

17 Island Road

Date:	July 27, 2010
To:	Scarborough Community Council
From:	City Solicitor
Wards:	Ward 44 – Scarborough East
Reference Number:	

SUMMARY

To report back as requested by Scarborough Community Council at its meeting held on May 25, 2010.

RECOMMENDATIONS

The City Solicitor recommends that:

1. Scarborough Community Council receive this report for information.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting on November 10, 2009, Scarborough Community Council directed the City Solicitor to report to Scarborough Community Council on the ongoing investigation of property standards, tree by-law and illegal water discharge at the above-noted property. On January 22, 2010, the City Solicitor provided an update on the ongoing investigation. At its meeting of April 27, 2010, Scarborough Community Council requested a further report on the investigation and possible prosecution on this site.

At its meeting held on May 25, 2010, Scarborough Community Council referred this item back to the City Solicitor, in consultation with the Ward Councillor, for a further report.

ISSUE BACKGROUND

Four private trees located on the property were removed without the necessary permits required by Chapter 813-Trees of the Municipal Code.

At the May 25, 2010 meeting, Scarborough Community Council raised concerns that the property owner would not be prosecuted for the removal of the private trees contrary to the provisions of the Municipal Code.

I was requested to review the history of this matter. I have reviewed correspondence and e-mail exchanges. I have met and discussed this matter with the Director of Prosecutions. I have also met and discussed this matter with the Director of Urban Forestry and members of his staff.

I have briefed the Ward Councillor and Chair of Scarborough Community Council.

COMMENTS

Role of Divisions

The operating division is responsible for enforcing by-laws including the laying of charges and providing evidence under oath in court. In this case, Urban Forestry is responsible for the enforcement of Chapter 813-Trees. The enforcement role of divisions is similar to the role of the police in dealing with criminal matters.

When a charge is laid, staff of Legal Services is responsible for prosecuting the charge in court. Legal Services staff also provides advice to enforcement staff regarding such issues as the sufficiency of the evidence and other legal matters. The role of Legal Services is analogous to the role of the Crown in dealing with criminal matters.

As in any criminal or quasi-criminal matter, the success of the prosecution is dependent on the sufficiency and quality of the evidence.

As was outlined to Community Council in the confidential attachment to the report dated May 19, 2010, there were issues with respect to the sufficiency of the evidence in this instance which led to the conclusion that a prosecution would not be successful. In addition, the Provincial Offences Act provides that the charges must be laid within 6 months.

Where members of a community have witnessed the commission of an offence, their evidence may assist the City. Unfortunately, residents are not trained to perform enforcement functions, or qualified to provide expert evidence on the condition of the trees, and while wanting to be helpful, often are not in a position to assist staff in laying charges. It has also been the City's experience that while residents will complain; they

are less likely to provide witness statements in support of a charge or to appear in court to provide evidence under oath.

Urban Forestry's Position

The General Manager Parks, Forestry and Recreation and her staff are currently responsible for the enforcement of Chapter 813. Forestry's main objective with respect to the administration of Chapter 813 has been on restitution as opposed to enforcement. Forestry staff have received training related to collecting evidence and laying charges, and proceed with doing so when sufficient evidence exists to suggest a successful prosecution.

Forestry's priority, with respect to the City's tree protection by-laws, is to process and comment on tree issues during the development application review process, and to process tree permit applications that have been submitted by those who follow the rules. Forestry has recently hired 4 new inspectors and will be adding 4 more in 2012 who will help with the timely processing of applications as well as the investigation of possible by-law infractions.

A Notice of Infraction was sent to the owner on September 15, 2009 advising of the contravention. The letter advised that any person who contravenes the by-law is guilty of an offence. The letter continues, however, requesting the owner to "submit a completed application for tree removal, fee and notation that future development of this property will provide a satisfactory tree planting plan that will act as compensation for the unauthorized tree removal".

A second letter was sent to the owner dated February 4, 2010 requesting that the application fee and replacement tree planting cash in lieu be paid. The letter further notes that there would be considerable benefit to resolving this matter prior to submission of an application for development of the subject property.

Forestry staff also confirmed that had the owner followed procedures and applied for the necessary permits to remove the trees and submitted a satisfactory replacement plan, that their position would have been to support the application for tree removal.

Future Actions

This is an unfortunate situation that while it cannot be condoned, has resulted in lessons learned and some proposed future actions.

1. Legal Services staff provides training to enforcement staff on an as requested basis or when a new by-law to be enforced has been enacted. The training involves: explaining the provisions of the by-law; how to document evidence; legal requirements to lay charges; and, how to provide evidence in court. Training was previously provided to Forestry staff but, refresher training is often

helpful particularly for operating areas where enforcement activities are not undertaken on a regular basis.

2. As a result of this incident as well as other cases, it has become apparent that some changes to the by-law would assist in enforcement of the by-law. Legal staff are assisting Forestry staff in this regard. It is anticipated that a report to strengthen the by-law will be presented to Council early in 2011.
3. Given that Municipal Licensing and Standards currently has responsibility for the enforcement of a number of City by-laws and have enforcement expertise, it may be worthwhile to consider whether the General Manager Parks, Forestry and Recreation should commence discussions with the Executive Director, Municipal Licensing and Standards with a view to transferring the responsibility for tree by-law enforcement to Municipal Licensing and Standards.

Conclusion

Lessons have been learned as a result of this unfortunate incident. Actions have begun to address the situation to minimize the likelihood of a similar reoccurrence.

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SIGNATURE

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