



BUILDING MARKHAM'S  
FUTURE TOGETHER



# Tree Preservation Workshop

April 25<sup>th</sup>, 2017

Community & Fire Services – Operations Department  
Development Services – Planning Department  
Corporate Services – Clerk's, By-law Enforcement  
CAO Commission – Legal Department



# Agenda

- Purpose of Workshop
- Urban Forest Policies and Principles
- Tree Preservation and Protection in Markham
- Tree Preservation By-law
- Tree Permitting and Development Processes
- Replanting and Compensation
- By-law Appeals and Enforcement
- Prosecution
- Next Steps

## Purpose of Workshop

- Continuous Improvement Objectives – review of By-law effectiveness and determine if there are improvements available
- Opportunity to address concerns with process
- Opportunity to share data on actual experiences in all areas including permitting, appeals and enforcement
- Opportunity to align internal processes to ensure consistency in application of tree preservation strategies
- Seek direction from Council on next steps

## Tree Protection Policy

- Natural heritage protection is a matter of Provincial interest and is implemented through legislation, municipal policy and regulatory tools
- Markham's natural heritage includes the urban forest, comprising all trees within the City, on both public and private property
- Policies guiding Markham's actions are included in:
  - The Greenprint, Markham's Sustainability Plan
  - City of Markham Official Plan 2014
  - Markham Trees for Tomorrow Streetscape Manual
  - York Region Forest Management Plan

## Policies of the Official Plan (not yet in force)

- Protect, expand and integrate the urban forest in the community
- Maintain and update the Tree Preservation By-law
- Encourage the enhancement of the urban forest through planting and restoration in the urban area
- Require appropriate compensation where the urban forest has been impacted
- Increase awareness of the benefits of the urban forest and promote public education and involvement in the stewardship of the urban forest
- Develop and implement tree canopy targets

## Targets and Where We Are Now

- The Greenprint, Markham's Sustainability Plan
  - Reach 30% tree canopy and vegetation coverage City-wide
- York Region Forest Management Plan
  - Regional canopy cover target of 35% by 2031 & 40% by 2051
  - Recommended canopy cover range for Markham is 20%-35% by 2051
- Markham's current Total Canopy Cover is 18%
- Targets are unachievable without trees on private lands

## Urban Forest Pressures

- Increasing occurrences of large scale insect and disease infestations
  - Emerald Ash Borer, Asian Long-horned Beetle
- Extreme weather events
  - 2013 ice storm, 2016 drought
- Redevelopment and intensification

## Principles to Guide Future Changes

- Staff are guided by the following principles for the internal review:
  - Prioritizing preservation before replacement and compensation
  - The protection and preservation of the urban forest should be done in a manner to achieve consistent outcomes
  - Ensure transparency and fairness in application of the By-law and processes
  - The calculations of tree compensation should be done in a consistent manner using the best urban forestry practices, with the premise that the urban forest is a high value City Asset
  - Achievement of a tree canopy cover of 30% or greater



# Tree Preservation Legislation



## Tree Preservation By-law Background

- Section 135 of the Ontario Municipal Act, provides the authority to pass a By-law to prohibit or regulate the destruction or injuring of trees.
- Subsection 135(2) provides exemptions for:
  - Activities undertaken by a municipality or local board
  - Trees permitted to be removed pursuant to a site plan approval, subdivision or severance approval
  - Trees permitted to be removed under other legislation including the Crown Forest Sustainability Act, Surveyors Act, Electricity Act, and Aggregate Resources Act

## Tree Preservation By-law Background

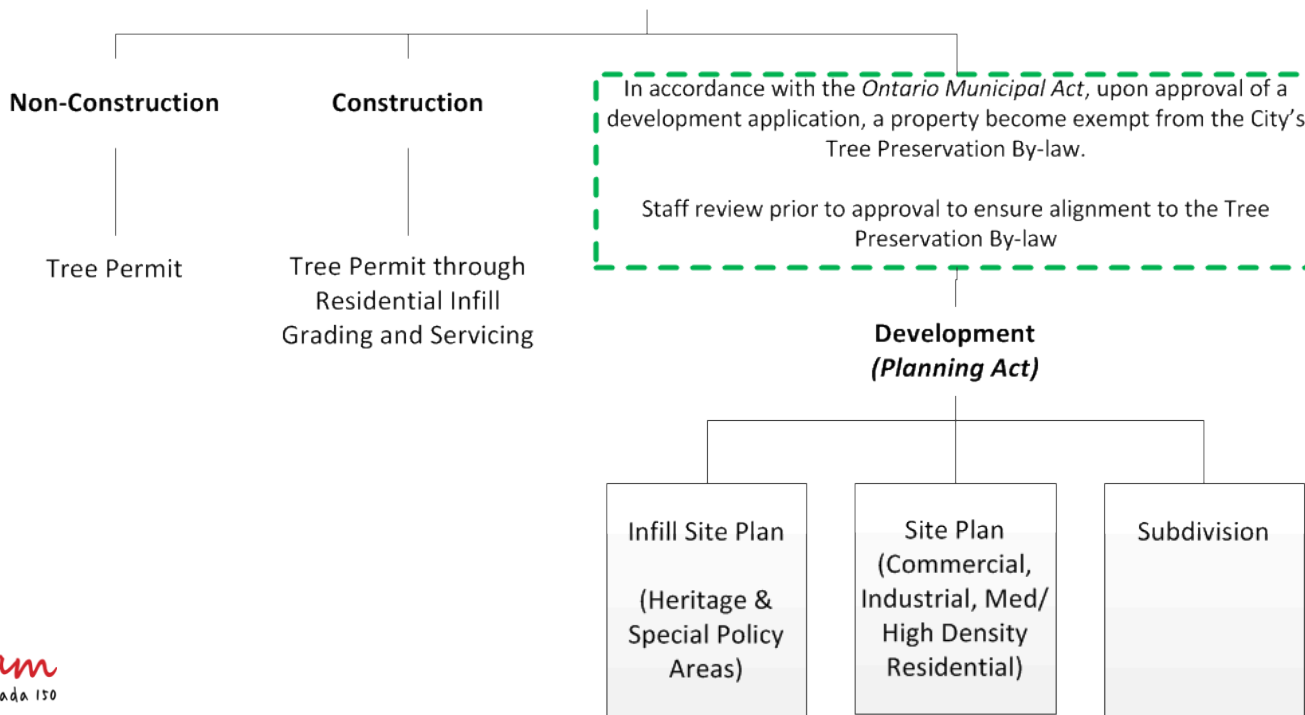
- Residents and Council expressed concerns of increased tree cutting incidents in Markham
- A Task-Force was established, a consultant was retained, and public information sessions held, in order to develop the By-law
- The Tree Preservation By-law was passed on June 24, 2008

## Other Municipalities with Tree By-laws

Municipality	Trees Subject to Tree By-laws	Staffing	Permit Application Fees
Aurora	>2 trees per 0.25 ha per year $\geq 20$ cm DBH & all trees $>70$ cm DBH	1	3 trees for \$200, \$100 for each additional tree over 70cm=\$500, \$2,500 max. No fee for dead trees.
Brampton	all trees, $\geq 30$ cm DBH	1	\$50 per permit
Markham	all trees, $\geq 20$ cm DBH	1	Permit application fees waived to encourage compliance.
Mississauga	>2 trees per year at $\geq 15$ cm DBH	1	3 trees \$375, each additional tree \$85. No fee for dead trees.
Oakville	all trees, $\geq 15$ cm DBH	4 FT, 1 PT	\$232 per tree $\leq 76$ cm, \$579 per tree for any tree $>76$ cm
Richmond Hill	all trees, $\geq 20$ cm DBH	3	1 tree for \$150, \$50 for each additional tree, \$400 max.
Toronto	all trees, $\geq 30$ cm DBH	...	Non-commercial \$104.96/Commercial \$313.99 per tree
Vaughan	all trees, $\geq 30$ cm DBH	2	1 tree for \$58, 6 trees for \$357, 20 trees for \$1,050 Secondary site inspections \$40 each

# Tree Preservation By-law Applicability

## Markham Tree Preservation By-law



## 2016 Non-Construction Tree Permits

	Quantity	Percentage
Total Applications Received / Cancelled	707 / 44	
Total Trees Inspected	1,077	
Total Permitted Without Conditions (mostly dead trees or trees facing imminent failure)	680	63%
Total Permitted With Replanting Conditions (mostly related to species selection)	189	18%
Total Trees Replanted as a Condition of Removal	378	
Total Tree Removal Requests Denied	208	19%
Total Decisions Appealed	9	
Appeals as a percentage of denied requests		4.33%
Appeals as a percentage of total trees inspected		0.84%

## 2016 Infill Grading & Servicing Tree Permits

	Quantity
Residential Infill Grading & Servicing Applications	112
Trees within footprint of proposed building (By-law exempt)*	51
Trees permitted to be removed without conditions (e.g. dead trees or trees facing imminent failure)	92
Trees permitted to be removed with conditions (e.g. site grading, ingress/egress)	249
Trees replanted as a condition of removal	541
* Amendment to By-law recommended to revise exemption to require replanting/compensation	

## Site Plan and Subdivision Review

- Prior to site plan and/or subdivision approvals, Staff work to achieve the intent of the Tree Preservation By-law by preservation of trees in development applications
  - Locating park blocks adjacent to mature trees
  - Minimizing grade changes
  - Re-aligning proposed roads
  - Reconfiguring lot sizes and layout
  - Re-design of building footprint
  - Reconfiguration of hard surfaces such as walkways and driveways



## Process Highlights

- Key Highlights of Processes
  - In all instances where there is construction, the City requires a Tree Assessment and Preservation Plan (TAPP)
  - Tree Protection Zones (TPZ) are required and the City inspects to ensure they are in place before construction commences
  - In the site plan and subdivision processes, Letters of Credit are collected to ensure obligations are fulfilled (e.g. tree preservation and/or plantings)

## Tree Removal Compensation Rationale

- Compensation for removals are based on the quantity and size of trees removed
- The greater the size of a tree, the greater the ratio applied
- Appraisal method used for development applications
- Provided handout compares tree removal compensation with other municipalities

# Tree Removal Compensation

Tree DBH (measured at 1.37m)	Non-Construction Tree Permit	Infill Tree Permit	Site Plan & Subdivisions
≥20 cm up to 40 cm	2:1	2:1	2:1
>40 cm up to 60 cm	3:1	3:1	Negotiated amount based on tree inventory and appraisal
>60 cm up to 80 cm	4:1	4:1	
>80 cm	5:1	5:1	
Min. for Replanting	6 cm diameter deciduous shade trees or 300 cm tall conifers		
Cash-in-Lieu Rate	\$300 per tree	\$600 per tree	\$600 per tree

## Tree By-Law Appeal Process

- Tree By-law appeals currently involve:
  - Hearing by 3 Members of Council sitting as the “Appeal Committee”
  - Council ratification of hearing decision
- In 2014, 2015 & 2016 a total of 14 appeals were heard by the Appeal Committee & subsequently went to Markham City Council.
- Of these 14 appeals, one Appeal Committee recommendation was not adopted by Council, resulting in the removal of one tree

## Tree By-Law Appeal Process (Cont'd)

- The current process results in Council re-hearing the appeal without the benefit of sworn evidence from both parties
- Staff propose to amend the by-law to give the Appeal Committee the final decision-making authority to
  - ensure that the applicant has a fair hearing in accordance with the rules of procedural fairness and natural justice.
  - streamline the hearing process for applicants
  - make it consistent with the appeal process contained in the Stationary Licence By-law Appeal process

## By-Law Enforcement Challenges

- Residents' lack of awareness of City regulations regarding tree removal
- By-law Officers are first to respond but require Forestry Staff to provide expert opinions and to advise how to proceed and secure evidence
- In cases where charges are laid, the Courts place a greater value on the testimony of qualified tree experts
- Investigations triggered only by permit applications or complaints

## By-Law Enforcement Challenges (cont'd)

- Enforcement provisions of the By-law need to be strengthened e.g. the current By-law does not adequately address trees that have already been cut down, making it difficult to:
  - Determine that the tree was subject to the By-law (stump size versus DBH)
  - Who was responsible for the removal
  - Time of the offence

## Prosecutions

- Three year (2014-2016) statistics on completed court matters:

	2014-2016
Number of Trees Destroyed Without a Permit	53
Number of Trees Replaced	92
Total cash-in-lieu paid to City	\$25,600
Average fines per tree (with trees replanted):	\$200 - \$500



## Prosecution – Challenges

- A “reasonable prospect of conviction” is required in order to prosecute
- Evidence of “who” destroyed the trees or contracted to have them cut down is often difficult to obtain since By-law Enforcement Officers are typically called to the property after the tree(s) have been cut & the tree contactor has left the property
- Amending the by-law to put the onus on the property owner to establish that he/she did not authorize the injury to the tree would address this challenge to some extent

## Prosecution – Fines

- Fines are based on the principles of sentencing such as deterrence, and are intended to penalize persons who contravene the By-law, not compensate for the actual loss of the tree(s).

## Next Steps and Timelines

- Immediate
  - Staff will bring forward a housekeeping By-law amendment to aid By-law enforcement & prosecutions.
    - Put the onus on the property owner to establish that he/she did not authorize the injury to the tree
  - Revise the appeal process to be make Appeal Committee decisions final
  - Revise By-law exemption for trees that are within the footprint of a proposed building in order to obtain tree replanting or compensation

## Next Steps and Timelines

- Fall 2017
  - Staff will report back with recommended changes to the City's various appeal processes. This report will look at appeal body composition and processes
  - Communicate a standardized approach for tree replanting and compensation
  - A cross commission Working Group comprised of Staff from all four commissions will report back to General Committee with other proposed amendments to the City's Tree Preservation By-law

# Thank You

## Questions and Discussion

