



## **Staff Report for Committee of the Whole Meeting**

**Date of Meeting:** July 3, 2018

**Report Number:** SRPRS.18.034

**Department:** Planning and Regulatory Services

**Division:** Policy Planning

**Subject:** **Tree Preservation By-law – 73 Neighbourly Lane  
Appeal (TP-2015-103)**

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### **Purpose:**

To report back on options to provide compensation or other community benefits in exchange for permitting the removal of a tree at 73 Neighbourly Lane.

### **Recommendation:**

- a) That a Permit to Destroy the Blue Spruce tree located at 73 Neighbourly Lane be refused.

### **Contact Person:**

Martin Volhard, Tree Preservation/Landscape Planner, Phone Number 905-747-6418

Patrick Lee, Director of Policy Planning, Phone Number 905-771-2420

### **Report Approval:**

**Submitted by:** Kelvin Kwan, Commissioner of Planning and Regulatory Services

**Approved by:** Neil Garbe, Chief Administrative Officer

All reports are electronically reviewed and/or approved by the Division Director, Treasurer (as required), Town Solicitor (as required), Commissioner, and Chief Administrative Officer. Details of the reports approval are attached.

## **Background:**

### **Tree Preservation By-law History**

Among other benefits, trees provide shade, energy savings, erosion control, noise buffering, storm-water attenuation, wildlife habitat, and improvements to air quality through the removal of airborne pollutants. Trees also contribute to neighbourhood and Town aesthetics, and help to mitigate the effects of climate change. In order to prevent the unnecessary loss of these public benefits, the *Municipal Act* provides a framework for regulation of private tree removal and injury through by-laws.

The Town of Richmond Hill's Private Property Tree Preservation By-law was enacted in March of 2007. Over 300 permit applications and exemptions for removal of dead, diseased and hazardous trees are processed under the By-law every year. The By-law has been instrumental in improving coordination of tree removal with planning, building and demolition processes and has also been successful in reducing the number of tree removal conflicts arising in the municipality. While it is difficult to estimate a specific number of trees that have been preserved as a result of the By-law it is clear that the By-law has resulted in improved tree protection, a more fulsome consideration of tree preservation options during property development processes, and increased public awareness about the importance of trees in the community.

### **73 Neighbourly Lane Permit to Destroy a Tree**

On September 16, 2015 the owner of 73 Neighbourly Lane applied to the Town for a Permit to Destroy the large, Blue Spruce (*Picea pungens*) tree located in the front yard of 73 Neighbourly Lane (the "Subject Tree").

The Arborist Report submitted in support of the Tree Preservation By-law permit application noted that the tree is a "feature specimen", but that it is "heavily infected with needle cast and Cytospora canker which has resulted (over the years) in excessive dieback in the canopy." A staff inspection of the Subject Tree at the time found that while it is infected with these very common spruce tree diseases, it was in fair/good condition with only minor inner canopy needle loss. It was also observed that the Subject Tree has a major presence on the street, which is amplified by recent significant street tree loss due to the Emerald Ash Borer.

On September 30, 2015 staff issued a letter advising that the requested permit to destroy the Subject Tree was refused. Since the permit refusal was issued, the owner of 73 Neighbourly Lane has been in contact with both Town staff and the Ward Councillor on several occasions requesting further review of the permit application. Staff have made several follow-up visits to the site but continue to believe that the tree should be preserved.

On October 16, 2017 the owner of 73 Neighbourly Lane gave a delegation to Council to appeal the standing staff decision refusing issuance of a Permit to Destroy the Subject

Tree. In his delegation, the owner identified the following reasons for wanting to remove the Subject Tree:

- i. it is diseased;
- ii. it is causing property damage (sap damage to the paint of cars parked on the driveway underneath the tree, and root damage to adjacent interlock pathway); and,
- iii. it is causing safety concerns (tree sap landing on the windshields of cars parked beneath is affecting visibility while driving).

In response to the delegation, Council approved a Motion to Refer as follows:

“That the delegation and motion to receive be referred to staff to report back on options to provide compensation or other community benefits in exchange for permitting the removal of the tree.”

### **Staff Response to Council Motion**

The Tree Preservation By-law is an important tool for preserving the Town’s urban forest. Perhaps the main benefit of the by-law is that the regulation it imposes encourages residents to stop and consider tree preservation as an option to be weighed against other alternatives for dealing with specific situations. In this regard, contemplated tree removals are often avoided without the submission of a permit application because pre-application discussions with staff result in realization that alternatives to tree removal are preferable.

In the case of the Blue Spruce tree at 73 Neighbourly Lane, staff have refused to issue a Permit to Destroy the Tree for the following reasons:

- i. the fungal infections impacting the tree are very common and their presence does not justify removal of the tree; the tree is currently in fair/good health and condition,
- ii. the tree has significant environmental and aesthetic value to the community particularly in light of the ongoing loss of street trees along Neighbourly Lane to the Emerald Ash Borer; and
- iii. there are other options for addressing the owners concerns (e.g., cover cars parked underneath, park cars in the garage rather than under the tree)

Council has two options in dealing with the appeal to this permit:

Option 1: Confirm the staff decision refusing a Permit to Injure or Destroy a Tree.

Option 2: Approve the requested Permit to Injure or Destroy a Tree and apply the Town’s standard replanting condition.

In response to the Council motion, staff advise that there are standard replanting requirements issued in association with all permits granted pursuant to the Tree Preservation By-law. Each approved Permit to Injure or Destroy Tree(s) is granted on the condition that the applicant either replants trees to replace the trees approved for removal, or pays to the Town a cash amount which will facilitate Town planting of the

replacement trees. The amount of replanting required is based on the Town's *Procedure for Calculating Requirements for Replacement of Lost Tree Cover* (see Attachment 1). In this case, since the Subject Tree is a non-native species, the applicant would be required to replant one tree to replace the tree being removed.

Replanting requirements are intended to ensure that the Town's tree cover will be maintained. Replanting is used as a condition to acceptable removal rather than as a strategy for justifying a proposed unacceptable removal. Staff do not support the idea of using the promise to replant as a means to justify removal of a tree that otherwise should not be removed (even if the proposed quantity of replanting is above and beyond the Town's standard requirement). If the promise to replant becomes an acceptable means of justifying tree removal, there will never be any reason to refuse a permit since replanting or payment in lieu of replanting will always be a feasible option.

### **Financial/Staffing/Other Implications:**

There are no financial or staffing implications associated with the recommendations of this report.

### **Relationship to the Strategic Plan:**

This report and its recommendation are related to the Strategic Plan goal of Wise Management of Resources. Specifically the protection of the Subject Tree is consistent with the objective of increasing natural landscaping and the urban tree canopy on both Town and private property.

### **Conclusion:**

Staff continue to be of the opinion that the environmental and aesthetic value of the Subject Tree to the community outweigh the implications for the owner if the tree is not removed. It is therefore recommended that Council confirm the staff decision to refuse the requested permit; however, if Council wishes to approve the permit, the replanting requirements as per Attachment 1 should be applied.

### **Attachments:**

The following attached documents may include scanned images of appendixes, maps and photographs. If you require an alternative format please call contact person listed in this document.

- Attachment 1 – Procedure for Calculating Requirements for Replacement of Lost Tree Cover

## Attachment 1

# Procedure

<b>Procedure Name:</b>	Calculating Requirements for Replacement of Lost Tree Cover
<b>Parent Policy:</b>	Official Plan Policy 3.2.3.22
<b>Procedure Owner:</b>	Park & Natural Heritage Planning Section
<b>Approved by:</b>	Manager of Park & Natural Heritage Planning
<b>Policy Approval Date:</b>	June 15, 2016
<b>Date of Last Revision:</b>	December 21, 2017
<b>Procedure Status:</b>	Active

### PURPOSE:

To set out an appropriate methodology for determining requirements for replacing tree cover lost through the development process and/or Tree Preservation By-law permit applications.

### SCOPE:

This procedure is to be followed when calculating the amount of tree planting required to replace tree cover lost through the development process and/or Tree Preservation By-law permit applications. It should be noted that this methodology is intended to be used in association with the removal of individually standing trees; it is not meant to be used to calculate compensation for lost forest/woodland cover. Additionally, this procedure is intended for use to calculate required tree cover replacement in situations where tree removal has followed the correct protocols (i.e., a Tree Preservation By-law permit application has been processed or tree removals have been permitted through the planning process). Illegal removal of trees can result in different (e.g., punitive) replacement requirements.

## PROCEDURE:

Once the number, size, health, condition and species of trees to be removed has been confirmed the following requirements will be utilized to determine the number of trees that need to be replanted to replace lost tree cover:

1. 1 replacement tree must be planted for each exotic/non-native species >20 cm DBH, in fair to good condition that is to be removed.
2. Replacements for native trees are as follows:

DBH of Tree to be Removed	# of Replacement Trees Required
0-20 cm	0
20-30 cm	1
31-40 cm	2
41-50 cm	3
51-100 cm	4
>100 cm	5

3. No replacement is required for removal of any invasive tree species for which the Town encourages removal due to the potentially negative ecological impacts of the species to local ecosystems. This includes European Buckthorn in all circumstances and Manitoba Maple, Scots Pine and Norway Maple in cases where the tree being removed is in poor condition and/or is not providing a community benefit.

If the owner/applicant cannot, or does not want to, plant replacement trees on the subject property then the owner/applicant is required to pay an amount equivalent to the cost of the tree planting calculated using the 'Tree Replacements' fee identified in the Town's Tariff of Fees By-law (e.g. Tree Replacement Fee X number of required replacement trees not planted on site).

## ROLES AND RESPONSIBILITIES:

The calculations undertaken pursuant to this procedure will be completed by staff of the Park & Natural Heritage Planning Section.

Cash-in-lieu of replacing tree cover lost through the development process will be collected by the Capital and Development Financing Section using the Finance schedules of site plan and subdivision agreements.

**RELATED DOCUMENTS:**

Town of Richmond Hill Official Plan (see page 3-56, Policy # 3.2.3.22)

Tariff of Fees By-law

Staff Report SRCFS.16.021

**Report Approval Details**

Document Title:	SRPRS.18.034 Tree Preservation By-law - 73 Neighbourly Lane Appeal.docx
Attachments:	- SRPRS.18.034 Attachment 1.docx
Final Approval Date:	Jun 26, 2018

This report and all of its attachments were approved and signed as outlined below:

**Kelvin Kwan - Jun 25, 2018 - 11:22 AM**

**Neil Garbe - Jun 26, 2018 - 2:38 PM**