

Teddington Park Residents Association Inc.

██████████ | Toronto, ON | ██████████ | tpra@rogers.com

December 8, 2015 [Revised]

To: Parks and Environment Committee
Chair Michelle Berardinetti,
Cllrs. Maria Augimeri, Joe Cressy, Sarah Doucette, Mike Layton, Gord Perks

To: Councillor Jaye Robinson,
Local Ward 25 Councillor

To: Mayor Tory and Members of Council
Toronto City Hall, 100 Queen Street West,
Toronto, ON M5H 2N2

Attention: Ms. Marilyn Toft, Manager
Council Secretariat Support, clerk@toronto.ca

Dear Mayor Tory and Members of Council:

PE8.5: Revisions to the Tree By-laws
Amending Chapters 658 and 813 of the City's Municipal Code
Council Meeting No.11 held on December 9th, 2015

Teddington Park Residents Association Inc. (TPRA) is writing to oppose the Revisions to the Tree By-laws affecting City, Private and Ravine trees as presented in Council's Agenda PE8.5.

The City proclaims that "Every Tree Counts"; however adopting the report and amendments will put our trees at needless risk of injury and removal, decimate the mature and established landscaped character of our neighbourhoods, render the voices of those who speak for trees powerless, and stifle local democracy. This should not be the effect of a by-law that was meant to protect, preserve and enhance the city's trees and its canopy.

The city's 10.2 million trees have a structural value of approximately \$7 billion and perform ecological services – such as air pollution removal, energy savings, avoided carbon as related to energy conserved and carbon sequestration – valued at \$28.2 million annually. Trees are living assets of the City, and silent workers – deserving of our care and stewardship.

As such Teddington Park Residents Association Inc. recommends:

1. That City Council refer the staff report and proposed revisions to the Tree By-laws (Chapters 658 and 813 of the City's Municipal Code) back to staff in the Policy & Strategic Planning Branch within Parks, Forestry and Recreation; and
2. To have the agenda item returned to Parks and Environment Committee following notice to interested and affected persons including residents, ratepayers and their groups and tree preservation, environmental and naturalist groups, to allow for representations to be considered prior to the drafting of any revisions to the Tree By-laws.

Among the many reasons supporting our recommendation, TPRA highlights the following summary:

1. FAILED DUE PROCESS:

The public expects and demands that such amendments come forward following consultation with notice, allowing for representations to be made for staff consideration before draft revisions to the Tree By-laws are presented, reviewed and finalized for adoption.

How is it possible that such substantive and far reaching revisions to our tree by-laws, currently not in draft by-law form, be recommended for adoption with Bills attached without notice and without representations from the public?

2. FAILED LOCAL DEMOCRACY

This report bundles a number of City Council decisions and Committee requests for information that date from July 2013. The omnibus report has essentially denied the public various opportunities to participate in understanding the issues and to provide feedback and input as part of the City's review of the Tree By-laws. How does this make for a robust and transparent dialogue in making law?

3. SUBSTANTIVE ISSUES are, but are not limited to

- The intent and purpose of the tree by-laws should made part of the by-law so that policy makers, administrators, enforcement staff, Councillors and the public do not lose sight of why these by-laws exist.
- The report and the proposed revisions are premature.
- The new terms for "Boundary Tree" and "Neighbour Tree" are inadequate. The processes are unclear. It would place all Boundary Trees and Neighbour Trees protected under the private tree by-law at risk. And will the rights of owners to these Boundary and Neighbour trees be ignored / diminished as a result?

- The new “as of right” definition is overly broad and lacks specificity. What are urban forestry’s procedures to ensure private trees measuring 30 cm or more are not deemed expendable under the “as of right’ permission? And how will the term be used in Committee of Adjustment Decisions that are subject to Urban Forestry? Will Urban Forestry’s objectivity be compromised in rendering opinions on protecting, injuring or destroying trees under the proposed “as of right” decision-making process?
- The amended process of deciding to injure or destroy healthy private trees will make the uneven process worse with the proposed elimination of the notice of intent from 14 days to 0 days. The gradual elimination of the public from decisions affecting our local trees threatens public confidence and trust in the City with respect to the stewardship of trees.
- The overall delegation of authority and the request for further delegation from Council to injure and destroy trees that are healthy or would otherwise be protected is problematic And should we expand the list of persons recognized as “Officers” to include students and city contractors?
- For further details of the summary issues, Attachment A is provided for your reference.

TPRA and residents have witnessed the loss of significant trees. The needless felling of mature trees by decision hurts more. We have witnessed the mistakes that have and can be made when trees are not considered in the development decisions:

- city trees and private trees sacrificed to make way for driveways – when they could easily have been put on the other side of the tree; and
- for bigger, wider and deeper homes that do not consider trees in their plans.

And we have endured the opaque process and resulting tension when the City tilts the decisions against the protection rights of the common owner in boundary tree situations and the rights of owners with trees wholly situated on their own lots where redevelopment is occurring next door.

The City’s Strategic Forest Management Plan approved by Council in 2013, states:

[...] the City's Official Plan, protecting the natural environment and urban forest should not be compromised by growth, insensitivity to the needs of the environment or neglect.

One of the fundamental aspects of increasing tree canopy coverage across the city is protection of the existing resource. Tree protection is currently accomplished through implementation of various tree and natural feature protection by-laws which provide opportunities to educate the public on the benefits of trees. Efforts to protect trees need to be improved.” (p.7)

Teddington Park Residents Association asks Mayor Tory and Members of Council to uphold the City’s *Official Plan*; to uphold the City’s *Strategic Forest Management Plan*; to uphold “*Every Tree Counts – A Portrait of Toronto’s Urban Forest*” by referring the staff report and proposed revisions back to Parks, Forestry and Recreation.

Respectfully,

Eileen Denny, President
Hilde Reis-Smart, Secretary
On Behalf of the Board and Residents
Teddington Park Residents Association Inc.

Encls.

Attachment A: Reasons and Substantive Issues – Supporting Details

ATTACHMENT A: REASONS AND SUBSTANTIVE ISSUES - SUPPORTING DETAILS

1. FAILED DUE PROCESS

The revisions to the City's Tree By-laws were advanced to Council without notice and without representations from members of the public. The revisions are substantive and far reaching and involve adding new definitions, amending existing terms, introducing new and amended processes to injure or destroy private trees. Also the revisions include a request for further delegation of authority from Council while at the same time seeking to eliminate the notice requirements of intent.

The public expects and demands that such amendments come forward following consultation with notice and to allow for representations be made for staff consideration before draft revisions to the Tree By-laws are presented, reviewed and finalized for adoption.

As much as 60% of the city's tree canopy is from trees located on private property, cared for by residents across the city. Residents are the stewards of these trees. Our residents are fortunate to have private, city and ravine trees grace our surroundings. It stands to reason, that TPRA and residents would ask for an opportunity to make our views known, to bring forward information that may have been missed and to have concerns and objections considered. TPRA would make the same request for others who wish to do the same.

2. FAILED LOCAL DEMOCRACY

This report bundles a number of City Council decisions and Committee requests for information that date from July 2013. The omnibus report has essentially denied the public various opportunities to participate in understanding the issues and to provide feedback and input as part of the City's review of the Tree By-laws making the dialogue less than robust and transparent.

Of equal concern is that previous amendments in 2013 were also introduced without Notice to Parks and Environment Committee on November 22, 2011. The item was adopted by Council on November 29, 2011, a mere span of 7 days. And a Bill was brought forward 15 months later as Bill No. 261 consisting of By-law 248-2013 enacting the amendments without any other corresponding reference to Council's February 2013 agenda. TPRA asks that this process to amend by-laws not be repeated.

TPRA is relying on Council's most recent May 2015 direction requesting the General Manager of Parks, Forestry and Recreation to undertake a full review of the City's Tree By-law

(emphasis added). A strong local democracy requires being informed, being involved and being part of a better outcome.

3. **THE SUBSTANTIVE ISSUES are, but not limited to**

- A. The purpose and intent should be made part of the Tree By-laws so that the policy makers, administrators, enforcement staff, Councillors and the public do not lose sight of why these by-laws exist.

Generally, the by-laws protect all trees on City owned property and Ravines and all private trees measuring 30cm or more at 1.4m from the ground. The decision to protect, to injure or destroy a tree is regulated by City Council.

- B. The report and proposed revisions are premature. The criteria in assessing tree condition from poor to good health are not available for review; the new processes being introduced lack clarity and are not properly outlined for inclusion into the by-laws; the new amended definitions, and “Boundary Tree” and “Neighbour Tree” appear incomplete as there are no associated clauses delineating how these trees are further protected.

- C. The new terms for “Boundary Tree” and “Neighbour Tree” are inadequate. Generally, the by-laws protect all trees on City owned property and Ravines and all private trees measuring 30cm or more at 1.4m from the ground.

- i. Boundary Tree: The key issue for a Boundary Tree is the fact that ownership is shared and one owner does not have the unilateral say to injure or to destroy a boundary tree without the express consent from the other owner (if two properties are involved).

For boundary trees measuring 30cm or more, TPRA’s lived experience suggests the proposed process places all boundary trees that are protected by the City at risk.

Consideration should be given to:

- Incorporating the common ownership in the definition of Boundary Tree;
- Making consent and the required signatures of the common owners’ of Boundary Trees part of the application to injure or destroy a boundary tree (signatures to be verified by a commissioner).
- Ensure that without signed and verified signatures of the common owners of the Boundary Tree, the application is incomplete, notice cannot be executed and permits cannot be issued.
- Requesting for some form of tree protection guarantee / security be deposited to ensure the boundary tree would continue to survive following a request to injure.

- Acknowledging upfront that to injure or destroy a boundary tree without consent is subject to a \$20,000 fine as stipulated by the Forestry Act.

For boundary trees measuring less than 30cm, TPRA’s understanding is that they are not protected under the City’s private tree by-law. However they are protected under the Forestry Act and should remain private matters. We ask that the City not interfere as their position will disadvantage the common owner of the boundary tree who places value in having those trees remain. Consideration should be given to:

- Providing the rights to the common owners of boundary trees protected under the Forestry Act and not the City’s private tree by-law.
- Acknowledging upfront that injury or destruction of a boundary tree without consent is subject to a \$20,000 fine as stipulated by the Forestry Act.

For boundary trees where the City is the common owner, the decision to injure or destroy a healthy tree would also be subject to the same criteria. Express consent from the shared owners would be required followed by notice.

- ii. A Neighbour Tree is defined as representing only those trees that are subject to an application to injure or to destroy by an adjacent property owner. The concept does not appear to be substantiated in the staff report. However, TPRA’s experience suggests the proposed process would place all Neighbour Trees protected by the City private tree by-law at risk. Consideration should be given to:
 - Whether there is a need to define a Neighbour Tree in this way.
 - Making consent and the required signatures of a Neighbour Tree part of the application to injure or destroy a Neighbour Tree (signatures to be verified by a commissioner).
 - Requesting for some form of tree protection guarantee / security be deposited to ensure the Neighbour Tree would continue to survive following a request to injure.
 - Ensuring that without signed and verified signatures of the owners of the Neighbour Tree, the application is incomplete, notice cannot be executed and permits cannot be issued.

D. The new “as of right” definition is overly broad and lacking specificity. What are the procedures? What are the criteria? And what are the circumstances when the “as of right” would be executed? The proposed revisions [813-11] define “as of right” as:

“development that complies with the Ontario Building Code, local Zoning By-laws and other applicable laws without further approval by City Planning.”

However, the Ontario Building Code does not recognize the Tree Bylaws and therefore is not considered applicable law. It is our understanding that applicable law

is enacted by Council, decisions of Committee of Adjustment and the Ontario Municipal Board.

What are urban forestry's procedures to ensure private trees measuring 30 cm or more are not deemed expendable under the "as of right" permission? Even with the issuance of a building permit, that permit does not preclude the applicant from not meeting other by-laws governing their site. Where would urban forestry use their expertise to argue protection if in fact what is submitted as plans to build with permits are accepted without question?

TPRA's direct experience with Urban Forestry is a result of development applications requiring Committee of Adjustment (COA) decision. This is coincidentally, from TPRA's experience, when trees are felled without permit and before a hearing takes place. And we often ask why are so many development applications subject to Urban Forestry following a COA hearing and decision, a privileged position not accorded to any other party attending and speaking on the matter. It has the effect of keeping the COA decision open until Urban Forestry makes a decision away from the public quasi-judicial hearing process. And unlike a deferral it does not return to the Committee allowing those that participated in the previous hearing an opportunity to speak on the matter. From a hearing process is this procedurally fair? And does this fall into Urban Forestry's definition of "as of right"?

The broadly defined "as of right" term is currently in use; it appears arbitrary and discretionary. Inserting it in the private tree by-law will predetermine Urban Forestry decisions and place City trees, significant large and mature trees, boundary trees, neighbour trees, heritage trees deserving of protection at risk.

Furthermore, Urban Forestry's goal of objectivity and neutrality in rendering opinion on protecting, injuring or destroying trees under the "as of right" decision-making process will be severely compromised and diminished.

E. Procedural Fairness:

The amended process of making a decision to injure or destroy healthy private trees is already unequal. Eliminating notice of intent from 14 days to 0 days makes the situation worse.

The uneven process can be illustrated by amendments enacted in 2013 to remove similar processes without notice and without the opportunity for the public to make representations.

And the inconsistent process is demonstrated in the COA quasi-judicial hearing proceedings where COA decisions are subject to Urban Forestry as noted above.

Also, the suggested new processes for Boundary Trees and Neighbour Trees are not clear and not properly disclosed. The recommendation for the inclusion of these new processes is premature.

The erosion of procedural fairness, the elimination of clear public processes with opaque processes on how our trees are maintained, preserved and enhanced is undemocratic. It threatens, if it has not already diminished, public confidence and trust in the City when it comes to the stewardship of our trees.

F. Delegation:

The revisions to the tree by-laws seek further delegation of decision-making from Council to injure and destroy trees that are considered “healthy”. This is problematic. First, the criteria used to determine the condition of trees is not yet available for review. And second, it appears that the General Manager of Parks, Forestry and Recreation has been granted broad decision making powers as delegated by Council. Yet there does not appear to be a separate by-law outlining the specifics of the General Manager’s overall delegation and to what extent this delegation can be further delegated.

TPRA objects to the adding of “students” and “city contractors” to the current approved list of “Officers” in the by-law as provided below:

“A City employee whose duties include the enforcement of this chapter, including but not limited to those persons holding the positions of: General Manager, City Forester, Urban Forestry Supervisor, Urban Forestry Coordinator, Urban Forestry Planner, Urban Forestry Planning Assistant, Urban Forestry Manager, Arborist Inspector and Arborist Foreperson.”

Are we to presume that students or city contractors are permitted to enforce infractions and contraventions of the tree by-laws?

TPRA asks that a review be conducted to return certain delegated decisions back to a public forum to restore public confidence in decision-making. Good governance and accountability comes from clear lines of responsibility as well as clear parameters on what is being decided.

TPRA reserves the right to comment, make our views known, bring forward information that may have been missed, or object to the proposed revisions and to address the integrity of the Tree by-laws, as amended, in an effort to re-balance the competing interests with the City’s long term goals in mind.