SUBJECT: Amendments to Various By-laws Regulating Trees on Private Property in the Former Area Municipalities (PDO02229(d)) (City Wide)

RECOMMENDATION:

(a) That the Economic Development and Planning Committee be designated as the Hearing Body for appeals respecting tree cutting permits under the various by-laws regulating trees on private property in the former Area Municipalities.

(b) That the draft By-law to amend the existing By-laws which regulate trees on private property in the former area municipalities (i.e. Ancaster By-Law 2000-118, Dundas By-Law 4513-99, Stoney Creek By-Law 4401-96) and the former regional municipality (i.e. Region of Hamilton-Wentworth By-law R00-054), included as Appendix "A" to Report PDO02229(d), which has been prepared in a form satisfactory to the City Solicitor, be passed and enacted.

(c) That subject to the approval of sub-section (a), the Agricultural and Rural Affairs Advisory Committee no longer serve as the Tree Committee and that their Terms of Reference be amended accordingly.

EXECUTIVE SUMMARY:

The Economic Development and Planning Committee received, but did not approve, report PD02229(c) entitled “New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy”. As the current tree by-laws are to remain in effect, staff were directed to correct a known problem with the appeal process prescribed in the
Subject: Amendments To Various By-Laws Regulating Trees On Private Property In the Former Area Municipalities (PDO02229(d)) (City Wide)

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Town of Ancaster By-Law and to review the other tree cutting by-laws of the former municipalities for similar deficiencies.

Staff has reviewed the former Region of Hamilton-Wentworth, Ancaster, Dundas and Stoney Creek Tree By-Laws and recommends that the Economic Development and Planning Committee be the hearing body for any appellant who feels that the denial of a permit interferes with their rights on their own property. Staff also recommends that as no appeal is required with respect to a stop-work order, this be deleted from the Ancaster and Stoney Creek Tree By-laws.

Background:

The Economic Development and Planning Committee, on October 20, 2009, held a special meeting to consider staff report PD02229(c) entitled “New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy”. Committee received the report, and directed:

“(a) That staff be directed to report back to the Committee with the necessary information to amend the Town of Ancaster tree by-law to allow appeals to be made to the Senior Director of Parking and By-law Services rather than the Ontario Municipal Board;

(b) That staff be directed to review the appeal mechanisms in place, if any, in the existing tree by-laws of the former Region of Hamilton-Wentworth, Town of Dundas and City of Stoney Creek and report back with appropriate changes, if required.”

Amending out-dated by-laws, particularly those of former municipalities, is inherently problematic, especially when attending to one or two deficiencies rather than comprehensively. While an entirely up-dated new by-law continuing the existing by-laws which regulate trees on private property should be drafted at some point, this report responds to the direction to address the appeal procedures.

Analysis/Rationale:

The following table summarizes the appeal procedures prescribed in existing by-laws which regulate trees on private property:

<table>
<thead>
<tr>
<th>By-Law</th>
<th>Stop-Work Order Appeal Procedure</th>
<th>Section(s)</th>
<th>Permit Appeal Procedure</th>
<th>Section(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ancaster</td>
<td>Council</td>
<td>8.2, 9.2</td>
<td>Ontario Municipal Board</td>
<td>9.1</td>
</tr>
<tr>
<td>Dundas</td>
<td>Does not provide for appeal</td>
<td>n/a</td>
<td>Does not provide for appeal to OMB - likely relied on requirement in</td>
<td>n/a</td>
</tr>
</tbody>
</table>
The October 20, 2009 Committee direction was specifically “to amend the Town of Ancaster tree by-law to allow appeals to be made to the Senior Director of Parking and By-law Services rather than the Ontario Municipal Board”. However, while an applicant can always ask management to review staff decisions, an appeal hearing must be made available as denial of a permit interferes with an applicant’s rights on their own property. Therefore, staff recommends that Council delegate the hearing of appeals to the Economic Development and Planning Committee, and that the Committee report its recommendations and findings to City Council for a final decision. Designating the Economic Development and Planning Committee as the Hearing Body for appeals respecting tree cutting permits will also require removing this responsibility from the Agricultural & Rural Affairs Advisory Committee mandate.

**ALTERNATIVES FOR CONSIDERATION:**

City Council could appoint a 3 to 5 member tribunal composed entirely of City Councillors or public members or a combination thereof to hear permit appeals, but this would require additional financial and staff resources.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: N/A

Staffing: N/A

Legal: the municipality is required to give an applicant a hearing as denial of a permit interferes with their rights on their own property. However, there is no requirement for an appeal of stop work orders.
POLICIES AFFECTING PROPOSAL:

N/A

RELEVANT CONSULTATION:

Legal Services

CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, and economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑Yes ☐No

Efficient by-laws contribute to effective enforcement efforts that are essential to the health, safety and well being of the Community.

Environmental Well-Being is enhanced. ☑Yes ☐No

Efficient by-laws contribute to effective enforcement efforts that are essential to the health, safety and well being of the Community.

Economic Well-Being is enhanced. ☑Yes ☐No

Efficient by-laws contribute to effective enforcement efforts that are essential to the health, safety and well being of the Community.

Does the option you are recommending create value across all three bottom lines? ☑Yes ☐No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐Yes ☑No

MH:dt
Attach.(1)
CITY OF HAMILTON

BY-LAW NO. __________

To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth

WHEREAS Council wishes to amend the appeal processes provided for in: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

AND WHEREAS the City of Hamilton Act, 1999 did incorporate, as of January 1st, 2001, the municipality “City of Hamilton”;

AND WHEREAS the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor the former Regional Municipality of Hamilton Wentworth;
AND WHEREAS the *City of Hamilton Act, 1999* provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth remain in force, in respect of the part of the municipal area to which they applied on December 31, 2000, until they expire or are repealed or amended to provide otherwise;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

**By-law No. 2000-118, the Town of Ancaster Tree Protection By-law**

1. Subsection 9.1 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with following new subsection 9.1:

   **9.1 APPEALS REGARDING PERMITS**

   9.1.1 An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

2. By-law No. 2000-118 of the Town of Ancaster is amended by adding the Appeal Schedule, attached to this By-law as Schedule A.

3. Subsections 8.2 and 9.2 of By-law No. 2000-118 of the Town of Ancaster are deleted.

4. Sections 3 and 4 of Schedule “G” or By-law No. 2000-118 of the Town of Ancaster referring to an appeal are deleted.

**By-law No. 4513-99, the Town of Dundas Tree Protection By-law**

5. By-law No. 4513-99 of the Town of Dundas is amended by adding following
new section 5a after section 5:

5a. APPEALS

An appeal of the conditions imposed on a permit or of a permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

6. By-law No. 4513-99 of the Town of Dundas is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

By-law No. 4401-96, the City of Stoney Creek Tree By-law

7. Sections 22 and 23 of By-law No. 4401-96 of the City of Stoney Creek are deleted and replaced by the following new section:

APPEAL TO THE ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE

22. An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

8. By-law No. 4401-96 of the City of Stoney Creek is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

9. Subsections 29(h) and (i) and section 33 and 34 of By-law No. 4401-96 of the City of Stoney Creek are deleted.

10. The third and fourth recitals of Schedule “E” of By-law No. 4401-96 of the City of Stoney Creek referring to an appeal are deleted.

By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth

11. Subsections 5(h) to (m) inclusive of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth are deleted and replace with the following
new subsection:

5(h) An appeal of a permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

12. By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

General

13. This By-law comes into force on the day it is passed.

PASSED this day of , 200.

________________________________________________________________________
MAYOR CLERK
Fred Eisenberger Kevin C. Christenson
Schedule A

**APPEAL SCHEDULE**

1. For the purposes of this Schedule:
   “applicant” means an applicant for a permit under this By-law;
   “City” means the City of Hamilton incorporated as of January 1, 2001 under the City of Hamilton Act, 1999;
   “Economic Development and Planning Committee” means the City of Hamilton’s Economic Development and Planning Committee or any successor committee; and
   “permit” means a permit under this By-law.

2. An applicant for a permit who does not agree with the conditions imposed in a permit or with the refusal of a permit may appeal by requesting a hearing before the Economic Development and Planning Committee which, in the place of City Council, shall hear the appeal.

3. A request for a hearing by an applicant under section 2 shall be in writing, accompanied by the applicable fee and delivered to the Clerk of Economic Development and Planning Committee within 20 days of the date the permit is refused. The applicant shall also include the grounds for their appeal.

4. Where a request for a hearing meeting the requirements of section 3 has been delivered to the Clerk of the Economic Development and Planning Committee, the hearing shall be scheduled before the Economic Development and Planning Committee and notice of the hearing date shall be given to the applicant who requested the hearing. The notice of hearing shall include:
   (a) a statement of the time, date and purpose of the hearing; and
   (b) a statement that if the applicant does not attend the hearing, the Economic Development and Planning Committee may proceed in their absence without notice to them.
5. The notice of hearing under section 4 may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the applicant on file with the City. Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing unless the person to whom it is being given establishes that they, acting in good faith, through absence, accident, illness or other cause beyond their control did not receive the notice of appeal until a later date.

6. The Economic Development and Planning Committee shall hold a hearing pursuant to the *Statutory Powers Procedure Act* at the time, date and place set out in the notice of hearing and the Economic Development and Planning Committee may recommend to Council that a permit be refused or issued or that a condition be confirmed, rescinded, varied or imposed on a permit.

7. The Economic Development and Planning Committee shall have regard to the following matters, where relevant, as may be raised at a hearing:
   (a) this By-law and other applicable law;
   (b) circumstances and facts raised by the evidence of the parties; and
   (c) whether strict application of the provisions of the By-law in the context of the circumstances and facts raised by the evidence of the parties would result in unusual hardship for the applicant or be inconsistent with the general intent and purpose of this By-law.

8. The Economic Development and Planning Committee shall forward a report to City Council on its final decision arising from each hearing or opportunity for a hearing.

9. City Council, after considering a report of the Economic Development and Planning Committee, may refuse or issue a permit or confirm, rescind, vary or impose a condition on a permit, all without a hearing, having regard to the matters considered by the Economic Development and Planning Committee,
this By-law and other applicable law.

10. After City Council has made a decision in respect of a report of the Economic Development and Planning Committee, notice of that decision shall be sent to the applicant by personal delivery or by registered mail to the last known address of the applicant on file with the City.