

Hearing Committee Report for File 230906-000268 - Clearing of Yards Bylaw

Presented To:	Hearing Committee
Meeting Date:	November 20, 2024
Type:	Public Hearing
Prepared by:	Melissa Laalo By-Law & Security
Recommended by:	General Manager of Corporate Services

Report Summary

This report provides a recommendation regarding a Notice of Non-Conformity issued to property 236 Autumnwood Crescent, Greater Sudbury, for trees located in the rear of the private property.

Resolution

THAT the City of Greater Sudbury confirms the Notice of Non-Conformity issued to the owners of 236 Autumnwood Crescent, Sudbury, ON, pursuant to Section 20(1) of the Clearing of Yards Bylaw 2009-101 outlined in the report entitled "Hearing Committee Report for File 230906-000268 – Clearing of Yards Bylaw" from the General Manager of Corporate Services, presented at the Hearing Committee meeting on November 20, 2024.

Relationship to the Strategic Plan, Health Impact Assessment and Climate Action Plans

This report refers to operational matters and has no direct connection to the Community Energy and Emissions Plan.

Financial Implications

There are no financial implications with this report.

Background

The Clearing of Yards Notice of Non-Conformity (herein referred to as "the Notice") was issued pursuant to the *Municipal Act 2001, S.O. 2001, c. 25*, as amended, (herein referred to as "the Act").

The Council of the City of Greater Sudbury enacted Bylaw 2009-101 cited as "the Clearing of Yards and Vacant Lots Bylaw" (herein referred to as "the Bylaw"). This Bylaw has been passed under the authority of the Municipal Act and prescribes minimum standards for the upkeep of yards. This By-law was enacted to ensure the safety of residents and the upkeep of yards and properties to prevent the degradation of the community and neighborhoods.

The Bylaw outlines the responsibilities of property owners related to their yards, enforcement options and remediation where there is non-compliance, inspection powers of the officer, the issuance of a Notice, the establishment of a Hearing Committee, and the procedures for an appeal of the Notice. Specific time frames and methods of notification are established in the Bylaw.

Facts and Evidence Supporting the Order

On September 06, 2023, the City of Greater Sudbury Compliance and Enforcement Division received a complaint stating that trees located in the rear yard at 236 Autumnwood Crescent were a hazard. Case #230906-000268 was generated and assigned to the area Bylaw Enforcement Officer SAGLE for inspection. On September 14, 2023, Officer SAGLE attended the subject property to inspect the trees and further received an Arborist Report from Frank's Family Tree Service submitted by the complainants, which cited four trees for removal.

On September 28, 2023, a Notice on Non-Conformity with a compliance deadline of October 29, 2023, was issued pursuant to Section 20(1) of Bylaw 2009-101, the Clearing of Yards Bylaw, pertaining to the trees located in the rear yard at 236 Autumnwood Crescent. The Notice requires the property owner of 236 Autumnwood Crescent to perform the following action;

- a) To provide a written report by a Professional Arborist, licensed in the Province of Ontario, containing findings as to confirming the subject trees are not dead, diseased, decayed, or damaged;

Or

- b) To remove the subject trees located at the rear of the property.

On October 17, 2023, Officer SAGLE received a letter from the property owners Mr. and Mrs. DURHAM dated September 29, 2023, requesting that a General Manager complete a review of the Notice of Non-Conformity citing concerns of the location of the trees being on City property.

A review of the file was conducted by the Bylaw Services Coordinator, at the time M. LAALO, which resulted in the following findings;

1. Legal Services confirmed there was an easement owned by Hydro Electric Commission and Sudbury Cable Services (1977). However, Ontario Land Registry records indicate this easement was transferred to the property owners (DUNHAM) in 1983.
2. Licensed Surveyors with the Province of Ontario completed a survey of the location on October 27, 2023. The survey confirmed that the trees are located on private property, 236 Autumnwood Crescent.

On June 27, 2024, Manager M. LAALO responded to Mr. and Mrs. DUNHAM with the findings of the review and confirmed the Notice as written. The compliance deadline was further extended to allow for the property owner Mr. DUNHAM the opportunity to obtain an independent arborist report and to perform any work required should the report provide recommendations. Subsequent discussions onsite at the subject property, over the phone, and at Tom Davies Square took place with Mr. DUNHAM and information was provided with respect to the Notice of Appeal procedures.

The Notice of Appeal was submitted August 27, 2024, with the matter to be presented at the Hearing Committee meeting being held on October 17, 2024.

Attached to this report for the Committee's review and in support of the recommendation are the following;

- 1) Notice of Non-Conformity 230906-000268
- 2) Frank's Family Tree Service, Assessment Report, dated September 19, 2023
- 3) Letter from Mr. DUNHAM, dated September 29, 2023
- 4) Ontario Land Registry and Parcel Information, dated October 18, 2023

- 5) Survey conducted by City Registered Land Surveyors, dated October 27, 2023
- 6) Photos of the subject trees, date indicated on the photo.
- 7) Final Notice of Non-Conformity, dated July 31, 2024.

Conclusion

Section 23(4) of the Bylaw sets out the powers of the Hearing Committee on an appeal of a Notice. Should a property owner wish to appeal to the Hearing Committee, the person appealing may present evidence and make submissions regarding the Notice. The Hearing Committee may confirm, amend, or revoke all or part of the Notice or may add conditions to a Notice if in the committee's opinion doing so would maintain the general intent and purpose of the by-law and of the official plan or policy statement. A decision of the Hearing Committee with respect to any Notice is final and binding, makes effect upon the rendering of the decision by the Hearing Committee and is not reviewable by City Council. In the event the Hearing Committee revokes the Notice, the Appeal fee shall be refunded.

Section 18 of the City of Greater Sudbury's Official Plan starts with the statement "Adequate and affordable housing for all residents is a fundamental component of Greater Sudbury's Healthy Community approach to growth and development. Further statements include the achieving diversity in the housing supply by maintaining a balanced mix of ownership and rental housing and addressing housing requirements for low-income groups and people with special needs. One of the objectives of the policy is to ensure that the City's housing stock provides acceptable levels of health and safety through enforcement of the property maintenance standards in all forms of housing. The intent and purpose of the Bylaw may also be determined through statements in the preamble; "Whereas the lack of upkeep of yards and vacant land can lead to the degradation of a neighbourhood and of a community and can represent a hazard to health and safety of the residents of a community."

It is for these reasons that the recommendation in this report is to uphold the Notice 230906-000268, dated September 28, 2023, to ensure that the owner of the property of 236 Autumnwood Crescent, complies with the clearing of yards standards as set out in the By-law 2009-101 by either providing an Arborist Report for the trees or by removing the trees located in the rear yard. Should the property owner fail to obtain an arborist report nor remove the trees, the City is prepared to hire a Licenced Arborist with the Province of Ontario to obtain a report and the cost of the report shall be billed to the property owner and collected by way of application to the property's tax roll. Should the arborist report recommend the removal of the trees, or part thereof, the City will require the work to be done by the property owner. Should the property owner fail to comply with the recommendations the City will remediate, and any costs associated with the remediation of the trees will be billed to the property owner and collected by way of application to the property's tax roll.