

## **Tree Bylaw Investigation: 7 Waxwing Place**

**Date:** March 8, 2018

**To:** North York Community Council

**From:** General Manager, Parks, Forestry and Recreation

**Wards:** Ward 34 - Don Valley East

### **SUMMARY**

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The purpose of this report is to provide an update and information on a tree bylaw contravention that occurred at 7 Waxwing Place, as directed by North York Community Council.

On July 27, 2017, a tree bylaw contravention at 7 Waxwing Place was reported through 311 and the local councillor's office. Urban Forestry staff inspected the site and confirmed that two trees were removed from the subject property that were not included in the permit for tree removals and injuries issued by Urban Forestry on February 24, 2017.

In keeping with the guidelines of the Private Tree Bylaw, a Stop Work Order and a Contravention Inspection Form was issued to the property owner. An Order to Comply and Cover Letter were also issued. They identified the compliance measures required to correct the contravention including the submission of contravention inspection fees and replanting requirements. Urban Forestry has received payment of the contravention inspection fees and will be conducting an inspection in October 2018 to confirm the planting requirement has been met.

### **RECOMMENDATIONS**

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The General Manager of Parks, Forestry and Recreation recommends that:

1. North York Community Council receive this report for information.

### **FINANCIAL IMPACT**

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There are no financial impacts resulting from the adoption of this report.

## DECISION HISTORY

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At its meeting of January 16, 2018, North York Community Council requested an update on the investigation into 7 Waxwing Place tree removal and directed that:

1. Urban Forestry staff prepare a report for the April 4, 2018 meeting of the North York Community Council:

- a. detailing, step-by-step, the investigation and subsequent fines issued to the violating parties; and
- b. comparing the process used and fines issued in the 7 Waxwing Place case to the guidelines set out in the City of Toronto Private Tree Bylaw.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.NY27.40>

## COMMENTS

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### **Tree Protection and Plan Review: Involvement prior to Contravention**

In March 2016, the owner of the property located at 7 Waxwing Place submitted a minor variance application to the Committee of Adjustment to construct a new two-storey dwelling with an integral garage. The Committee of Adjustment application was required as the proposed building did not conform to existing zoning bylaw requirements.

In April 2016, Urban Forestry, Tree Protection and Plan Review staff were circulated the Committee of Adjustment application for 7 Waxwing Place. The front yard of the property is regulated by *Municipal Code, Chapter 813, Trees* and the rear yard is regulated under *Municipal Code, Chapter 658, Ravine and Natural Feature Protection*. Urban Forestry staff did not object or submit conditions to the Committee of Adjustment as no major impacts to bylaw regulated trees resulting from the proposed minor variances were anticipated.

On April 21, 2016, the Committee of Adjustment's Notice of Decision was issued and the minor variance application was approved with conditions. Of the eleven variances that were applied for, three were refused. The refused minor variances were related to building length and depth. The Committee's decision was final and binding on May 12, 2016. During this time, as required, the building plans were revised to meet the conditions imposed by the Committee of Adjustment's final and binding decision. As part of these revisions, the footprint of the proposed dwelling was shifted closer to the front (north) property line. A zoning certificate was issued for the site on May 24, 2016 confirming that the proposal complied with applicable City zoning bylaws and identified that the proposal was subject to the *Conservation Authorities Act*, requiring the applicant to receive a permit from the Toronto and Region Conservation Authority for the proposed project.

In August 2016, the Ravine and Natural Feature Protection group received an application to injure ten trees and remove two trees at 7 Waxwing Place. The permit for

these removals and injuries was issued on February 24, 2017, conditional on the issuance of a building permit. As compensation for the tree impacts, cash-in-lieu in the amount of \$10,494.00 was received. Remaining trees within the Ravine and Natural Feature Protected Area were protected through the installation of hoarding as per the approved Tree Protection Plan. A permit for this site was issued from the Toronto and Region Conservation Authority on January 26, 2017 and on March 14, 2017 the building permit was issued.

## **Private Tree Bylaw Contravention**

On the evening of July 27, 2017, a tree bylaw contravention at 7 Waxwing Place was reported through 311 and the local councillor's office. That night Urban Forestry staff followed up with the complainant to confirm if any work was happening on site. As it was confirmed that there was no work currently on site, staff advised the complainant that the site would be inspected the following day. Urban Forestry staff inspected the site and confirmed that two trees were removed from the front yard of the subject property. The two trees were basswoods (*Tilia americana*) and the stumps on site were measured to be 45 cm and 65 cm in diameter. These trees were protected under *Municipal Code, Chapter 813, Trees, Article III, Private Tree Protection* and permits for their removal had not been issued. As a result of the tree removals, a Stop Work Order and a Contravention Inspection Form was issued to the property owner.

Staff met with the applicant for 7 Waxwing Place to discuss the contravention. At this meeting the applicant admitted that he had given an arborist the direction to remove the two private trees. The applicant clarified that there was no malicious intent in removing the subject trees and thought they had received all necessary tree permits for the site.

If the property owner of 7 Waxwing Place had submitted an application for the removal of the two private trees, Urban Forestry would have approved the application. When the location of the proposed dwelling was shifted closer to the front (north) property line, the two trees were then directly within the footprint of the dwelling and removal was required in order to facilitate construction in accordance with the building permit. As the proposal complied with applicable zoning bylaws, this proposal is considered an "as-of-right" development. *Municipal Code Chapter 813, Trees, Article III, Private Tree Protection 813-18(10)* allows for the issuance of permits to injure or destroy trees where development is permitted as-of-right. In these instances, Urban Forestry attempts to achieve a net benefit to the natural environment through replacement planting and by establishing tree protection for the remaining trees on site.

When a contravention has occurred, Urban Forestry's primary objective is to stop the contravention from continuing if possible and to obtain mitigation and compensation for the tree damage. This may be achieved through the issuance of Contravention Inspection Forms and Cover Letters to clearly outline the specifics of the bylaw contravention (i.e. trees impacted and contravention details) and the issuance of orders requiring the contravening activity to be discontinued and work to be completed to correct the contravention in accordance with *Municipal Code, Chapter 813, Trees, Article IV, Offences and Enforcement 813-27.A.(1)(2)*. Typical compliance measures include the replanting of trees on the subject site, performing remedial work to correct the contravention and the payment of contravention inspection fees. This method of

achieving compliance with the tree bylaws is beneficial in that the natural environment impacts are successfully mitigated and the individual responsible for the contravention has been held accountable and educated on the tree bylaws and their role in protecting the city's urban forest.

When a contravention is either egregious in nature, the offender has a history of tree bylaw infractions, undue harm has been done to the community; or compliance with the orders issued is not forthcoming, Urban Forestry may choose to pursue formal charges and prosecution against the individuals responsible for the contravention. Under *Municipal Code, Chapter 813, Trees, Section 29, Penalties.*, any person convicted of an offence is liable; to a minimum fine of \$500.00 and a maximum fine of \$100,000.00 per tree; and a special fine of \$100,000.00 under subsection 370 (1) (d) of the *City of Toronto Act, 2006*. When prosecution is successful, the amount of the fine requested by City staff is based primarily upon the severity of the contravention, the evidence provided and whether or not the contravening party is perceived to have acted with intentional disregard for the City's tree bylaws. While City staff make recommendations with respect to the appropriate amount of the fine to be levied, the final decision with respect to the amount of the fine levied is determined solely by the presiding justice at the time of decision. After the fines are levied the defendant can appeal the fines.

Through discussions between Urban Forestry and the applicant representing the property owner, staff have concluded that the private tree contravention was unintentional. The applicant believed they had received all of the necessary permits from Urban Forestry when they received the permit from the Ravine and Natural Feature Protection group. As a result, Urban Forestry's compliance unit deemed it appropriate to pursue compliance through the issuance of an Order to Comply and not proceed with prosecution.

On October 24, 2017 an Order to Comply and Cover Letter was issued to the property owner identifying the compliance measures required to correct the contravention including the submission of contravention inspection fees for two trees in the amount of \$1,398.62 and the planting of ten large growing native 50 mm caliper trees. The documents also outlined the requirement to submit a Landscaping and Replanting Plan and provided details on addressing the tree planting requirement through a combination of planting and cash-in-lieu payment in the amount of \$583 per tree.

The deadline for the submission of the contravention inspection fees was November 14, 2017 and the deadline for tree planting is October 24, 2018. Urban Forestry received payment of the contravention inspection fees on November 6, 2017 and the applicant has stated they intend to meet the tree planting requirements and will work with Urban Forestry staff to develop an acceptable Landscape and Replanting Plan.

## **CONTACT**

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## **SIGNATURE**

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Janie Romoff  
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