



CITY OF HAMILTON
PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
Licensing and By-law Services Division

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	June 20, 2017
SUBJECT/REPORT NO:	Application for a Permit to Injure or Destroy Trees in a Woodland for CON 2 PT LOT 57, PLAN 699 PCL A RP 62R17555, PARTS 1 TO 11 (Municipal Addresses of 820, 828, 870 Scenic Drive and 801 Sanatorium Road)(PED17096) (Ward 8) Refused by the Director of Licensing and By-law Services and appealed by the Applicant
WARD(S) AFFECTED:	Ward 8
PREPARED BY:	Robert Ustrzycki (905) 546-2424 Ext. 4721
SUBMITTED BY:	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development
SIGNATURE:	

RECOMMENDATIONS

That the Appeal of the Director of Licensing and By-law Services' decision to refuse a Permit to Injure or Destroy Trees in a Woodland be **denied** on the following basis:

The Permit Application requesting permission to cut trees:

- (a) meets the criterion in Section 11 of the Urban Woodland Conservation By-law No. 14-212 under which a Permit **shall be refused**, namely a portion of a Sensitive Natural Area would be eliminated if the trees were cut; and
- (b) is not in keeping with the general intent of purpose of the Urban Woodland Conservation By-law No. 14-212 which is to promote the conservation and sustainable use of woodlands on private property within the urban boundary of the City of Hamilton.

EXECUTIVE SUMMARY

The Applicant, Valery (Chedoke Browlands) Developments Inc., applied for a Permit to Injure or Destroy Trees in Woodland for CON 2 PT LOT 57, PLAN 699 PCL A RP 62R17555, PARTS 1 TO 11 with municipal addresses of 820, 828, 870 Scenic Drive and 801 Sanatorium Road (the Property).

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The Permit Application was refused by the Director of Licensing and By-law Services on grounds as set out in the Notice of Refusal of Permit (attached as Appendix "A" to Report PED17096 - Notice of Refusal). The main ground of refusal was that the Permit Application met the criterion in Section 11 of the Urban Woodland Conservation By-law No. 14-212 (the By-law) requiring refusal as the trees to be cut are a woodland within a Sensitive Natural Area. Issuing the Permit would result in the elimination of that portion of the woodland and Sensitive Natural Area, shown as stands 3 and 4 on Map 1 attached to the Notice of Refusal.

The Applicant has appealed the decision of the Director of Municipal Law Enforcement, now Director of Licensing and By-law Services, to the Planning Committee.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: N/A.

Staffing: N/A

Legal: The By-law establishes the process for applying for a Permit, including appealing a decision of the Director of Licensing and By-law Services to Planning Committee. Planning Committee hears an appeal and makes a recommendation to Council which decides to refuse or issue a Permit.

HISTORICAL BACKGROUND

On August 15, 2014, Council approved the By-law, which applies to woodlands within the urban boundary of the City. The By-law establishes criteria for the refusal, issuance or issuance with conditions of a Permit to destroy or injure trees in a woodland.

Staff received various submissions from the Applicant (attached as Appendix "B" to Report PED17096 – Permit Application Documents), including:

- Notice of Intent to Cut Application, as updated January 13, 2017;
- Brow Lands Tree Inventory and Preservation Plan by GeoProcess Research Associates, January 13, 2017;
- Forest Assessment, Scenic Drive, Hamilton, Ontario by Kuntz Forestry Consulting Inc., January 13, 2017; and,
- Browlands Forest Operating Prescription by Williams and Associates Forestry Consulting Ltd., February 14, 2017.

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These submissions were reviewed in consideration of a Permit Application under Section 7 of the By-law to cut trees in the woodland located on the Property. On March 29, 2017 the Permit Application was refused by the Director of Licensing and By-law Services and on April 11, 2017 the Applicant appealed this decision.

Inspection by City Enforcement staff concluded that, on or about the 24th day of March, 2017, 106 trees within the Woodlands of the Sensitive Natural Area subject to this Application were cut without a Permit. Legal proceedings are currently being processed against the Applicant Corporation, its directors and person(s) party to the destruction of trees without a permit in contravention of the By-law.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The By-law prohibits the injury or destruction of trees in woodlands located within the urban boundary of the City. It provides that the Director may issue or refuse a Permit to allow for tree cutting in such woodlands, subject to certain criteria. The proposed tree-cutting in this Application meets the criteria for refusal, and does not meet the criteria for issuing a Permit.

Approval of the Permit Application would allow the destruction and injury of trees in contravention of the By-law and could set a precedent for the future destruction and injury of trees in urban woodlands.

An explanation of criteria in the By-law, and how it applies to the Permit Application, is set out under the heading of “Grounds for Refusal” in the Notice of Refusal (Appendix “A”). Further, comments with respect to the Applicant’s Permit Application (Appendix “B”) and Appeal Letter (attached as Appendix “C” to Report PED17096 – Appeal Letter), are set out under the heading of “Comments” in the Notice of Refusal and under the “Analysis and Rationale” section of this Report.

In addition to considering this Report and the Notice of Refusal by the Director of Licensing and By-law Services, the Planning Committee is to consider the following in making its recommendation to Council:

- special circumstances or conditions applying to the land where the trees are located;
- whether strict application of the provisions of this By-law in the context of the special circumstances applying to the trees would result in practical difficulties or unnecessary and unusual hardship for the owner, inconsistent with the general intent and purpose of this By-law; and,

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- whether such special circumstances or conditions are pre-existing and not created by the owner.

There is only one special circumstance that applies to this Applicant. The Property is subject to an Ontario Municipal Board Decision, as set out under the “Comments” heading of the Notice of Refusal in Appendix “A” to this Report. Denial of the appeal is consistent not only with the general intent and purpose of the By-law, but with the Ontario Municipal Board decision which determined how the Property was to be developed, with the woodland remaining intact: *“The large woodlot on the east portion of the site has been identified as an ESA [Environmental Sensitive Area]. This woodlot, along with a buffer, will remain as private open space.”*

The time required for the Permit Application process to take place is not a hardship as asserted in the Applicant’s Appeal Letter in Appendix “C” to this Report.

RELEVANT CONSULTATION

Planning Staff and Hamilton Conservation Authority staff was consulted in the Director’s review of this Application.

Legal and Planning staff was consulted in the preparation of this Report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

The analysis and rationale for the refusal of the Permit Application is set out under the “Grounds for Refusal” and “Comments” headings of the Notice of Refusal in Appendix “A” to this Report.

The Applicant raised several items in its Appeal Letter which are summarized and responded to below.

1. The Notice of Refusal does not reference the report by Peter Kuntz dated January, 2017.

The Peter Kuntz Forestry Consulting Inc. report, dated January 13, 2017, was reviewed by City staff when considering the application. This report was appended to the “Notice of Intent to Cut Application, as updated January 13, 2017”. Therefore, City staff has carefully reviewed and considered all of the information submitted by Valery Homes when making the decision to refuse the Permit.

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2. The three expert reports provided constitute a “Forest Management Prescription” and provide a complete inventory of the trees.

City staff does not agree with the Applicant’s assertion. The plan submitted in this application calls for the clearing of trees within the Core Area, with replanting in a different location. This is not forest management, but offsetting (woodland replacement). The Notice of Intent to Cut did not provide the residual basal area (the volume of tree wood remaining after the proposed cut) or a management plan for restoring the woodland in its current location.

The tree inventory in the Notice of Intent to Cut was incomplete. Considering the size of the area to be cut (0.28 hectares) and the density of trees typical of woodlands (and shown in the photos provided), City staff suspected that the Notice of Intent to Cut did not include all trees proposed for removal. This has been confirmed because 106 trees were cut on or about March 24, 2017, but only 48 trees were listed on the Notice of Intent to Cut.

3. The area of the proposed tree cutting is only a small portion of the Environmentally Sensitive Area and not every tree would be removed.

According to the Notice of Intent to Cut, an area of 0.28 hectares or 48 trees (listed in Appendix A) were to be removed within the ESA. The Williams and Associates Forestry Consulting Inc. letter (dated February 14, 2017) refers to “clearing of these areas” and “removing the remaining trees and the understory”, which implies that few, if any, trees would remain in the woodland. This conclusion is also supported by the fact that the Notice of Intent to Cut did not provide any residual basal area.

The removal of trees within the Sensitive Natural Area would be contrary to the OMB decision to protect the subject Woodland (Core Area, Environmentally Significant Area, and Significant Woodland). The documentation to this application calls for the removal of stands 3 and 4 on Map 1 attached to the Notice of Refusal with replacement at a different location.

4. The proposed tree cutting meets the definition of “good forestry practices”. “Invasive” species would be removed and replaced with native species on a 3 to 1 ratio in a slightly different location in the same general vicinity.

Clear cutting is not in accordance with good forestry practices. City staff question why the woodland must be clear cut and replaced in a different location, along the escarpment brow on the west side of the Property. A better solution would be to restore this section of the woodland over time, by gradually removing any invasive trees and plants, and replanting with native species. Based on the

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information and photos provided, the site would be an excellent candidate for habitat restoration, as the invasive species in the understory are not abundant.

5. The trees are not healthy.

Staff does not agree with the Applicant's assertion. The trees are healthy and the proposed injury or destruction of the trees is not necessary. Although the Notice of Intent to Cut requires data on the condition of trees to be removed, the reports do not provide specific information on the health of each tree.

6. No endangered tree species would be removed.

Insufficient details on the trees within the Core Area was provided in this application for City staff to determine if any endangered species are present. The Notice of Intent to Cut did not identify every tree to be cut.

7. The woodland is a plantation that is exempt from the By-law.

As asserted in the Applicant's documentation, the subject Woodland has not been continuously managed, and therefore does not constitute a plantation as defined in the By-law. Therefore, the woodland is not exempted from the By-law.

ALTERNATIVES FOR CONSIDERATION

Council may issue the Permit, with or without conditions, allowing for the cutting of the trees in the woodland.

The City's woodland conservation by-laws require that a Permit be obtained prior to the cutting or removal of trees to prevent serious environmental degradation or irreversible damage. Approving a Permit where tree cutting has commenced before issuance of the Permit could encourage similar applications, undermining the general intent and purpose of the City's woodland conservation by-laws including Urban Woodland Conservation By-law No. 14-212.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement & Participation

Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

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Our People and Performance

Hamiltonians have a high level of trust and confidence in their City government.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" - Notice of Refusal

Appendix "B" - Permit Application Documents

Appendix "C" - Appeal Letter

KL/RU/st

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