured or destroyed in a location visible from the street edge for the period during which the trees are being injured or destroyed.

INSPECTION

12. The City may from time to time designate officers to carry out the administrative functions of this By-law including the enforcement thereof.
13. An officer may at any reasonable time enter and inspect any lands to which this by-law applies to determine whether the by-law, an order or a condition to a permit is being complied with.
14. An officer, in carrying out an inspection, can be accompanied by assisting personnel.
15. Where an officer is satisfied that a contravention of this by-law has occurred, the officer may make an order requiring the person who contravened the by-law or who caused or permitted the injuring or destruction of trees in contravention of the by-law to stop the injuring or destruction of trees.
16. An order issued pursuant to section 15 shall set out the municipal address or legal description of the land, reasonable particulars of the contravention, and the period within which there must be compliance with the order.
17. A person shall comply forthwith with an order as issued by the officer.

EXEMPTIONS

18. This by-law does not apply to:

- (a) any activities or matters undertaken by the City, the Regional Municipality of York, a school board for the development of a school, or any other government authority, conservation authority, or utility corporation;
- (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* 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 distribution system, as those terms are defined in that section;
- (g) the injuring or destruction of trees undertaken on land described in a license 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*.

OFFENCES

19. (1) Any person who contravenes any provision of this by-law is guilty of an offence and 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.
- (2) Any corporation that contravenes any provision of this by-law is guilty of an offence and is liable:
- (a) on a first conviction, to a fine of not more than \$50,000 or \$5,000 per tree, whichever is greater; and

- (b) on any subsequent conviction, to a fine of not more than \$100,000 or \$10,000 per tree, whichever is greater.

SEVERABILITY

20. 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 of 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 full force and effect and be applied and enforced in accordance with its terms to the fullest extent possible according to law.

GENERAL

21. 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 when the context so requires.

SHORT TITLE

22. This by-law may be referred to as the "Private Property Tree Protection By-law".

READ a FIRST, SECOND and THIRD time and finally passed this _____ day of _____, 2007.

Linda D. Jackson, Mayor

J.D. Leach, City Clerk