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March 21, 2017

**CORPORATE SERVICES (LEGAL SERVICES)
INFORMATION REPORT #2017-07**

TO: Mayor Van Bynen and Members of Council

SUBJECT: Notice Requirements Prior to Change of the Town's Woodlot Bylaw

ORIGIN: Director, Legal Services/Municipal Solicitor

In accordance with the Procedure By-law, any Member of Council may make a request to the Town Clerk that this Information Report (which is not confidential) be placed on an upcoming Committee of the Whole agenda for discussion.

The aspects of this matter which are confidential (provision of legal advice) are discussed in related Corporate Services (Legal Services) Confidential Information Report #2017-08, which is circulated concurrently with this report.

COMMENTS

Short Conclusion:

There is no legal requirement to provide notice prior to amending the Town's Woodlot By-law, however, providing such notice would be consistent with the Town's general practice in order to ensure public participation, in particular with respect to an issue such as the regulation of trees on private property that has historically generated strong opinions on both sides.

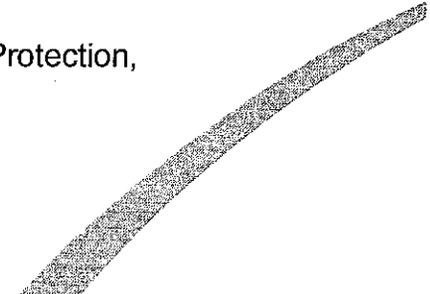
Moreover, for the reasons set out in this report, staff does not recommend amending the Woodlot By-law or introducing any other interim prohibition on tree cutting on private property in advance of the fulsome process described in Development and Infrastructure Services – Planning & Building Services and Public Works Services Joint Report 2017-05 (the "**Planning Report**").

Analysis:

(I) Background

On February 27, 2017, Committee of the Whole received the Planning Report, which recommended:

1. That Council direct staff to update the existing Tree Preservation, Protection, Replacement and Enhancement Policy.



2. AND THAT Council direct staff to prepare and bring to a future Council meeting a by-law regulating and protecting significant trees on private property.
3. AND THAT Council direct staff to prepare and bring to a future Council meeting a by-law protecting trees on municipal property.

The Planning Report explained that staff would undertake research and public consultation prior to bringing the above noted updated policy and new by-laws back to Council. The estimated timeline for returning to Council was early 2018 due to resources and competing priorities.

The Planning Report also highlighted that, in the meantime, there are some gaps with respect to the protection of trees within Newmarket under the Town's current regime. The Planning Report described in detail the relevant Town and Region policy and legislative documents, and also set out some difficulties in the existing Town approach to the regulation of trees. One of these difficulties is that Town Bylaw 2007-71 – *A By-law to Prohibit or Regulate the Destruction or Injuring of Woodlot Trees* (the "**Woodlot By-law**") currently only applies to certain "woodlots" in the Town (a term defined in the Woodlot By-law). In addition, the Town's Tree Preservation, Protection, Replacement and Enhancement Policy is only applicable to properties which are the subject of a development application. This regime leaves a gap where, immediately prior to making a development application, an owner may cut down trees which are not considered part of a "woodlot" and, therefore, avoid any oversight or requirements for re-planting.

Much public attention has been drawn to this gap as a result of the recent loss of trees at 181 Beechwood Crescent in Newmarket. A deputation related to this property was received by Committee of the Whole on February 27, 2017, during which the deputant cautioned staff and Council that further clearing of trees at this property was anticipated unless immediate action was taken to stop it. The deputant drew Council's attention to the fact that the trees on the North side of 181 Beechwood Crescent are not governed by the Town's Woodlot By-law, whereas the trees on the South side of the same street are. The deputant therefore requested an immediate amendment to the Town's Woodlot By-law to also include the North side of Beechwood Crescent.

(II) Direction from Committee of the Whole

Following receipt of the deputation, Committee of the Whole directed staff to report back on:

1. whether there is any legislated notice period that must precede a revision to the Town's Woodlot By-law; and/or
2. is there any other measure that may be brought into place to enhance tree protection within the Town more quickly than the measures set out in the Planning Report?

The response to each of the questions above is set out in this report, together with related Corporate Services (Legal Services) Confidential Information Report #2017-08.

In addition, in order to address the urgency relative to the potential additional loss of trees at 181 Beechwood Crescent, the CAO also personally reached out to the owner on February 28, 2017 and received confirmation that no further tree removals are proposed at this time.

(III) Question One: Is there any legislated notice period that must precede a revision to the Town's Woodlot By-law?

1. Legislative Requirements for Notice

Section 270(1) of the *Municipal Act, 2001* (the "**Act**") requires a municipality to adopt and maintain a policy with respect to the circumstances in which the municipality shall provide notice to the public, and, if notice is to be provided, the form, manner and times notice shall be given. The Act also sets out specific requirements for notice in certain circumstances, including with respect to tax collection, prior to passing a local improvement by-law, or closing a premises deemed to constitute a public nuisance. There is no specific requirement in the Act with respect to notice prior to changing the Woodlot By-law, and therefore, according to the Act, the Town's policy on notice would govern such a change.

2. Town Policy on Notice

In accordance with the Act, Council adopted Notice Policy Corp. 1-02 on December 17, 2007 (the "**Notice Policy**"). The Notice Policy outlines the circumstances where notice shall be given on matters where there is no statutory notice required pursuant to the Act. None of the circumstances listed in the Notice Policy apply to the amendment of the Woodlot By-law.

3. Town By-law on Notice

Town by-law number 2002-168 (the "**Notice By-law**") governs notice in circumstances where the provision of notice is required by the Act but the Act does not specify the form or the manner in which such notice shall be given. Given that the Act does not require notice prior to amending the Tree Bylaw, the Notice By-law does not apply.

4. Town Practice

The Notice Policy provides that staff may provide additional or more comprehensive methods of notice than those strictly required by the policy. To that end, it is Town practice to provide two weeks' notice prior to any by-law amendment, even if not required by the Act, the Notice By-law or the Notice Policy.

That said, both the Notice By-law and the Notice Policy also recognize that there are certain circumstances where an urgent situation may require the notice requirements to be waived, and, in such circumstances, staff shall make best efforts to provide as much notice as is reasonable in the context.

5. Other Considerations

(A) Public Participation

The Town's Accountability and Transparency Policy confirms Council's commitment to providing good government for its constituents in an accountable and transparent manner by, among other things, encouraging public access and participation to ensure that decision making is responsive to the needs of constituents and receptive to their opinions. The Planning Report highlighted that there is a high level of engagement in the community on this issue (without a consensus on direction), in particular with respect to the regulation and/or protection of trees on private property. As such, the Planning Report recommended that, prior to making changes to the current tree regulation regime, staff should undertake research, prepare revised draft policies and by-laws, return to Council for consideration and direction, and finally take the proposed new by-laws out for a thorough community consultation with all stakeholders. This recommended approach is consistent with the commitment to encourage public participation in decision making.

(B) Scope of Proposed Amendment

As noted above, the Town's Woodlot By-law currently applies to only the South side of Beechwood Crescent and not the North side. The deputant asked that the Woodlot By-law be immediately amended to expand the scope of the Woodlot By-law to the North side as well in order to protect the remaining trees at 181 Beechwood Crescent. This expansion would affect all of the other property owners along that side of the street, not just the one property of concern. The Town's Accountability and Transparency Policy would suggest that those other owners should also be given an opportunity to comment prior to making such a change, in particular as it relates to the right of those owners to deal with trees on their private property.

(C) Equal Treatment within the Town

The proposed amendment to the Woodlot By-law to deal with this one street would also be a very "reactionary" approach. There may be other areas within the Town where the trees and/or woodlots should also be considered for protection. The thorough process set out in the Planning Report will allow a full review of the entire Town to be conducted to ensure that all residents and all streets are treated equally.

(D) No Retroactivity

Unfortunately, even if Council were to pass an immediate amendment to the Town's Woodlot By-law, the force of that revised provision would not be retro-active. As a result, the amendment will not give the Town the power to lay any charges with respect to the trees that have already been lost at 181 Beechwood Crescent. With respect to the warning that more trees on the same property may be cut down, as noted above, the CAO has received confirmation from the property

owner that that will not occur prior to the submission of a development application and consultation with Town staff.

(IV) Question Two: Is there any other measure that may be brought into place to enhance tree protection within the Town more quickly than the measures set out in the Planning Report?

For the reasons listed above, as well as those listed in Corporate Services (Legal Services) Confidential Information Report #2017-08, there is no other change to our governance structure that is recommended at this time.

BUSINESS PLAN AND STRATEGIC PLAN LINKAGES

This report is consistent with the following objectives from the Town's Strategic Plan:

Living well: focusing on health, safety and the environment to promote activity and enrich lives; and

Well equipped & managed: implementing policy and processes that reflect sound and accountable governance.

CONSULTATION

The Legislative Services and Planning Departments were consulted in the preparation of this report.

HUMAN RESOURCE CONSIDERATIONS

Staffing levels are not impacted as a result of the matters discussed in this report.

BUDGET IMPACT (CURRENT AND FUTURE)

There is no budgetary impact as a result of this report.

CONTACT

For more information on this report, please contact Karen Reynar, Director of Legal Services / Municipal Solicitor, (905) 953-5300 ext. 2437, kreynar@newmarket.ca

Respectfully submitted,



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Esther Armchuk
Commissioner of Corporate Services