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## **Protection of Trees on Private Property Staff Report to Council**

Report Number: 2022-01

Department(s): Planning Services, Forestry Services, & Regulatory Services

Author(s): Meghan White, Devon Morton, Joerg Hettmann, & Flynn Scott

Meeting Date: January 24, 2022

### **Recommendations**

1. That the report entitled Protection of Trees on Private Property dated January 24, 2022 be received;
2. That the Private Tree Protection By-law (Private Tree By-law) be adopted; and,
3. That the application fees be directed to resource and administer the By-law;
4. That the applicable fees be set as follows:
  - a) administration fee: \$300
  - b) review fee: \$100/tree for cost recovery
  - c) appeal to the Director of a refused permit: \$50
  - d) appeal to the Appeals Committee of a refused permit: \$650;
5. That a cash-in-lieu amount of \$450 per 6cm of tree be collected if replanting cannot cover all of the prescribed compensation amount, and this amount be reviewed annually;
6. That staff bring forward a separate By-law defining and protecting Socially Significant Trees, targeting Q1 of 2023;
7. That a reserve be established for the compensation collected and to be used for planting new trees and/or other programs related to improving the Town's canopy and meeting canopy targets (over and above scheduled yearly tree planting operations);

8. That Staff bring forward amendments to the AMPS and Fees & Charges By-laws at the same time as the Private Tree Protection By-law; and

9. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

## **Executive Summary**

The discussion of protecting trees on private property in Newmarket has been ongoing for some years. It is not an easy topic of discussion as people generally feel very passionate about the topic, both for and against. In this report, as well as previous reports to Council, staff outline the social, economic, and environmental benefits of trees. The services they provide are felt throughout the community whether they are on public or private property. This value and understanding has lead staff to recommend that Council adopt a Private Tree Protection By-law to regulate and discourage the removal of trees on private property.

The By-law will contribute to the Town achieving the target, set by the Region, of 35% tree canopy by 2051. By discouraging removal of trees on private property, and ensuring the replacement of those that are being removed, this By-law will allow more trees to mature and contribute to achieving the overall canopy target.

Council set Environmental Stewardship as one of the strategic goals for this term of Council. The proposed By-law realizes one of Council's measures of achieving the goals of this strategic priority.

This discussion has been taken out to the community and based on the results of the survey and technical comments received, staff have made some changes to the earlier proposed By-law that are outlined in the report. The extent and result of community consultation is also discussed in this report, demonstrating that the community is divided but that those in support of the By-law support it for the environmental and community benefits it can assist in achieving.

Much work has been undertaken to bring the proposed By-law to this point and if it is Council's intention to proceed to adoption of the By-law, then there remain some processes that will need to be finalized prior to accepting applications for tree removal. It is anticipated that these can be completed within a few months.

The policy effect of this By-law should encourage the preservation and replacement of trees such that they can benefit all of Newmarket and assist in achieving the tree canopy target.

## **Purpose**

The purpose of this report is to recommend approval of a by-law which will protect trees on private property and allow for their removal in certain circumstances with compensation.

## **Background**

As Newmarket grows, it is important to help keep as many trees as possible. Trees are an intrinsic part of communities, towns, cities, and regional districts. They play a vital role in creating and maintaining sustainable communities that attract and retain residents and businesses. A healthy urban canopy is an investment which only appreciates over time.

The Municipal Act gives municipalities the authority to enact by-laws to prohibit or regulate the destruction or injuring of trees. Such by-laws are created to protect trees and natural features with the purpose of avoiding unnecessary injury, removal, or destruction of trees. Such by-laws are not uncommon in the province.

The Town currently uses a number of tools to manage canopy cover and the removal of trees; however, trees on private property which are not identified as Natural Heritage or as being in the Woodlot By-law are generally not protected at this time.

### **Protection on Private Property**

The Town's 2016 Urban Forestry Study reports that the greatest proportion of the urban forest is located in the residential areas of the municipality, including the other land uses that are generally privately held, 68% of all trees are found on private property.

The value of trees, which will be outlined below, demonstrates the social, economic and environmental benefit of preserving trees on private property. Any potential change to the protection of trees in Newmarket, whether in planning applications or on public or private property, requires a careful balance of rights and interests.

On private property that is subject to a development (planning) application, private property owners regularly seek to change or develop their property in a manner that suits their future interests. Council and staff review these applications in light of the Official Plan, zoning by-law, and other Town, Regional, and Provincial plans, while considering the impact on the surrounding community. The established practice (through existing policies) is that property owners wishing to develop their land retain an arborist to help them shape their proposal for the best possible scenario for tree preservation. This practice recognizes the right of property owners to remove trees provided that they replant a commensurate number of trees or pay the Town the equivalent value to replant those trees on alternative lands. This also gives the Town an opportunity to engage the property owner in discussions about tree preservation. Through the development review process, there is a detailed review of, and analysis of, the balance between development rights and the interests of the broader community.

On private property, not subject to a development application, this balance is rarely considered. Property owners expect to be able to manage their own property as they wish. Broadly speaking, the Town strives to protect private property rights wherever possible. The work done to date and this report outline that in the case of trees it is appropriate to prioritize benefits to the community at large over individual property rights

when discussing a subject matter of this significance. Staff have found that, generally, property owners are concerned about the welfare of trees; however, people are not always aware of how alterations to their property can injure, damage and destroy trees.

Limiting private property rights is not unprecedented among municipalities. Like many municipalities, Newmarket has a suite of policies, by-laws, and practices which already limit private property rights. For instance, the zoning by-law limits the use of land and how one can build on it. The site alteration by-law regulates the way that one can change the topography and grade of property. The existing Tree Preservation, Protection, Replacement and Enhancement Policy (Tree Policy) regulates the removal of trees as part of planning applications and requires their value be, broadly speaking, compensated or replaced, during the development review process. The Woodlot By-law and Regional Forest Conservation By-law regulate the removal of trees within a woodlot. The Property Standards By-law requires certain maintenance of trees and property to Town standards. Subdivision and site plan agreements limit the ability to remove trees on many properties in Newmarket. In sum, these various legal tools already recognize the value of privately-owned trees and regulate when and why trees can be removed. Any revision to these tools requires a consideration of private property rights and the public good, but it is important to understand that limitations on private property rights already exist in Newmarket's current policy landscape. Staff are proposing reconfiguring the balance struck between private property rights and the public good as it relates to trees on private property. Based on best practices and the value of trees demonstrated in this report, it is staff's opinion that it is appropriate to implement a by-law which will discourage the removal of private trees and regulate how they might be removed.

## How did we get here?

In 2017, staff started a process of reviewing all tree related policies and by-laws in Newmarket to establish a consistent and comprehensive approach. Since then the following has been accomplished:

- Review of Policy and By-laws (2017), Staff Report 2017-05
- Public Tree By-law approved (2017), Staff Report 2017-41
- Tree Policy revised (2018), Staff Report 2018-24
- Interim report on private tree protection (2019), Staff Report 2019-61
- Council Workshop on Private Tree Protection (April 2021)



## Why are we doing this?

### Value of Trees

Trees are a capital asset. Just as streets, buildings, and recreational facilities are a part of a community, so too are trees. Trees have intrinsic social, environmental, and economic value. They make our community better, they enhance our property values<sup>1</sup> and improve our mental health. It is not just publicly accessible trees that improve our world; trees on private property play a role as well.

Trees play a fundamental role in the health of the environment. Trees support biodiversity within communities, as they provide habitat and protect streams, aquatic life, and all other ecosystems. Trees help control erosion, sedimentation, and help reduce stormwater runoff, reducing Town costs to manage water. Not only do trees and urban forests provide many environmental benefits, they also encourage active transportation; inviting people to walk or bike to their destinations alongside or through treed routes instead of getting in their cars.

As has been noted previously, and mentioned frequently in the public comments received throughout this process, trees are instrumental in mitigating the impacts of how our climate has changed due to human intervention, as well as limiting the amount of change we will face in the future. They also lift our mood and our spirits; they improve our mental health as well as our physical and environmental health.

To reiterate from previous reports, trees are valuable public infrastructure, not just ornamentation. Newmarket's urban canopy is made up of both public and private trees and is a valuable infrastructure asset. As per the 2016 Urban Forestry Study, Newmarket's trees help avoid more than 200,000 cubic metres of water runoff each year, a service valued at nearly \$500,000. Trees reduce erosion, improve air quality, and increase property values. The Town's urban tree canopy reduces residential energy costs by more than \$3,000,000 per year. Newmarket trees and shrubs remove 40 tonnes of air pollution per year with an associated removal value of approximately \$249,000 and they are estimated to store 35,345 tonnes of carbon. To quantify this in economic terms, the replacement value of Newmarket's trees exceeds \$350,000,000.

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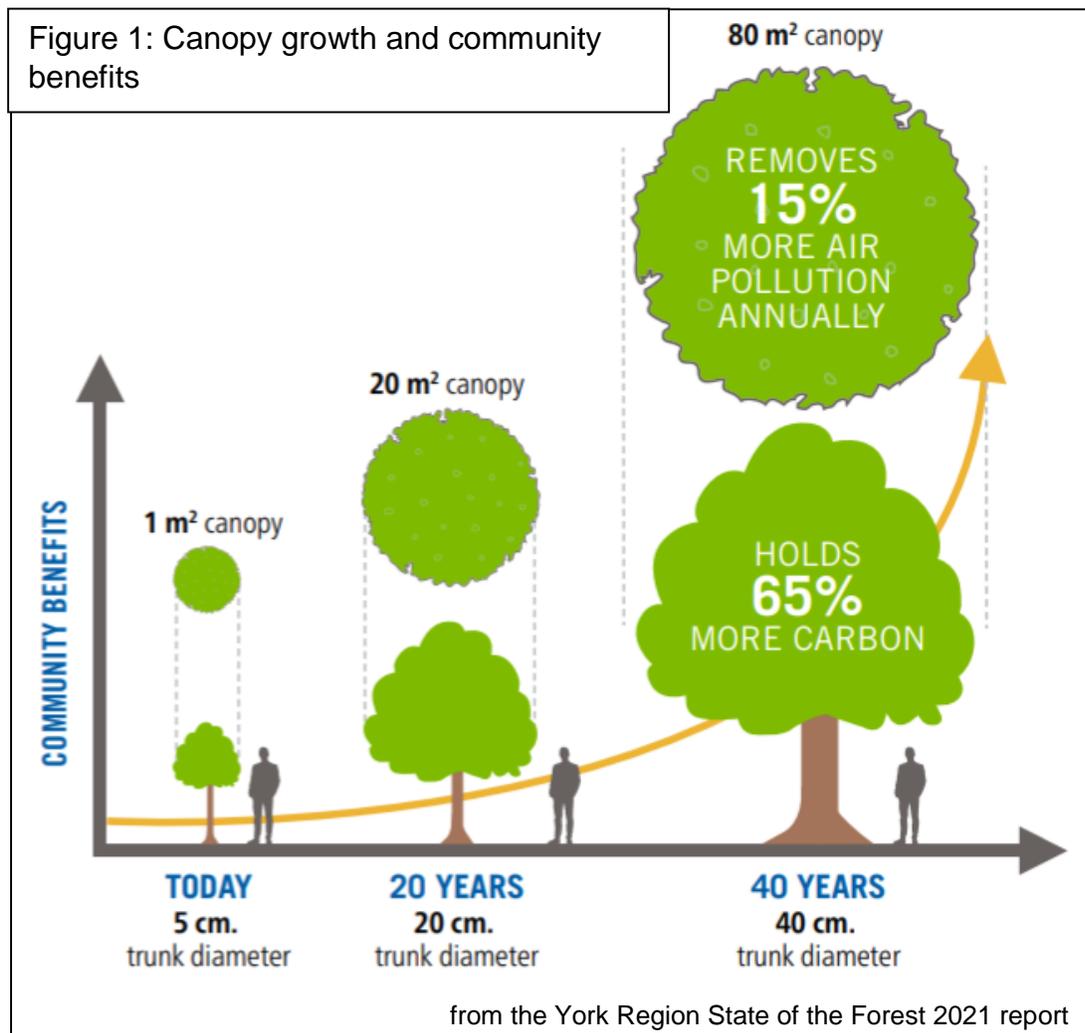
<sup>1</sup> "Canadian surveys have shown that having mature trees around a house can increase its value by up to 15% by providing privacy and adding character to a neighbourhood." from the [York Region's State of the Forest Report, 2021](#)

## Council Strategic Priority

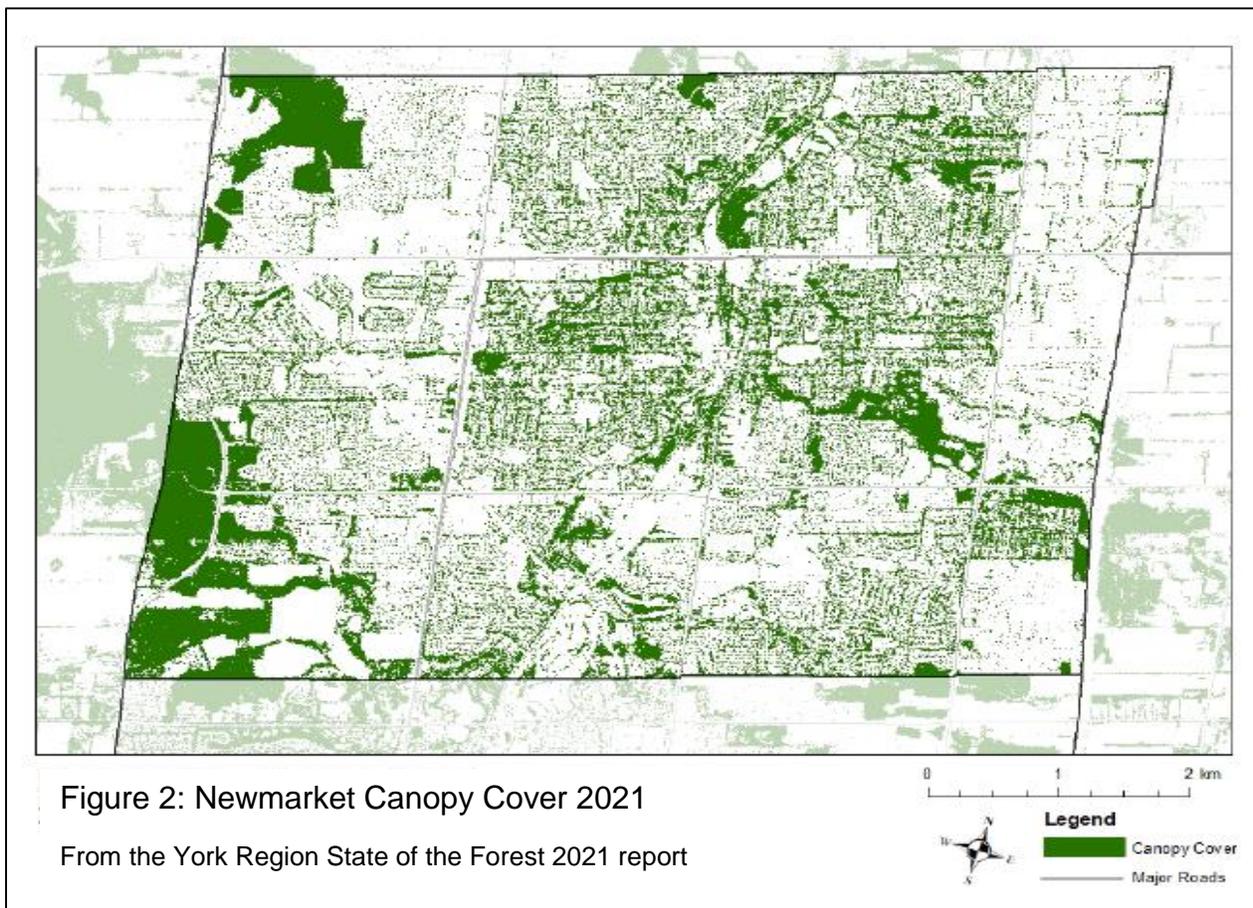
In 2018, Council set their priorities for this term of Council, including a pillar of Environmental Stewardship, aiming to lead proactive planning and action related to climate change and other environmental initiatives. Under this pillar, “bring forward a Private Property Tree Protection By-law for Council consideration” was identified as a measure of achieving the goals of this strategic priority. The proposed By-law is part of how Council can be proactive in adapting to climate change and mitigating our impacts on the climate. It realizes one of Council’s strategic priorities under this pillar.

## Canopy Targets

Tree canopy cover is a measure of the size of our urban forest. Canopy cover increases exponentially during a tree’s lifetime (see Figure 1 below). Increasing canopy cover will increase the value and benefits to the community. This means the protection and maintenance of mature and maturing trees is critical to preserving and extending canopy cover. Allowing trees on private property to reach their full maturity, and discouraging their removal will most effectively increase the Town’s canopy size.



The York Region Official Plan recommends increasing Newmarket's canopy cover to 35% by 2051. While the Town currently has a total canopy cover of 28%<sup>2</sup>, current practices may not be sufficient to reach the 35% target. The Urban Forestry Study shows us that 68% of our trees are on private property; therefore protecting trees on private property is vital in meeting this canopy target. Growing our canopy cover is about increasing the number of trees, and also, more importantly, increasing the size of trees. It is not possible to enhance and grow the tree canopy when 68% of the trees are outside the control of the Town. It may not be possible to maintain our current canopy levels if too many trees are removed. The 4% increase in canopy cover since 2016 has largely been attributed to tree growth and maturity of existing trees, not by adding a significant number of new trees.<sup>3</sup> Continued growth and maturity of trees will be even more critical going forward if we are to meet the 35% target within the limited space and fixed boundaries of the municipality. This By-law should act as a deterrent to removing trees thereby allowing more trees on private property to mature and allow for the canopy to continue to grow. We can re-grow trees, however we cannot immediately replace their environmental impact.



<sup>2</sup> York Region reports Newmarket canopy cover increased to 28.1% (+4.1%) in 2020, while woodland cover decreased to 9.8% (-0.1%) from 24% canopy cover and 9.6% of woodland cover in 2016.

<sup>3</sup> The Town has planted 3,127 tree on municipal land since 2016. This does not include trees that have been added through new subdivisions.

## Discussion

### The Proposed By-law

The draft by-law is attached as Appendix 1. The By-law requires a permit to be obtained to remove a tree that is 20cm in diameter or greater at breast height. If it is less than 20cm, the By-law (and subsequently the tree permit process) does not apply.

If a Tree Permit is approved, compensation is required. Compensation is measured in new trees planted, or a cash-in-lieu amount. The number of trees to be planted as compensation is determined through the Aggregate Inch Method. For every cm (or inch) of tree diameter removed, and equivalent aggregate diameter and associated number of trees must be replanted on the same property. If tree(s) cannot be replanted on the property, the applicant may pay a cash-in-lieu amount. The cash-in-lieu amount will be included in the Town's Fees and Charges By-law and is proposed to be initially set at \$450 per 6cm of tree diameter. Additional details on compensation is provided below.

The By-law also sets out the following matters:

- Definitions for the terms used in the By-law;
- Sets out that trees equal to or greater than 20cm diameter at breast height (DBH) cannot be injured or destroyed on private property unless approval is granted by the Town;
- Exemptions for getting a permit include:
  - trees subject to other governing regulations under the Town's Woodlot By-law and the Region's Forest Conservation By-law,
  - the exemptions provided under the Municipal Act (utilities, activities undertaken under provincial or federal legislation, etc.), and
  - tree removal authorized by Planning Act applications;
- Sets out the reasons a tree permit may be granted;
- Sets out the review criteria for refusing or issuing a permit;
- Sets out that there can be conditions put on a permit;
- Sets out that compensation will be required if a tree permit is granted and how that compensation will be calculated;
- How long the permit is valid for and when or if a permit can be revoked; and
- That fines and charges will be set out in the Administrative Monetary Penalty System By-law 2019-62, as amended (AMPS By-law).

### General Philosophy and Intent

The general intent and philosophy of the By-law is to be a deterrent to encourage private property owners to keep and care for their trees. It puts in place penalties for property owners who remove trees without permission, and it establishes some barriers that make it more difficult to remove a tree – thus giving property owners pause. Through this By-law and by hiring an arborist, there is opportunity to reach the tree canopy



targets with innovative approaches for tree retention and using replacement and compensation as the last option.

Through the public consultation on this matter, stakeholder responses stated that the Town should focus on developers removing trees. This By-law will provide staff the enforcement power required to penalize property owners who remove trees without permission; whether they are doing it to prepare their property for a future development application or consider the tree a nuisance. Once a Planning Act application has been submitted a property owner is effectively a developer and they are subject to the Tree Policy and review by staff. Staff work with developers to save as many trees as possible and obtain compensation when removal is absolutely required. Currently there is no such review for non-developer private property owners. This By-law will fill this gap in the Town's regulatory framework.

This By-law also allows staff to penalize property owners who remove a tree in contravention of their approved development agreement (Site Plan Agreement or Subdivision Agreement). This has been another gap in the Town's enforcement regime regarding trees.

In being able to work with a staff arborist, this By-law is also intended to encourage private property owners to find new and innovative solutions for preserving trees (and thereby meeting the tree canopy targets) while achieving their own desires for their property. We can re-grow trees, however we cannot immediately replace their environmental impact. Therefore the philosophy behind the By-law is to encourage preservation first with replacement and compensation as an alternative, if preservation cannot be achieved.

## **Compensation**

Staff have made a formal recommendation that a reserve fund be established to hold the cash-in-lieu of compensation collected as part of the Tree Removal Permit process. This will ensure that funds collected will be available to be used specifically for projects relating to the enhancement of the Town's canopy. These funds will be used for additional tree planting, however they may also be used for education campaigns and programs, such as programs to assist residents in caring for their trees so they thrive and mature. This also ensures that the By-law and permit continues to be directly tied to enhancing the Town's canopy and meeting the tree canopy targets.

## **Changes since the Workshop**

Based on the feedback received at the Council Workshop in April 2021, staff have removed the opportunity for residents to pay a higher application fee in order to have a town employed arborist undertake the initial tree assessment on an applicant's behalf. There won't be different options for application fees and applicants will be required to hire their own arborist to submit a report with the application.

## **Designated Heritage Trees and Socially Significant Trees**

The defined term “Socially Significant Trees” has been removed from the By-law. Staff have found that there is a significant difference between a Heritage Tree designated under the Heritage Act (Section IV or V) and a heritage tree designated under the Municipal Act. Therefore it is recommended that staff return with a separate by-law for identifying and protecting socially significant trees as permitted in the Municipal Act. Staff are using the term socially significant tree to differentiate from a Heritage Tree designation under the Ontario Heritage Act. Staff received many comments concerned with the definitions of the two terms as they were included in the draft by-law. At this time it is felt it will be better to have a separate by-law to cover this aspect of tree preservation as it will provide staff additional time to create a Newmarket-made definition and understand all of the implications of defining socially significant trees.

The public survey indicates that the community is split about tree protection on private property generally however, there was a clear desire to protect heritage trees.

A comparison of the two terms and additional information on these forms of tree protection is provided in Appendix 2.

## **The Guidelines**

The proposed By-law defines the term “Guidelines” as the Town’s guidelines for processing and reviewing Private Tree Permits. This will be a comprehensive document giving guidance on the following items:

- Additional review criteria for reviewing a Private Tree Permit
- Additional criteria for refusing a Private Tree Permit
- Listing the types and conditions which can be assigned to a Private Tree Permit

These are technical details which should not live in the By-law itself as they are likely to shift slightly as our experience with Private Tree Permits grow. The By-law is the place for the legal requirements of the permit process, and, the details can live in a different place. This avoids the need to amend the By-law if technical standards change or if a minor tweak to the process is required. For instance, the Guidelines will establish the minimum size of a replacement tree, it would not be an effective use of staff and Council time and resources if the By-law has to be amended if the minimum size of a replacement tree changes, or if the list of possible conditions increases or decreases, for instance. The Guidelines provide clear information to both applicants and professionals who are involved in the permitting process. They should provide all of the details one needs to know (and what to expect) for the Private Tree Permit process. If Council approves the By-law, staff will proceed with the creation of this document.

## **Consultation to date**

This topic has been discussed in various forums since 2017. During this time, the Town has reached out to the public through our interactive webpage – HeyNewmarket, which

included several ways for residents to express their thoughts: multiple surveys, telling us their tree stories, etc. Over the three years, the project page has been visited over 7,300 times, and 479 residents have participated in at least one of the tools, and 1,457 residents have been informed about the project through this format.

A phone survey was conducted in October to November 2018 and an iWonder PIC was held October 2019. The results of these specific consultations have been discussed in previous reports, with the general outcome being continued support for staff to pursue a Private Tree Protection By-law. Most recently, survey results show that at least 86% of respondents believe the Town should have a Private Tree Protection By-law.



Overall there were 344 respondents. Based on the survey results:

- Approximately 40% of responses indicate the Town is “not doing enough” or “could do more” to protect mature trees.
- Approximately 41% of responses indicated the Town is “doing enough” or “more than enough” to protect mature trees.
- The remaining 19% (approximately) of responses indicated they do not know enough about what the Town does to protect mature trees.

The survey ended with a question asking for any additional comments the respondents may have about the Private Tree Protection By-law, and these answers, not surprisingly, show that there is an almost even divide between those who support the by-law and those who don't. Those who do support it are in line with staff with their reasons why they support it. A few of the comments are provided below and the entire survey report is available upon request.

### **Sample of responses in favour of a Private Tree Protection By-law**

1. I believe that all fees and fines associated with the removal of trees should be steep. Our society must stop viewing trees and forests as something renewable and replaceable. No size of tree that can be planted can replace a mature tree. By imposing steep monetary penalties maybe people will begin to understand the true value of trees and the critical role they play in the continued health of our environment. Code red for humanity has been issued and extremes steps **MUST** be taken to ensure we leave a safe and healthy place for future generations.

2. Please finish this process as soon as possible. I see a lot of trees coming down for only selfish reasons. Don't just pass it: circulate clear, simple outline and reference to full document on social media and every door knob (use bamboo paper or properly, unbleached recycled paper). Post educational signs on trails and parks as you have done for coyotes, turtles, poisonous plants. Use a sponsorship program to pay for this.

### **Sample of neutral responses**

3. This is an onerous process and expensive for residents. I would support a bylaw for more than 1 tree being removed and these to be required to be a native species. Education on private trees and maintenance including street trees is important and should be pursued. I think that the details associated with the bylaw should be provided in terms of how the bylaw works with a building permit and site plan approval. What happens if the town does not accept an arborist report; opportunity to appeal and to whom. More details should be provided on enforcement.
4. This town has an opportunity to set an example on environmental issues. Once these trees of significant age and importance are gone, they are gone. Don't pave and over develop the entire town!

### **Sample of responses not in favour of a Private Tree Protection By-law**

5. Local government over stepping what home owners can do on their property.
6. It is ridiculous that the town is planning this by-law to encroach on homeowner's private property rights. To impose a fee is insult to injury.

## **Communication & Education**

As this will be a significant shift for the community, staff are proposing to offer an extensive communication plan and education campaign to advise residents and urban forestry professionals about the new permit and process. Some communication tactics proposed are:

- One (or more) event/open house (in person or virtually depending on Covid restrictions)
- Creation of an education video for future promotions (budget considerations)
- Social media campaign
- Dedicated webpage on [newmarket.ca](http://newmarket.ca)
- Notice(s) in Newspaper (Town Page)
- Notice in digital paper (Newmarket Today)
- Town-wide post card (budget considerations)
- Information insert in hydro bills (feasibility being investigated)

- Booth at Farmer’s market and other events (Covid restrictions permitting)

In order to give staff the opportunity to both roll out this education campaign and finalize all of the background materials required to process Private Tree Permits, staff are proposing a delay of approximately two months between approval of the by-law and when applications for permits can be accepted. The detailed background material and work that has to be completed before permits can be processed includes:

- Preparation of an application form;
- Updating the website;
- Drafting the Guidelines (discussed above);
- Hosting education events; and
- Establishing internal procedures and protocols for processing applications (i.e. tracking materials, customer service update, setting up accounting/fiscal structure to process and manage permit revenues and in lieu funds received, etc.).

It is proposed that the By-law would come into effect and be adopted the day Council approves the By-law. Staff are targeting the next Council date which is February 7, 2022. It is proposed that implementation of the By-law and permits being accepted would not occur until approximately the end of March. It has been considered that some may see this as a “grace period” that could result in premature tree removals; however, the topic of a private tree by-law has been ongoing since 2017. The time is required to be properly prepared for processing applications and this approach has been used with other by-laws in the past.

## **Application fee**

Staff are proposing a two part fee, this is common for tree removal permits (municipal scan is below). The proposed amounts are \$300 for the administration fee and an additional \$100/per tree. For example the application fee for a permit to remove one tree would be \$400, for two trees \$500, etc. The first part of the fee is administrative, it covers the cost of a staff member to accept and review the application (ensure the required material has been submitted, start a file, correspondence with the applicant, processing multiple submissions, etc.); this could be considered a quantitative review – are all the pieces there? The second part of the fee is a charge per tree, and this covers the cost to review the submitted arborist report<sup>4</sup>; it could be considered the qualitative review – is the submitted arborist report correct?

It is expected that the application fees will cover most if not all of the costs to hire a new staff person and therefore the review of these permits is not expected to be a burden on

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<sup>4</sup> In addition to the desktop review of the merits of the application and the arborist review, this fee covers field visits before the permit approval, after tree removal, and verifying the tree replacements plantings. It also includes any necessary support to Regulatory Services in the case of a contravention of the By-law.

the tax base. Staff will report back in 2024 to let Council know whether this application fee is covering the cost and if it has to be adjusted.

The By-law grants the Director the ability to set a cap on the number of per tree fees collected. This is added in for the rare instance where there are many trees being removed due to agricultural practices or forestry management on private lands.

### Municipal Scan

In compiling the municipal scan, staff assessed all York Region local municipalities and a few similar sized municipalities in southern Ontario. In York Region, East Gwillimbury, King Township, Whitchurch-Stouffville, and Georgina Township do not have private tree removal by-laws. The chart below demonstrates our application fee is appropriate and does not deviate substantially from the range noted in York Region local municipalities and other similar sized municipalities in Ontario.

Of the municipalities assessed, there are approximately 3 municipalities with permit fees higher than what we have proposed and 6 municipalities with permit fees lower than what we have proposed. Although our permit fee is in the higher range of fees, this may be offset as the proposed cost of replacement trees are, on average, less than most municipalities assessed. It is staff’s opinion that the \$300.00 permit fee collected in conjunction with a \$100.00 fee for each tree removed will likely cover the cost of processing the permit. This is important as we aim to achieve full cost recovery.

At the expiration of 2 years, staff will review the permit fees associated with private tree removal to ensure the fee collected remains appropriate for the level of work required.

**Table 1: Jurisdictional Scan - Private Tree Removal Permit Fees and Compensation**

Municipality	Permit Fee	Compensation (Payment in lieu)
Aurora	<ul style="list-style-type: none"> <li>1 or 2 trees removed: \$0.00</li> <li>3 trees removed: \$214.00</li> <li>4 trees removed: \$321.00</li> <li>5 trees removed: \$427.00</li> <li>6 trees removed: \$534.00</li> <li>7 trees removed: \$640.00</li> <li>8 or more trees removed: \$107.00 per additional tree removed</li> <li>No fee for removal of dead tree, dying tree or hazardous tree (permit required)</li> </ul>	<ul style="list-style-type: none"> <li>Aggregate Inch Replacement method (based on supply and installation costs of the same species) Installed cost is 2.5 x the cost of nursery stock</li> <li>Cost includes delivery, planting, mulching, and 1 year guarantee</li> </ul>
East Gwillimbury	n/a	n/a
Georgina	n/a	n/a
King	n/a	n/a

Municipality	Permit Fee	Compensation (Payment in lieu)
Markham	<ul style="list-style-type: none"> <li>• 1 tree removed: \$200.00</li> <li>• Each additional tree removed: \$100.00</li> <li>• Tree Management Plan Review Fee: \$200.00 (in addition to per tree fee)</li> <li>• No fee for exempt trees</li> </ul>	<ul style="list-style-type: none"> <li>• \$300.00 per tree (non-development related)</li> <li>• \$600.00 per tree (development related)</li> </ul>
Newmarket (proposed)	<ul style="list-style-type: none"> <li>• Administration fee: \$300.00</li> <li>• Review fee per tree: \$100.00</li> </ul>	\$450 per tree
Richmond Hill	<ul style="list-style-type: none"> <li>• 1 tree removed: \$160.00</li> <li>• Each additional tree removed: \$56.00</li> </ul>	\$547 per tree
Vaughan	<ul style="list-style-type: none"> <li>• Processing: \$68.00 (up to 5)</li> <li>• Removal of each tree: \$135.00 (up to 5)</li> <li>• Processing: \$115.00 (more than 5)</li> <li>• Removal of each tree: \$146.00 (more than 5)</li> </ul>	\$550.00 per tree
Whitchurch- Stouffville	n/a	n/a
Peterborough	<ul style="list-style-type: none"> <li>• Processing: \$50.00 with licensed tree provider</li> <li>• Processing: \$150.00 without licensed tree provider</li> </ul>	\$550.00 per tree
Oakville	<ul style="list-style-type: none"> <li>• Processing: \$50.00</li> <li>• Each additional tree removed: \$350.00</li> <li>• \$740.00 (development related)</li> <li>• No fee for removal of dead tree, high risk tree, ash tree or buckhorn tree</li> </ul>	\$300.00 per tree
Burlington	<ul style="list-style-type: none"> <li>• \$400.00 (non-development related)</li> <li>• \$700.00 (development related)</li> <li>• No fee for removal of dead tree, terminally diseased tree or tree within 2 m of occupied building (permit required)</li> </ul>	\$400.00 per tree
Guelph	Processing: \$68.00	\$500.00 per tree

Municipality	Permit Fee	Compensation (Payment in lieu)
Toronto	<ul style="list-style-type: none"> <li>• Removal of each tree: \$126.25 (non-development related)</li> <li>• Removal of each boundary tree: \$263.53 (non-development related)</li> <li>• Removal of each tree: \$377.67 (development related)</li> <li>• Removal of each boundary tree: \$790.63 (development related)</li> </ul>	\$583.00 per tree

## Resources & Process

As can be appreciated, this is a new direction for staff, Council, and the Town, and it will take an increase in resources to manage the applications. Staff are proposing that an arborist be hired on contract for two years to review and process applications. The arborist will also work collaboratively with the Town’s Regulatory Services Division on contraventions to this By-law. After the 2 years, staff will bring forward another report, advising Council on budgetary impacts and experience with the By-law. The expected duties of the contract arborist are as follows:

- Advise residents about the permit process,
- Provide advice on how to avoid removing the tree, if possible
- Process permit applications (review for completeness, review quality of submission, etc.),
- Review submitted arborist reports,
- Provide recommendation for permit conditions on tree removal and replacements.
- Confirm conditions of the permit have been met and that compensation has been paid or planted,
- Attend site visits, as needed to confirm arborist findings or advise residents or determine if a by-law infraction has occurred,
- Advise Regulatory Services on the technical arboriculture aspects of a by-law contravention (i.e. determining size of tree removed without a permit).

This additional staff person will enhance the customer service the Town can provide relating to our urban forest.

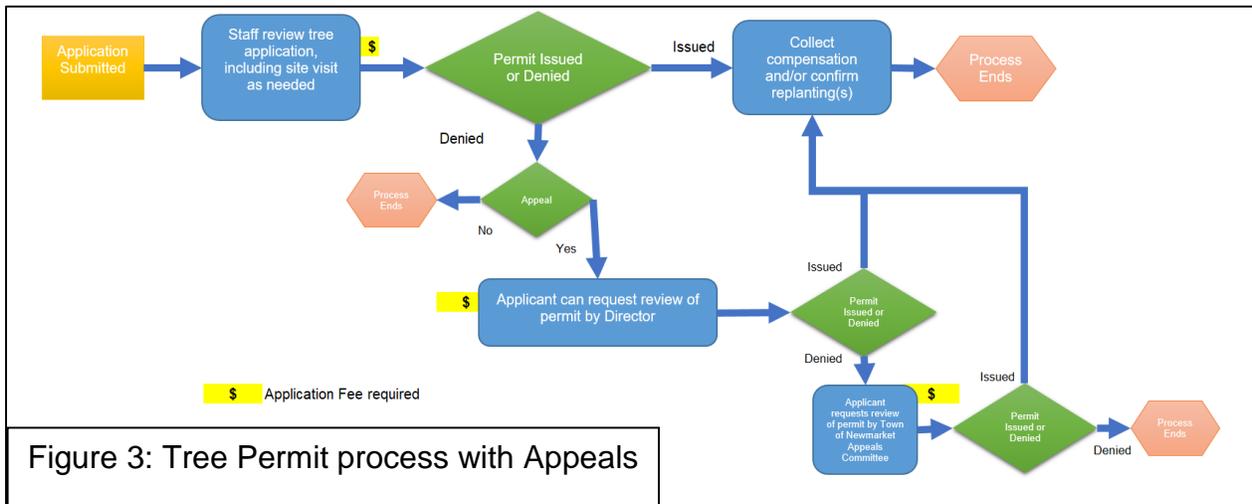
## Process

The proposed process has not changed since the version presented at the Workshop, which is shown again in the image below. This is also provided in a larger size in Appendix 3.



Generally, the process is fairly straight forward, an application is made, it is reviewed and if the application is approved the applicant is notified of the conditions and compensation required.

If the permit application is refused the applicant has the opportunity to request a review by the Director. If the Director refuses the permit, the applicant may appeal the decision to the Appeals Committee. There are fees associated with requesting a review by the Director (\$50) and taking it to the Appeals Committee (\$650).



## Compliance Approach

Through consultation with the Town’s Regulatory Services Division, an overall compliance approach has been established in relation to the proposed regulatory framework for private trees. While the Town’s arborist will work directly with property owners to educate on new permitting processes and requirements relating to the proposed by-law, the Town’s Regulatory Services Division will be utilized for escalated enforcement action that may be required for non-compliant property owners. The Town’s property standards officers will work in conjunction with the Town’s arborist to first attempt to gain voluntary compliance with the property owner. In circumstances where all efforts for voluntary compliance are exhausted, Town staff are proposing enforcement action be commenced via the Town’s Administrative Monetary Penalty System By-law 2019-62.

## AMPS By-law 2019-62

With the introduction of the proposed Private Tree Protection By-law, Town staff are also recommending an amendment to AMPS By-law 2019-62 to include regulations for the purpose of enforcement. This change will allow staff to enforce contraventions through administrative penalties set by Council. The proposed by-law amendment and fine structure is attached to this report as Appendix 4.

For Council's reference, the specific fine amounts being proposed for each offence are based on four key considerations:

1. Best practices and research of other municipalities currently regulating private tree protection laws.
2. Projected compliance rate (i.e. balancing the fine amount imposed versus the cost and time associated with obtaining a permit).
3. Community significance in prioritizing the protection of trees throughout Newmarket (based on public consultation input and Council directives).
4. Ensuring fine amounts are not punitive in nature.

Under the AMPS model, fines imposed can be either independent or compounded, based on the severity of the offence. For example, if a property owner damages or removes one tree, the Town will have discretion on how best to proceed to achieve compliance and this may include the issuance of one fine for noncompliance. However, in a scenario where several trees are damaged or removed without a valid permit to do so (or contrary to the issued permit's conditions), the Town will have the authority and discretion to compound fines to increase the fine amount in conjunction with the severity of the offence (i.e. 10 trees damaged or removed = 10 tickets may be issued). The overall objective with compounding fines is to evaluate each offence on a case-by-case basis to ensure the penalty is weighted against the severity of contraventions documented.

Overall, the Town always prefers voluntary compliance over enforcement action and Town staff will work with residents to educate on new processes and procedures as they relate to the proposed Private Tree Protection By-law presented for Council's consideration. The AMPS model is being proposed for any matters that are not able to achieve voluntary compliance and where enforcement action may be required. Additionally, Town staff are also recommending the option to also enforce more significant matters using the Provincial Offences Act, pursuant to the provincial court system, where heavier fines may be imposed by a Justice of the Peace or Judge directly.

## **Next Steps**

Should Committee of the Whole recommend approval of this By-law, staff will bring it forward to a subsequent Council meeting. Once the By-law is approved by Council, staff will then establish all of the internal procedures and create the technical material required to process applications. In parallel, the education campaign and communication plan will be rolled out. Staff should be ready for receiving applications by the end of March.

In addition, a new arborist contract position will be filled and the Guidelines will be drafted.

After two years of working with the By-law and processing applications, staff will report back to Council.

In the meantime there are other projects that staff will continue to work on to maintain and enhance the Town's tree canopy, for all the benefits it provides:

- Preparing a Heritage Tree By-law for Council review in Q1 2023;
- Reviewing and updating the Tree Policy based on the By-law; and
- Possibly modernizing the Town's Woodlot By-law and evaluating how it works in concert with the Private Tree Protection By-law.

While property owners are asked to be restricted in dealing with trees on private property, staff strive continually to improve the policies, guidelines and practices that support our trees.

## **Conclusion**

The value of trees has been demonstrated. The Region has set a canopy target that has to be met, with 68% of the Town's trees on private property it is imperative that private trees are regulated, encouraging to protection, which will lead to an increased and enhanced canopy and meeting the target.

The By-law should act as a deterrent to removing trees and that where and when it is appropriate to remove a tree, permission can be granted with some part of the broader community benefit of the tree captured and put back to use in benefiting the community.

## **Business Plan and Strategic Plan Linkages**

Considering this By-law completes part of the Tree Policy Initiative under the Environmental Stewardship Pillar of Council's 2018-2022 Strategic Priorities.

## **Consultation**

As discussed above public consultation has been on going since 2017, results and implication of that consultation is discussed above. Staff have also been coordinating internally with Regulatory Services, Planning, and Forestry working closely to draft the By-law. Communications has been brought in to establish the communication plan and education campaign, should the By-law be adopted.

## **Human Resource Considerations**

An arborist will be hired on a 12 month contract for two years. The arborist would report to the Forestry Supervisor and may be able to assist with other forestry duties.

## **Budget Impact**

Application fees will be collected to cover the cost of the contract position. It is acknowledged that there may not be sufficient applications to cover the entire of the cost of the position initially. There may be an impact on the operating budget that would be identified.

## **Attachments**

Appendix 1 – Draft Private Tree Protection By-law

Appendix 2 – Different methods of protecting Heritage Trees

Appendix 3 – Process Flow Chart

Appendix 4 – Draft amendments to the AMPS and Fees and Charges By-law

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