

Request for Decision

Decision of Tree Removal at 2024 Elderwood Drive

Presented To:	Hearing Committee
Presented:	Wednesday, Sep 22, 2010
Report Date	Thursday, Sep 16, 2010
Type:	Public Hearings

Recommendation

THAT the request for tree removal from the road allowance at 2024 Elderwood Drive, Sudbury be denied.

BACKGROUND

On November 4, 2008 a 'request for tree removal from road allowance' form at 2024 Elderwood Drive, Sudbury was submitted to the City of Greater Sudbury. The reason listed, by the homeowner, for the removal of one (1) Linden tree, located beside the driveway, was due to the sap dripping from the tree causing damage to the paint on their personal vehicles.

Our inspection revealed that the tree shows signs of a sap sucking insect, with a moderate extent of infestation. Overall, the tree is considered healthy and the request for removal was denied on November 17, 2008. The criteria utilized in the decision making included the tree's vigor, root and trunk damage, cavity and crotch split and percentage of deadwood. In an effort to correct the resident's concerns regarding the sap problem, staff pruned the tree in July of 2009 to redirect the branches away from the driveway. Furthermore, staff committed to continue to monitor the tree after pruning and if the problem persisted, staff would reassess in the future.

In July 2010, a second request was made by the resident to have two (2) City trees pruned to allow the home's Bell Satellite Dish to receive a clear signal. The trees have not yet been further pruned due to a backlog of scheduled work.

In August 2010, the Mayor's Office was contacted by the resident requesting that the two (2) Linden trees in her front yard be removed.

A letter dated August 25, 2010 was received by City Clerks requesting that the decision on the tree removal be appealed at the Committee Hearing scheduled for September 8, 2010. Please refer to Appendix A for a

Signed By

Report Prepared By

Tony De Silva, P.Eng.
Roads Operations Engineer
Digitally Signed Sep 16, 10

Division Review

Robert Falcioni, P.Eng.
Director of Roads and Transportation
Services
Digitally Signed Sep 16, 10

Recommended by the Department

Greg Clausen, P.Eng.
General Manager of Infrastructure
Services
Digitally Signed Sep 16, 10

Recommended by the C.A.O.

Doug Nadorozny
Chief Administrative Officer
Digitally Signed Sep 16, 10

copy of the aforementioned letter. The Hearing Committee may review the matter based on whether staff have appropriately applied the by-law, including the application of Schedule C.

Furthermore, the letter states that a notice of claim for property damage was completed and faxed to the City of Greater Sudbury's Risk Management/Insurance Officer's attention.

THE CITY OF GREATER SUDBURY'S RESPONSE

The trees in this neighbourhood are generally infested by the Linden Aphid (it's a small insect with wings). The bug appears cyclically. There are over forty thousand (40,000) species of Aphid that secrete sap off hundreds of species of vegetation. They all produce the same by-product that the Linden Tree produces. The trees in question are healthy regardless of the infestation. The Linden tree can successfully cohabitate with the Aphid insect. The Linden tree is an approved species of tree within the City of Greater Sudbury. The Linden tree is part of a variety of species that the Forestry Section regularly plants within the road right of way each spring. The City's Tree Bylaw 2009-250 states that falling 'sap' and insect activity do not warrant removal of otherwise healthy trees. Under the By-law, staff may remove healthy trees on the right of way on request of an owner only when they meet the criteria outlined in Schedule C of the By-law 2009-250 (copy attached). Staff have determined it does not meet the criteria for removal.

There are hundreds of Linden trees in this neighbourhood and thousands within the City of Greater Sudbury. If the removal of several healthy trees of an approved species is authorized, it may result in requests to remove such trees throughout the entire neighbourhood. Attached are several photographs of the tree inspections.

Spraying trees with insecticides is not a practice that the City currently undertakes. There is no budget allocated for this activity and it may be associated with liability. Furthermore, proven to work insecticides such as 'Malathion' and 'Sevin' have recently been banned by the provincial government.

The sap (soot) in question can be scratched off using a finger or washed off with soap and water. It does not cause permanent damage to painted surfaces.

Staff does not support the request for removal of any healthy trees as approved in the City's Tree By-Law.

Angie Hache
City Clerks
Sudbury ON
FAX # 671-8118

August 25, 2010

Lorraine DuPont
2024 Elderwood Dr
Sudbury, ON P3B 2A6
705-524-8229

Re: Committee Hearing scheduled for September 8, 2010 to appeal the City of Sudbury's decision on the tree removal

Please expedite this letter as I would like to be added to the agenda for the September 8, 2010 scheduled committee meeting.

I am appealing the hearing committee to grant a decision to remove the 3 linden trees which 2 are located at my residence and the 1 tree located on my neighbor's property but hanging over in my driveway.

I would like to defend my case by providing details and pictures of the damaged property caused by these trees.

August 1, 2003

My husband and I purchased this property August 1, 2003 and at the time of the purchase we were not aware that the City of Sudbury owned the 2 large linden trees located approximately 4 feet from the road curb until we started having issues with the discharge from the trees.

July/August 2008

Back in July/August of 2008, I had placed a service call to Campeau Heating as I thought that the black soot that was covering my patio furniture on the front deck, the deck itself and my vehicle was from the gas fireplace that was installed earlier that year.

Campeau heating came out and looked at the damage and it was then that we were informed that the black soot was not coming from the gas fireplace, but from the two trees located on our property.

I then placed a call to the City of Sudbury and requested that one of there employees that deal with these trees come out and look at the damage being down from the discharge.

October/November 2008

Bruce McTiernan (Tree Warden) came out in October/November 2008. At the time of the first visit, he was not sure whether or not these trees were actually on the city property or my own; therefore he needed to measure the property line and the location of the trees.

He then came back and these trees due belong to the City of Sudbury. He took pictures of the black soot and sap that was all over my 2008 Kia Sportage, the patio furniture on the deck and the deck itself. He also gathered samples of the leaves that were covered in the black soot. During the visit, he stated that the trees are contaminated with a bug which is causing the problem, however since they cannot use any pesticides there is nothing that he can do, but submit a request to have the trees removed.

He then submitted a request to have the trees removed on November 4, 2008 due to the damage the sap and black soot was causing.

December 2008

On December 18, 2008, we received a letter that was issued by Lysette Carlson ext 3633 which stated that she was denying the request and listed the reasoning as the tree being healthy. I then placed a call to Lysette Carlson and she maintained her decision not to remove the tree. She then started to compare my problem (black soot, tree sap) to her home in Copper Cliff and how she has to deal with the smoke stake. I also advised her that we had to replace our front lawn twice since living at this address, and she advised me that there was nothing that she would do, again comparing our problems with the trees to her house in Copper Cliff.

I then requested that I speak with her manager as it was not right to compare my damaged personal property to her home in Copper Cliff. I then spoke with

Nathalie McHill who then advised me that she will send out her crew to trim the trees and if the problem did not correct itself, we would deal with it again.

July 2009

It took 8 months before the City of Sudbury actually came and trimmed the tree which then brings us to July/August 2009. The crew trimmed away the large branches overhanging on my deck and the ones that were overhanging on my driveway and overhanging on my neighbor's driveway. They also trimmed my neighbor's tree which was also hanging over my driveway. Sure this solved the problem of not having the sap and black soot over my vehicle, front deck during the 2009 year, however trees do grow.

July 2010

I placed another call to the City of Sudbury because at the time, these linden trees were not discharging any sap or black soot but have grown so much that I had no Bell Express Vue reception. The trees are so large that any wind, I have no reception. I cannot move my satellite as it is bolted to the front of my home. She advised me that she would put the request in that the trees needed pruning again. **As of today, August 25, 2010 they have not come to trim the trees.**

August 23, 2010

My husband placed a call to the City of Sudbury again and advised her that our personal property (boat, vehicle, bricks around trees) are again covered with black soot, sap. She then transferred his call to Bruce McTiernan ext. He left a message and waited for call back. By mid-afternoon, my husband asked to be transferred to his extension again and spoke with Bruce. Bruce advised him that he would be here August 24, 2010 at 9:00 am.

Bruce arrived the next day and took pictures of the damaged property which consisted of our boat and Kia Sportage. The boat cover is damaged with black soot, sap; the boat itself which is white, is now black, the vehicle is covered in black soot, sap. In addition to the above, the coral rocks which are placed around the bottom of the trees are not longer coral, but black. The green Bell telephone box located on the property as well is black.

While he was taking pictures of the damaged property, he explained and showed us the bugs that are living on the leaves. Apparently these bugs eat, and then

Page 4 of 4

discharge the sap and black soot. He then advised us to contact the City of Sudbury and file a claim for the damaged property.

I then spoke with Chantal at the City of Sudbury who then emailed me the form along with the Property Damage Information. This information does not give details on property being damaged by trees; it refers to sewer backup damages, water main breaks, potholes and road hazards, city construction projects. In her email, she also provided the person whom I will be dealing with by the name of Bruce Drake.

I completed the "Notice of Claim" for and faxed it into the office on the same day as Chantal emailed it to me. As of today August 25, 2010, I have not received a call from Bruce Drake with reference to the damaged personal property.

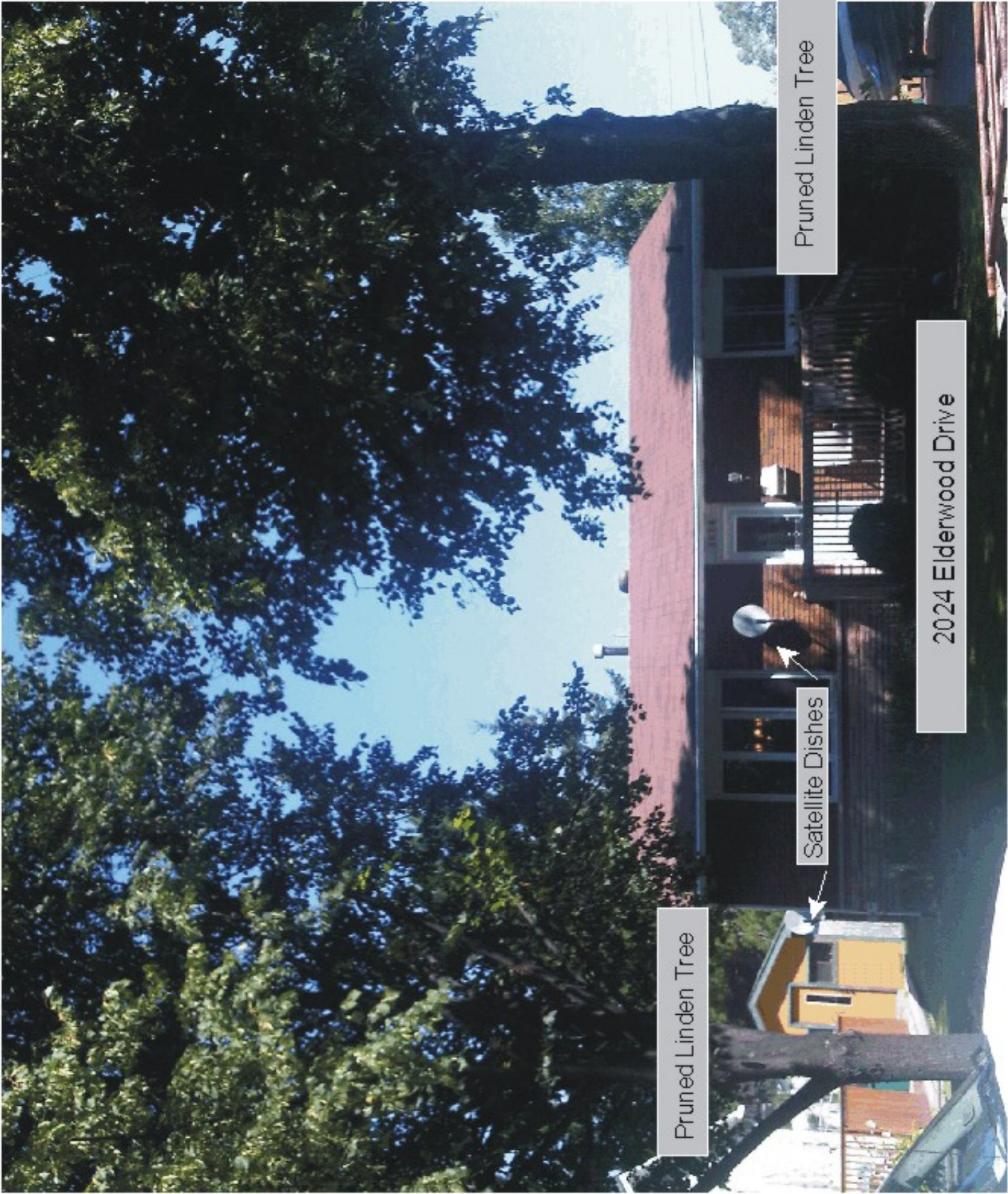
I am requesting that the two trees on our property and the tree closes to our driveway be removed in addition to having our boat cover replaced, the boat professionally cleaned and buffed, the 2008 Kia Sportage professionally cleaned and buffed. We have had to replace our front door due to black soot damage, repaint our front deck, replace our lawn twice and it still does not grow due to the bugs infesting in the trees.

I will be bringing in pictures of the damaged property, the locations of the trees and measurements of the distance between the 3 trees, distance between the driveway and trees and the distance between the house, front deck and the trees.

Thank You



Lorraine DuPont





Close Up Of Pruned Linden Tree



Typical Street View 1 of Elderwood Drive



BY-LAW 2009-250

**A BYLAW OF THE CITY OF GREATER SUDBURY TO AUTHORIZE,
REGULATE AND PROTECT THE PLANTING, MAINTENANCE,
PROTECTION AND REMOVAL OF TREES ON MUNICIPAL RIGHTS OF WAY**

WHEREAS Council of the City of Greater Sudbury deems it advisable to authorize, regulate and protect the planting, care, maintenance, protection and removal of trees on municipal rights of way;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER
SUDBURY HEREBY ENACTS AS FOLLOWS:**

Definitions

1. In this By-law:

“By-law Enforcement Officer” means a police officer, By-law enforcement officer, special constable and any other public officer engaged in the enforcement, of this or any other law;

“City” means the municipal corporation of the City of Greater Sudbury or the geographic limits of the City as the context requires;

“City personnel” includes the City’s employees, contractors and agents;

“destroy” means to ruin or harm a tree by cutting, burning or girdling the tree or roots, interfering with the roots or uprooting, interfering with the water supply, applying one or more chemicals, improper pruning, compacting of soil or re-grading within the drip line of a tree or by other means including causing irreversible injury to a tree which may result from accident or design and “destroyed”, “destroying” and “destruction” have similar meaning;

“diameter” means the measurement of the trunk of a tree at a height of 1.2 metres above the existing grade of the ground adjoining its base;

“General Manager” means the City’s General Manager of Infrastructure Services and includes his or her authorized designate;

“Hearing Committee” means the Hearing Committee authorized pursuant to the City’s Rules of Procedure By-law 2009-177 as amended or replaced from time to time;

“injury” means lasting damage to a tree which has or is likely to have the effect of inhibiting or terminating its growth and “injure”, “injured”, “injuring” have similar meaning;

“maintenance” includes all work or operations related to trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing a tree and “maintain”, “maintaining” and “maintained” have similar meaning;

“owner” includes the person holding registered title to land and the person for the time being managing or receiving the rent or paying the municipal taxes on the land in question, whether on his, her or its own account or as agent or trustee of any other person or who would so receive the rent if such were let, and shall also include a lessee or occupant of the land. Where the person holding registered title to land is a condominium corporation, the Owner is the corporation and not its members;

“person” includes any individual, firm, partnership, association, corporation, company or organization of any kind;

“pruning” means the removal, as appropriate of the live branches or limbs of a tree and “prune” or “pruned” have similar meanings;

“remove” means to cut down a tree and “removal” and “removed” have similar meanings;

“right of way” means every road, road allowance and laneway under the City’s authority or jurisdiction, whether opened or unopened and includes the travelled portion of the road, shoulders, curb, ditch, boulevard and sidewalks and all other land between the lateral limits;

“right of way tree” means any tree, where any part of the diameter of the tree is on the right-of-way; and

“tree” means any species of woody perennial plant, including its root system, which has reached or can reach a minimum height of four hundred and fifty (450) centimetres at physiological maturity.

Scope

2. This By-law applies to right of way trees.

Administration

3.-(1) The General Manager is responsible for the administration and implementation of this By-law.

(2) Any owner may submit to the General Manager a request for the planting or maintenance or removal of a right of way tree located on the right of way adjacent to the property of the owner and shall use such form, provide such information and supporting documentation as the General Manager may require to investigate the request and make a determination. The initial request may be made in writing or orally through the City's 3-1-1 system, or if available, through an on-line process.

(3) The General Manager shall direct the planting and maintenance and removal of right of way trees in accordance with priorities and processes established by the General Manager from time to time.

(4) The General Manager may, in writing, delegate any one or more of his or her duties hereunder to a City employee.

Approval to Plant Required

4.-(1) The General Manager shall direct the planting of right of way trees by authorized City personnel and in accordance with guidelines on Schedule “A”.

(2) No person shall plant a tree of a species on Schedule "B" in a location which is in whole or in part on a right of way.

(3) No person not being authorized City personnel shall plant or shall cause or authorize a tree to be planted in a location which is in whole or in part on a right of way without the prior written approval of the General Manager.

(4) No person having approval of the General Manager to plant a tree on a right of way shall plant or cause or authorize the planting of the tree contrary to any conditions of the approval.

(5) Where a right of way tree is not planted by City Personnel, the owner of the land adjacent to the right of way on which the right of way tree is planted shall be deemed to have planted the right of way tree or authorized or caused the right of way tree to be planted.

Removal of Unauthorized Tree

5.-(1) Where an owner has planted or is deemed to have planted a tree contrary to Section 4 the General Manager may give notice in writing to the owner, at the address shown on the tax roll for the owner's property directing the owner to remove the tree by the date specified in the notice.

(2) In the event that the owner does not remove the tree by the date specified in the Notice, the General Manager may cause the tree to be removed and may enter onto the owner's property without notice to remove the tree. The cost of removing the tree shall be a debt owing by the owner to the City, enforceable by any means open to the City. If unpaid, the debt may be added to the property tax roll for the owner's property and collected in the same manner as taxes.

Maintenance of Right of way trees

6-(1) The General Manager shall direct the maintenance of right of way trees by authorized City personnel.

(2) No person, not being authorized City personnel, shall prune or engage in other forms of maintenance of a right of way tree.

Right of Entry – Plant / Maintain

7. The General Manager may authorize or direct City personnel together with such persons and such equipment or facilities as may be necessary, to enter onto land lying along a municipal right of way as necessary to inspect, conduct tests on, engage in maintenance of a right of way tree or to plant a right of way tree.

Prohibition – Damage to Right of way trees

8.-(1) No person shall:

- (a) injure a right of way tree or engage in an activity likely to injure a right of way tree;
- (b) destroy a right of way tree or engage in an activity likely to destroy a right of way tree;
- (c) affix a poster, notice or sign to a right of way tree;
- (d) affix any guy line or other fastening or fixture to a right of way tree;
- (e) use a right of way tree to secure or support any object, structure or animal;
or
- (f) remove or interfere with any fence, tree guard or other protective device placed around a right of way tree.

(2) Nothing in Subsection 8(1) shall prohibit the removal of a right of way tree by authorized City personnel.

Removal of Trees - Dead or Damaged Etc

9. The General Manager may authorize the removal by City personnel of any right of way tree or branch thereof which the General Manager has determined to be dangerous, damaged, decayed, broken, diseased, dying or dead.

Removal – Healthy Tree

10. (1) The General Manager may authorize the removal of a healthy right of way tree by authorized City personnel where the General Manager determines it to be necessary for municipal purposes or for the purpose of construction or installation of other public utilities, including hydro, gas, cable and telephone.

(2) The General Manager shall consider an application for the removal of a healthy right of way tree in accordance with the Guidelines in Schedule "C" attached hereto.

Notice of Decision

11-(1) The General Manager shall advise the applicant for the removal of a healthy right of way tree of his or her decision.

(2) In the event that the applicant is not satisfied with the General Manager's decision to not remove a healthy right of way tree the applicant shall be entitled to appeal the decision to the Hearing Committee.

(3) In appropriate circumstances, where more than one property is affected by an application to remove a healthy right of way tree the General Manager shall give notice of the appeal to the affected adjoining owners.

Removal – Process – Right of Entry

12.-(1) The General Manager may authorize or direct City personnel together with such persons and such equipment or facilities as may be necessary, to enter onto land lying along a municipal right of way as necessary for the removal of a right of way tree.

(2) No person, not being authorized City personnel shall remove a right of way tree.

(3) Subsection 12(2) shall not prohibit a person removing a right of way tree in accordance with the direction of the General Manager under Subsection 5(1).

Replacement Tree

13. Where the General Manager has authorized the removal of a right of way tree, he or she shall direct the planting of a replacement right of way tree unless the General Manager determines that it is inappropriate in the circumstances to do so.

Offences and Penalties

14.-(1) Every person who contravenes any of the provisions of this By-law and any director or officer of a corporation who concurs in such contravention is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

(2) The levying and payment of any fine as provided for under the Provincial Offences Act shall not relieve a Person from the necessity of paying any costs or charges for which such Person is liable under this By-law.

(3) The making of a false or intentionally misleading recital of fact, statement or representation in application form required by this By-law shall be deemed to be a violation of the provisions of this By-law.

(4) This By-law may be enforced by any By-law Enforcement Officer.

(5) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.

Short Title

15. This Bylaw may be referred to as the "Right of Way Trees By-law".

Schedules

16. The following schedules are incorporated into and form a part of this By-law:

Schedule "A" Guidelines for Planting Right of Way Trees

Schedule "B" Species Not to be Planted on Right of Way

Schedule "C" Guidelines for the Removal of a Healthy Right of Way Tree
on request of an Owner.

By-law Review

17. Prior to the fifth anniversary of the passage of this By-law and every five years thereafter, the General Manager shall report to Council with any recommended changes to this By-law after consultation with Greater Sudbury Utilities Inc. and with representatives from each of the following City departments, divisions or sections: Roads division, Parks Services, Legal Services, By-law Enforcement Services; Building Services , Planning Services.

Repeals

18. By-laws 84-2 and 90-175 of the former the Corporation of the City of Sudbury are hereby repealed.

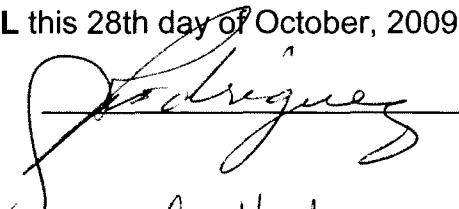
Conflict

19. Where a provision of this By-law conflicts with the provisions of another By-law in force in the City, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail


Enactment

20. This By-law shall come into force and take effect immediately upon the final passing thereof.

READ AND PASSED IN OPEN COUNCIL this 28th day of October, 2009



Mayor



Clerk

SCHEDULE A TO BY-LAW 2009 - 250

Page 1 of 2

GUIDELINES FOR PLANTING RIGHT OF WAY TREES

1. The General Manager may authorize the planting on a right-of-way or partly on a right of way of one of the following species of tree:
 - Ash – fall gold, green
 - Locust – shade master
 - Maple – amur, tatarian, royal red, sugar
 - Hackberry
 - Hawthorn - thornless
 - Flowering Crab – spring snow
 - Oak – burr, red
 - Japanese lilac
 - Linden – pyramidal
 - Elm – prospector
 - Mayday
2. Generally one tree will be planted on a standard 50 foot lot.
3. Two trees may be planted on a corner lot, in the discretion of the General Manager.
4. Despite Sections 2 and 3, the General Manager shall not authorize the planting of a right of way tree in a location where:
 - (a) as a result of existing or proposed infrastructure or other circumstances in the area, it is unlikely that a tree will grow successfully or it is likely that any tree planted will be injured or have to be removed;
 - (b) as a result of soil and drainage conditions, setback of buildings from the right of way, existing plants and trees, and similar considerations, the proposed location is not suitable for a tree;

SCHEDULE A TO BY-LAW 2009 - 250

Page 2 of 2

GUIDELINES FOR PLANTING RIGHT OF WAY TREES

- (c) the surface of the land is or may become water impervious, negatively impacting the health of any tree planted; or
- (d) the surface of lands covered by water impervious surfaces such as asphalt, concrete, stone or brick may be damaged by the roots or trunk of a tree planted in the area.

SCHEDULE B TO BY-LAW 2009 - 250

Page 1 of 1

SPECIES OF TREES NOT TO BE PLANTED ON A RIGHT OF WAY

1. No person shall plant and the General Manager shall not authorize the planting of a tree of the following species on a right of way or partly on a right of way:

Manitoba Maple

Walnut

Butternut

Chestnut

Poplars (all types)

Willows (all types)

Cherry

Silver Maple

Elm all types, except Elm - prospector

Evergreens (all types)

Any fruit bearing tree

SCHEDULE C TO BY-LAW 2009 - 250

Page 1 of 2

**Guidelines for the Removal of Healthy
Right of Way Trees on request of Owner**

Problem	Action Prohibited Species on Schedule B	Action Species other than Prohibited Species on Schedule B
Allergic reactions to tree / sap/ insects / pollen	Tree will not be removed	
Stress to homeowner caused by fear or dislike of trees and/or branches being blown down in a windstorm Or Trees drop things on 'their' property such as seeds, fruit, leaves, twigs, sap and insects which require cleanup	If tree may cause damage to a house and/or occupant due to proximity, lean and size (age) of tree, and is causing stress to homeowners and all other means to save the tree have been exhausted (i.e. pruning, volunteers to clean fruit, etc), the General Manager on consultation with the Ward Councillor, may authorize the removal of the tree	Tree will not be removed
Trees attract unwanted critters such as wasps, bees, caterpillars, birds, insects, chipmunks, squirrels, etc.	Tree will not be removed	
Tree takes up too much space, is too big, roof at risk, roots in sewer, weeping tile or foundation	-if the applicant proves to the satisfaction of the General Manager that sewer lines are being blocked by the roots of the healthy right of way tree, the General Manager, in his or her discretion may arrange to have the sewer re- lined at the City's expense or alternatively arrange to have the tree removed -If the applicant proves to the satisfaction the General Manager that there are roots from the healthy right of way tree in the applicant's weeping tiles or foundation, the General Manager may in his discretion authorize the removal of the tree	
Tree causes soil shrinkage: roots ruin lawn, tripping hazards, tree at risk of falling	-if the applicant proves by way of a soils report or other evidence satisfactory to the General Manager that hazardous conditions have resulted from soil shrinkage caused by the healthy right of way tree, the General Manager may authorize the removal of the tree	
Damage by a Tree of a Prohibited Species on Schedule B to a house, lawn, vehicles or driveway	-where it will solve the problem, the tree will be pruned and placed on a future priority list for removal -where damage cannot be mitigated, the General Manager may authorize the removal of the tree	Not applicable

SCHEDULE C TO BY-LAW 2009 - 250

Page 2 of 2

**Guidelines for the Removal of Healthy
Right of Way Trees on request of Owner**

2. Where the General Manager authorizes the removal of a healthy right of way tree for any of the reasons noted above, it shall be put on a replacement list and removed within six to twelve months. The tree removed will be replaced at a future date in accordance with the guidelines in Schedule A.