



Corporate

NO: R124

Report

COUNCIL DATE: June 17, 2002

REGULAR COUNCIL			
TO:	Mayor & Council	DATE:	June 14, 2002
FROM:	General Manager, Planning & Development	FILE:	8970-14400 6800-05
SUBJECT:	Damage to Walnut Tree at 8970 - 144 Street		

RECOMMENDATION

That Council receive this report as information.

INTENT

The purpose of this report is to respond to the request made by Council at its Regular meeting on May 13, 2002, for information regarding damage to a walnut tree at 8970 - 144 Street and the actions that have been taken by staff in relation to addressing the matter with the owner of the subject site.

BACKGROUND

In 1999, the City received an application for subdivision of the site on which the subject walnut tree is located. Due to the uniqueness of the subject tree a report was sent to the Heritage Advisory Commission. On January 19, 2000, the Heritage Advisory Commission (HAC) considered the report and resolved to recommend to Council that the subject tree be placed as a significant tree on Schedule B of the Tree Preservation By-law. On January 31, 2000, Council adopted the recommendation of the Heritage Advisory Commission. However, it is Council's practice not to include a tree on the Schedule without the agreement of the owner. In this circumstance, the owner did not agree to such a designation. The tree has a trunk diameter of 104 cm (41 inches) and, at the time of its consideration by the HAC, had a healthy canopy, with its lower branches extending 14 m (45 feet) from the trunk. The property on which the tree is located was subsequently subdivided and, as part of the approval process, a Restrictive Covenant was registered on the title of the property to assist in ensuring the on-going health of the tree. The Restrictive Covenant restricted construction and hard surfacing on the lot to an area that would not jeopardize the health of the tree.

Before the subdivision process was finalized, the owner hired a tree pruning firm to have most of the lower limbs of the tree removed. Although this pruning significantly changed the character of the tree, it did not jeopardize the life of the tree and, therefore, was not in contravention of Surrey's Tree Preservation By-law. When questioned by staff regarding why he had pruned the tree, the owner explained that neighbours were

complaining to him because children in the neighbourhood were climbing the tree and were going to get hurt and that by removing all the lower limbs he could prevent the children from getting up into the tree.

Once the subdivision had been completed the owner of the development, Mr Harjit Gill, sold the subject lot to Mr. Mandeep Bajwa. Mr. Bajwa applied for a building permit for the lot that conflicted with the requirements of the Restrictive Covenant related to the walnut tree and, as such, staff advised him that he would need to redesign the house to accommodate the tree. Mr. Bajwa stated that he had not been informed about the Restrictive Covenant when he purchased the lot and requested that the Restrictive Covenant be removed and that he be allowed to construct the house in accordance with his original plan.

Staff denied the request, but assisted Mr Bajwa in reconfiguring the design of the house such that the walnut tree would not be jeopardized. Mr Bajwa retained an accredited arborist to assess the tree and determine how close the excavation could come to the tree without damaging the roots. A tree protection barrier was installed around the tree to protect the tree from damage during the construction process. The building permit for the house was issued on April 25, 2002.

On April 30, 2002, City staff received calls from several neighbours that trees were being removed on the subject property and that the walnut tree was being seriously damaged. A City arborist and a By-law Enforcement Officer attended the site and discovered that the owner had excavated for the building foundation and in the process had destroyed the tree protection barrier, broken several large limbs from the walnut tree with the excavator, damaged some of the major roots and buried the trunk with fill up to a depth of more than 3 metres. The contractor who had done the work had already left the site by the time the By-law Enforcement Officer and City arborist arrived. Photographs of the tree and the lot were taken and evidence was recorded. Two photographs of the damaged tree are attached to this report as Appendix "I". City staff immediately placed a Stop Work Order on the site.

The owner, Mr. Bajwa, was informed that before the Stop Work Order would be lifted, he would need to retain an I.S.A. accredited arborist, approved by the City, to assess the damage to the tree and to provide a report to the City that clearly described the measures that would need to be taken to nurse the tree back to health. The City also advised Mr. Bajwa that he would be required to submit a Letter of Credit in the amount of \$10,000 to cover the cost of purchasing and installing a large mature tree (i.e., 30 cm or more in diameter) in case the walnut tree died or if the arborist reported that it would not survive due to the damage it sustained during the excavation process. The owner submitted the letter of credit, as requested.

The City received an arborist's report on May 3, 2002. It specified how the fill was to be removed from around the tree, that no heavy equipment was to enter the critical root zone, that the existing turf was to be temporarily exposed to act as an original grade indicator and that a proper tree protection barrier was to be constructed. The report further recommended that after the grade was restored around the tree, the broken branches would need to be properly pruned, the root zone would need to be aerated with an air spade under the supervision of the arborist and the turf around the tree would need to be removed and replaced with a layer of organic mulch. All the work was to be carried out under the supervision of an arborist.

The fill removal work was completed on May 13, 2002. The tree protection barrier was re-constructed by May 17, 2002. The pruning, aerating and mulching requirements have also been completed and the City has received a letter from the arborist advising that all of the work has been completed in a satisfactory manner. On this basis, staff lifted the Stop Work Order from the property and has allowed construction to continue on the site. The City will continue to hold the \$10,000 letter of credit for a period of four years to ensure that the tree is properly maintained or to ensure that a mature replacement tree is installed should the existing tree die. The Restrictive Covenant remains on the title to the property.

CONCLUSION

Although the walnut tree is no longer of specimen quality, it is still worth preserving. It is currently protected by the provisions of the City's Tree Preservation By-law and by the Restrictive Covenant on the title of the property on which it is located. Although the owner's contractor caused significant damage to the tree, the owner of the property has been cooperative in taking actions to remediate the damage and the arborist overseeing the remediation work has advised that the tree will probably survive if it is given proper care. The \$10,000 Letter of Credit posted with

the City by the owner, Mr. Bajwa, will be held for a period of four years to ensure that the tree is given proper care and to ensure that if the tree does not survive, it is replaced with a large mature tree. City staff are continuing to monitor the construction activity on the site and will apprise Council of any concerns that arise in relation to the subject tree.

Murray D. Dinwoodie

General Manager

Planning & Development Department

RE/kms/saw

Attachment – Appendix "I"

v:\wp-docs\building\02data\apr-june\05301144.re.doc

S 7/2/02 2:22