Economic Development and Planning Committee

AMENDED REPORT 09-022

Tree-Cutting By-law
Tuesday, October 20, 2009
2:30 p.m.
Albion Room, Hamilton Convention Centre
1 Summer’s Lane, Hamilton

Present:
Chair M. Pearson
Vice Chairs, Councillors: B. Bratina, L. Ferguson,
Councillors: B. Clark, B. McHattie, D. Mitchell, R. Pasuta,
T. Whitehead

Absent With Regrets:
Councillor S. Duvall – Vacation

Staff Present:
T. McCabe, General Manager – Planning and Economic Development
T. Sergi, M. Hazell, B. Young, S. Robichaud, B. Khes,
C. Plosz – Planning and Economic Development
L. Pasternak – Legal Services
C. Biggs – City Clerk’s Office

AT THEIR MEETING OF OCTOBER 28, 2009, COUNCIL AMENDED THE REPORT AS SHOWN BELOW;

THE ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE PRESENTS REPORT 09-022 AND RESPECTFULLY RECOMMENDS:

1. New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) (Item 3.1)

   1. That Report PD02229(c)) respecting the New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy, be received.

That the following be added as Item 2 to Economic Development and Planning Committee Report 09-022:

2. Tree Protection Guidelines

That the Tree Protection Guidelines, dated July 2009, attached as Appendix “B” to Report PD02229(c), be referred back to the Economic Development & Planning Committee
FOR THE INFORMATION OF COUNCIL:

On a motion, the special meeting of the Economic Development and Planning Committee convened at 2:30 p.m.

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On a motion, the special meeting of the Economic Development and Planning Committee recessed at 2:31 p.m., to permit the continuation of the regular Committee meeting.

On a motion, the special meeting of the Economic Development and Planning Committee reconvened at 3:55 p.m.

(a) CHANGES TO THE AGENDA (Item 1)

The Clerk advised that there were no changes to the agenda:

On a motion, the agenda for the October 20, 2009 meeting of the Economic Development & Planning Committee respecting the Tree Cutting By-law was approved as presented.

(b) DECLARATIONS OF INTEREST (Item 2)

None

(c) New Hamilton Private Tree and Woodland Conservation By-law and Tree Protection Policy (PD02229(c)) (City Wide) (Item 3.1)

Chair Pearson advised that this is a Public Meeting, under the Municipal Act, to hear input into the proposed Tree Cutting By-law. The Meeting has been advertised in the newspapers, and persons who wished to address the Committee on this issue had been asked to register with the Clerk.

The Chair also advised the Committee of the letters received and distributed.

On a motion, the written submissions received from the following persons, were received:

(a) Gordon Baker
Cathy Plosz was present to assist Committee and gave an overview of the matter, with the assistance of a power point presentation, which included the following:

- What is a Tree Cutting By-law and why is it required
- Overview/Background of the By-law and Tree Protection Guidelines
- Response to revised draft
- Issues: size of trees regulated; private property rights; permit fees; enforcement resources; Tree Permit Committee; trees cut for “own use”; heritage trees
- Revisions to By-law – generally few revisions; composition of Tree Permit Committee changed to include a farmer; exempted species, hazardous tree exemption; compensation replanting options – increased specifics; heritage trees – gap in heritage tree protection in rural area
- Overview of the Proposed New By-law: criteria for urban and rural trees (map showing urban and rural areas)
- Exemptions: hazardous, dead, dying, diseased trees; activities of the City, surveyors, public utilities; trees with their trunk within 3 metres of a building; trees cut for own use, with limit
- Permits: Fees - $60 for commercial harvest, $75 per tree up to a maximum of $225 for removal of trees in the urban area; $100 fee for appeals. These fees will be included in the User Fees and Charges By-law
- Features of the revised By-law: responds to comments on previous draft by-laws (2005 and 2008); carries forward the intent of existing by-laws; balances urban and rural residents’ priorities; balances tree protection with landowner’s right to manage their property
- Tree Protection Guidelines; issues resulting from consultations and revisions to the Guidelines
- Summary of Recommendations contained in Report PD02229(c).

Copies of the power point presentation were distributed to the Committee members. A copy has also been retained in the Office of the City Clerk for the public record.
Discussion by the Committee included the following:

Councillor Whitehead:

- Has there been any indication/observation/information that clearly identifies that people are taking down trees on their private lots across the urban part of the City

  Staff responded that this by-law was put together to deal with the existing by-laws enacted between 1996 and 2006 respecting clear cutting events; however, there have not been any large clear cutting events in recent history; originally enacted in area municipalities because of violations; have heard from attendees at open houses, that there is a lot of tree removal, particularly with development sites

- Concerned about the former City of Hamilton specifically; many homes with trees in backyards; is there anything to suggest that there is an issue of trees being removed at a significant rate, reducing the urban forest in the City

  Staff responded that there is no evidence that the tree canopy has been reduced; however, staff receive calls on a regular/daily basis about individual trees being removed

- City had grids program for trimming trees as a result of amalgamation; issue now is that trees have migrated on to private property; does this mean that the City will assume responsibility for the health and trimming of these trees

  Staff responded that it is the responsibility of the homeowner to maintain trees on their property; the issue of trimming is different than tree removal

- Does the City have an inventory of trees in Hamilton

  Staff responded that Forestry is currently working on an inventory of trees in the urban area

Councillor Ferguson

- Golf courses have on-going renewal programs; do not see golf courses exempted; does this mean that a permit would have to be obtained each time
Staff responded that with in the rural area, tree cutting would only be regulated if the area is large enough to be considered woodland; within the urban area, many golf courses have on-going management plans. Yes, the by-law would require golf courses to get a permit to cut trees.

- Willows and poplars were once exempted, but not anymore – why

Staff responded that this issue was brought up during the public consultation; however, it was felt that some willow and poplar trees are native and did not want to exempt those, in addition to non-natives; too much of a blanket exemption

- Town of Ancaster currently has a by-law which works; if the Committee rejects the recommendations in the report, does the Town of Ancaster By-law continue to be in effect

Staff responded “yes”.

Councillor McHattie

- Recognizing the importance of trees, does this by-law state that people will not be able to cut down trees in the rural area

Staff responded that trees in woodland are regulated; if removal of trees is for own use, permit is not required; however, the by-law will be in effect when you want to sell or trade wood; if for own use, the assumption is that not a huge quantity is involved, so permit is not required

- Other municipalities have opted not to have fees; is that something that could be considered in Hamilton

Staff responded that the Committee has the option not to go with fees; however, the staff direction is the result of Council direction for cost recovery; would require an increase to the levy of 1.5 FTE, which would be covered by the fees

Councillor Pasuta

- With respect to clear cutting events on development sites; have there been any in the “new” City of Hamilton

Staff responded that there was a clear cutting event in Dundas in 1999

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• With a tree cutting by-law in place, would that have stopped the clear cutting

Staff responded that it may have, but even if it didn't, the City would have had recourse; there is currently no punishment or deterrent

• Why should the City put a fee on a farmer’s property that is being harvested every few years; what business is it of the City to get involved in his business

Staff responded that this is definitely one of the big issues with tree cutting by-laws; the $60 fee is for staff time for administration of the processing fee, on-site visit, check marked woodland to make sure good forestry practices are followed and follow-up after harvest is complete; fee is fairly minimal compared to the revenue gained to the farmer from the harvest

• Original report indicated 3 FTE's; current report indicates 1.5 FTE's

Staff responded that the request is for 3.5 full-time FTE's; currently have 1 existing by-law enforcement officer and 1 other full-time position which is currently a vacant planning position within the Planning Department, which leaves 1.5 new FTE required

Chair Pearson

• Not many trees required to be cut down to accumulate 2.5 cords per hectare per calendar year for personal use, which is a very low amount

Staff responded that this number was taken from the Region of Halton’s by-law; some concern, but during public consultation, a more suitable number; feel that this is an adequate amount

• With respect to the appeal fee, would a special body be required to be established by Committee and Council

Staff responded that the appeal body would be the Tree Permit Committee, consisting of 3 people who would review the permit and make a decision, which would then be forwarded to Council; if a resident is denied, only recourse would be a judicial review

• With the emerald ash borer in the community, it is anticipated that there will be a total loss of all ash trees in the next 10 to 15 years; what is the responsibility if a tree dies in terms of a permit
Staff responded that if the tree is heavily infested and dying, no permit is required.

- If a perfectly healthy tree falls over, what would be the responsibility of that homeowner with respect to the removal process

Staff responded that the homeowner would not require a permit but would be responsible for the clean up

- Stoney Creek has a by-law to address the issue of wood cutting on the Escarpment; was there ever a fee

Staff responded that they did not know the answer to this question.

Councillor Whitehead requested staff to provide information in terms of activity and how many permits have been applied for since 2001; need to understand the need for this next stage. Staff responded that obtaining this information would be difficult in that after amalgamation, the by-laws were not being enforced and therefore, there is data gap between 2000 and 2004. In light of this response, Councillor Whitehead requested information since 2004 i.e., what type of activity has taken place.

The Chair advised that the following are the Speakers who have registered with Clerks and requested that they come to the podium to address Committee. The Chair asked that they sign their name, address and their phone number in the book provided and reminded all speakers that they had a maximum of 5 minutes to address Committee.

Stewart Munghen addressed Committee with regard to the proposal. His points included, but were not limited to the following:

- If a homeowner hired a private contractor to work on his/her property, who pays for the permit
- Have a 70-foot blue spruce; want to donate to the Christmas program for the City – who pays for the permit and who does the work
- Have concerns that many of the tree removal companies in Hamilton are hurting due to the economic situation; need work and talking about retaining jobs; however, implementing this by-law is not being conducive to employment for people who have to go through a process that costs money and headaches for private companies
- Some companies remove 4 to 5 trees each day – is this going to be stopped?
- By-law will interfere and impair ability to make a living
Dr. Tom Nugent addressed Committee with regard to the proposal. His points included, but were not limited to the following:

- 5th generation farmer and veterinarian
- Concerns with further regulations on the farming community
- Commended staff for looking into this by-law and differentiating needs between urban and rural areas
- Many provisions exempted for rural community; however, don’t need by-law at all
- Farmers have suffered at the hands of the Province extensively and do not need to suffer indignity and loss of livelihood through the City
- Feel that the City needs to realize that it is the first line of troops to face the fire
- Any additional regulations on farming is just driving another “nail in the coffin”
- Many farmers are experiencing difficulties because of the high cost of production; not competitive; rural area does not need any more regulations which requires permits

Tom Cochren, Thomas Cochren Homes, addressed Committee with regard to the proposal. His points included, but were not limited to the following:

- Resident of Millgrove; works in the area as a builder and renovator
- Despite co-operation from staff, the by-law is misguided and misses the mark
- Report contains 4 pages of policy and 26 pages of enforcement
- Three major issues:
  - Firstly, no identified need for this by-law; no justification; questions have been asked, but not answered; no response to why a tree by-law is required; no service provided by this and no measurable benefits to the citizens of the City; hence, have no means to measure success or failure after spending taxpayers’ money; staff cannot respond whether there are trees more or less trees in the City than 10 or 20 years ago – what are we protecting
  - Secondly, if this by-law does get approval, it is nothing but bureaucracy for the sake of bureaucracy; only intent is to build an empire; numbers flawed with respect to staff requirements; how can 2 or 3 people administer the by-law; public comments are very telling; at the end, stock answer from staff that additional regulations are required to protect tree cover; nothing about why; shameful bureaucracy and over-regulation; have to stop copy cat mentality
  - Thirdly, fatal flaw with this by-law is its total dependence on land development industry for revenue; big money comes from land
development, including industrial, commercial and institutional, as well as residential; approval process is already time consuming; planning approval is onerous, but carries right of appeal; the tree by-law impedes healthy growth; does not contribute to the economic, social and well being of our community; take exception to the triple bottom line; need Hamilton public policy and not copy cat legislation;

- In conclusion, need a policy that shows leadership and respect for private property rights; staff need to start over with better guidance and a clean sheet of paper

Mr. Cochren submitted a written copy of his comments which will be retained in the Office of the City Clerk for the public record.

Brian Lane had registered to appear before the Committee; however, he was not in attendance.

Steve Spicer, on behalf of the Hamilton-Halton Home Builders Association, addressed Committee with regard to the proposal. His points included, but were not limited to the following:

- In agreement with many of the points raised by Tom Cochren
- Thanked staff for consulting; however, despite several meetings, staff chose not to react to major concerns
- Believe that the by-law and policy is a final assault on landowners and residents of the City; gives ownership to the City; no such thing as a private tree if the by-law is passed
- Serious implications on the development industry; proposed policy requires the developer to compensate the City for those trees to meet City standards – this is wrong
- New development plants more trees each year – approximately 2200 trees in a good year at a cost of $1 million and correlates to the number of houses built; City’s capital budget is $1.5 million
- Believe that trees are an important part of the City; however, do not believe that the urban tree canopy is threatened; through the course of neighbourhoods maturing, the tree canopy grows
- Request that the report be rejected and ask staff to identify the real need for the by-law and address the real issues
- Mr. Spicer thanked the Committee for allowing him the opportunity to address this issue

Mr. Spicer submitted a written copy of his comments which will be retained in the Office of the City Clerk for the public record.
Joe Van Sickle and Roy Shuker, representing the Hamilton Wentworth Federation of Agriculture, addressed Committee with regard to the proposal. Their points included, but were not limited to the following:

Roy Shuker

- As President of the Hamilton Wentworth Federation of Agriculture, represents 600 farmers in the city
- Many farmers opposed to the by-law
- Woodlot, if properly managed, can be properly harvested
- Take exception to terminology of “injuring and destroying trees”
- Farmers are being over-regulated i.e., Green Belt legislation, species-at-risk legislation, SPCA legislation, gun registry, sign by-law and now, want to restrict cutting trees
- No where in the by-law is there reference to the harvesting of trees for lumber

Mr. Shuker submitted a written copy of his comments which will be retained in the Office of the City Clerk for the public record.

Joe Van Sickle

- Reside on Jerseyville Road West; 4th generation on farm of 240 acres, of which 100 acres is woodland; certified by the Canadian Tree Farm Committee in 1960; circulated pictures and Certificate to members of the Committee to show bush land
- Have been harvesting from the same bush with selective cutting and there is more timber now than 100 years ago
- Concerned about minimum tree cutting sizes
- Expressed concern with respect to the limit of 2.5 cords per hectare, which translates to 1 bush cord per acre; should be double that amount; will harvest approximately 10 bush cords per acre per year, but will only cover 10 acres per year; 10 to 15 years before returning to that site (pg 2 of report)
- Size of tree regulated – 40 cm diameter breast height (dbh); description of a tree in Appendix A described as 3m high; Pg. 3 of report refers to trees of 40 dbh – going wrong way – should be regulating smaller trees
- With respect to the change in the composition of the Tree Permit Committee to include 1 farmer – should read one rural woodlot owner as a farmer is not necessarily a woodlot owner
- If operating under Ministry of Natural Resources (MNR) recommendations, by-law is not required
- MNR marks trees and have recommendations of what size should be cut; e.g., Haldimand-Norfolk is 66 cm; Brant County is 43 cm

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• Follow regulations of MNR as closely as possible with respect to harvest

Chair Pearson requested if there was anyone else in attendance wishing to address the Committee. The following are the comments of those individuals which included, but were not limited to:

Matthew Lachance addressed Committee with regard to the proposal. His points included, but were not limited to the following:

• Employed by the City and has had to field many questions from the public
• Attended meeting to listen to the discussion on the proposed by-law

• Sees loopholes in the by-law in the sense that on many occasions, when called out for overtime and emergency situations – is there anything for storm damage that addresses safety issues; staff responded that Section 8 addresses exemptions and deals with hazardous trees, in which case a permit is not required
• Who will be pruning a homeowner’s tree; is there any specific guideline on who is allowed to prune trees
• Flaw in the system – need qualified people to be able to sign off for a tree to be cut down

Paul Glendenning addressed Committee with regard to the proposal. His points included, but were not limited to the following:

• Main concern is that people seem to think that there is no need for the by-law, which is not always the case
• Many people do follow the rules; however, there are those who don’t, and they are the ones that need to be regulated
• Have seen trees in his neighbourhood cut down and there is no recourse
• Despite damage to the urban canopy, trees are not something that can be instantly or easily replaced
• Definitely need by-law, but proposed by-law has too many exemptions
• Trees are a living entity which take a long time to grow and are the responsibility of everyone

John Hawker addressed Committee with regard to the proposal. His points included, but were not limited to the following:

• Expected more public to be present because of the notice of meeting in the newspaper
• Expressed concerns with respect to the drip line; 1 metre may not be enough for a 50- or 60-foot tree; stabilizing roots are the ones that outreach; not enough protection
• Where is the responsibility of the homeowner as a result of haphazard chopping
• Are Tree Protection Plans submitted as part of development applications available for public viewing
• By-law does not control the cutting or direct replacement of trees on City, Board of Education or utility properties; if this is so, how does the public know what is being done and when and if it is being done within the Tree Protection Plan
• How does public know whether or not there is due diligence done by the City

• Tree Permit Committee seems similar to the Property Standards Committee where there is an appeal hearing and neighbours are notified and given opportunity to speak to issues
• Where there are plantings of replacement trees as a condition of the permit, are requirements available to the neighbourhood prior to the cut so they know what kind of replacement there will be, or is this part of the site plan approval process
• If there is damage to a tree, is it the responsibility of the developer or of the homeowner to ensure that it lives
• No reference in by-law with respect to a deposit ($500), which may or may not cover the cost of damaged tree; Mr. McCabe responded that with respect to Tree Protection Plans, there is no circulation or public meeting; costs would be included in development agreements and once the deal closes, maintenance would be the responsibility of the home-owner

The Chair thanked all the presenters for their input today.

On a motion, the presentations were received.

Chair Pearson, members of the Committee and Mr. McCabe recognized and thanked the efforts of all staff for their work on the report and by-law, and extended thanks to Cathy Plosz specifically for all of her work in compiling the information and presenting it to the Committee.

Committee discussed the matter and had additional information supplied by staff.

On a motion, staff was directed as follows:

(a) 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) 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.

(d) GENERAL INFORMATION (Item 11)

None

(e) PRIVATE AND CONFIDENTIAL (Item 12)

None

(f) ADJOURNMENT (Item 13)

The meeting adjourned at 6:10 pm.

Respectfully submitted

Maria Pearson, Chair
Economic Development & Planning Committee

Carolyn Biggs
Legislative Assistant
October 20, 2009