



# **Corporate** NO: R213

# **Report** COUNCIL DATE: November 4, 2002

<b>REGULAR COUNCIL</b>			
TO:	<b>Mayor &amp; Council</b>	DATE:	<b>October 28, 2002</b>
FROM:	<b>General Manager, Planning &amp; Development</b>	FILE:	<b>12218 – 09200 7999-0137-00</b>
SUBJECT:	<b>Rock Tree - Delegation at October 7, 2002, Council-In-Committee Meeting</b>		

## **RECOMMENDATION**

It is recommended that Council:

1. Receive this report as information;
2. Direct staff to continue to follow the course of action documented as Option 1 in this report, relative to the ongoing preservation of the Rock Tree; and
3. Authorize the Acting City Clerk to forward a copy of this report and Council's resolution to Janet Dahr, who appeared before Council as a delegation on the matter of the Rock Tree.

## **PURPOSE**

The purpose of this report is provide information to Council regarding the current status of the Rock Tree and to address the request made by Janet Dahr during her delegation before Council on October 7, 2002, that the City assist the Friends of Kennedy Park Society and the Evergreen Society in acquiring the lots, on which the Rock Tree is located, as additional parkland.

## **BACKGROUND**

At the May 10, 2002 Regular Council Land Use meeting, Council considered Corporate Report L008 (attached as Appendix I to Schedule "A" of this report) that addressed the preservation of the existing cedar tree growing through a boulder on property located at 12192 and 12218 – 92<sup>nd</sup> Avenue. The subject properties were in the process of being rezoned and subdivided into 32 residential lots. The tree has come to be known as the "Rock

Tree". The Corporate Report provided a summary to that date of the activities that had been undertaken in relation to determining an appropriate course of action with respect to the Rock Tree and also documented and evaluated optional courses of action for Council's consideration with respect to the ongoing preservation of the Rock Tree. One of the alternatives considered at that time was the acquisition of the lots, on which the tree is located, as parkland. Council resolved to adopt Option 2 of that report, which was to retain the tree on a private lot and register a Restrictive Covenant on each lot affected by the tree, that would document conditions for which the owner of the lot would be responsible in relation to ensuring the long term health and maintenance of the tree. The conditions that were to be included in the Restrictive Covenant included the establishment of a six metre (20 foot) "no disturbance" zone around the base of the tree with an additional two metre (6.5 foot) protection zone beyond the "no disturbance" zone where limited works could be undertaken by the owner of the lot. The Restrictive Covenant was also to stipulate the lot owner's responsibilities with respect to the ongoing care and maintenance of the tree including, amongst other things, the construction and maintenance of a split rail fence around the tree to act as a visual barrier.

At the May 27, 2002 Regular Council Land Use meeting, Council received as information Corporate Report No. L009 (attached as Schedule "A") that informed Council of the actions that staff had taken in implementing Council's direction from May 10, 2002.

On October 7, 2002, Janet Dahr appeared before Council-in-Committee and advised Council that a new society had been formed called the "Friends of Kennedy Park Society" ("FKPS") for the purpose of addressing the long-term retention of the Rock Tree. She also expressed concern about the City not enforcing the Restrictive Covenant that was registered to protect the Rock Tree. Ms. Dahr advised Council of the work of the Evergreen Foundation (a charitable organization that works with community groups and municipalities to establish partnerships for the care of trees and naturalization of forested sites within urban areas) and the potential for that Foundation to assist in ensuring the long-term preservation of the Rock Tree. Finally, Ms. Dahr requested that the City purchase the two lots on which the Rock Tree is located as parkland and that the FKPS and the Evergreen Foundation would commit to fundraising with the intention of assisting with the cost of purchasing the lots.

## **DISCUSSION**

### **Current Physical State of the Rock Tree and the Immediate Area of the Tree**

Engineering services for the new subdivision within which the Rock Tree is located are nearing completion, including the underground utilities, road works and sidewalk on the street immediately fronting the tree. Due to the topography of the area in the immediate vicinity of the tree, in relation to the grades at which the fronting street needed to be constructed, it was necessary for the developer to construct a .75 metre (2.5 foot) high retaining wall parallel to the edge of a granular-surfaced sidewalk that runs parallel to and abuts the street in front of the Rock Tree. The retaining wall is located at a distance of approximately 5.3 metres from the centre of the Rock Tree at its nearest point of the tree. This retaining wall encroaches by up to a maximum of 0.7 metres (2.3 feet) into the six metre (20 foot) "no disturbance" zone on the street side of the tree. Current photographs of the tree are attached as Schedule "B". It is noted that during the construction work associated with installing the utilities, road works, sidewalk and retaining wall, no tree roots larger than four centimetres (one and half inches) in diameter were severed. Both the City's arborists and a private consultant arborist confirmed that there would be no significant detrimental effects to the health and longevity of the tree associated with the loss of these relatively small diameter roots.

City arborists, the developer and a private consultant arborist have spent significant time, energy and resources in making sure that the tree is properly protected and maintained to ensure its longevity. The following lists some of the actions that have been taken, to date, in this regard:

- A Restrictive Covenant has been registered on the title of the lots on which the Rock Tree is located that establishes a "no disturbance" zone around the tree and places responsibilities on the owner of the lot to ensure the long term protection and maintenance of the tree.

- During the course of the construction of engineering services, a City arborist visited the site on a daily basis during weekdays to make sure that the tree was being properly protected and cared for during the construction process. Since there is no construction going on in the vicinity of the tree at this time, the frequency of the arborist's visits has been reduced to twice a week.
- The developer hired Susan Murray, a highly respected consulting arborist, to monitor the tree and construction in the vicinity of the tree to ensure that the tree is properly protected during construction. Ms. Murray has been submitting regular reports to the City regarding her inspections. Her inspection reports confirm that the tree is being properly protected during the construction process.
- The City hired a second consulting arborist to conduct an extensive assessment of the tree's present condition and submit a report for future reference. This arborist conducted resistograph tests to determine whether or not there was any rot present within the tree. In addition, small lead plugs were inserted on either side of cracks in the boulder at the base of the tree so that accurate measurements of the width of the cracks could be taken in the future as the basis for future assessments of the condition of the tree. The tree's root mat, branches and foliage were also examined, assessed and recorded. The report also included photographs.
- The City arborist and landscape architect met with the developer on site many times over the course of the summer to discuss issues such as watering and mulching the base of the tree, the installation and upkeep of the temporary protection barriers and the construction of the permanent split rail fence around the tree.
- A permanent split rail fence has been installed around the tree in accordance with the requirements of the Restrictive Covenant that was registered on the lot. Based on measurements taken by City staff, the split rail fence is located at a distance of six metres (20 feet) from the centre of the tree (i.e., at the edge of the "no disturbance" zone) except along the top of retaining wall on the south side of the tree where it is at a minimum distance of 5.3 metres (17.7 feet) from the centre of the tree. The split rail fence was constructed with good quality material and to a satisfactory standard.

The tree remains in excellent condition and all arborists agree that, to date, nothing has been done that would have any significant negative impact on the tree.

City staff will again step up monitoring the Rock Tree during the course of house construction on each of the two lots on which the tree is located to ensure that the tree is properly protected and maintained during that phase of construction.

### Need for Additional Parkland

After Ms. Dahr's presentation to Council, the Parks, Recreation and Culture Department reviewed the need for parkland in the Kennedy Heights area and confirmed that there is currently more than sufficient area of parkland in the Kennedy neighbourhood to satisfy the City's standards with respect to the provision of parkland. Further, it was confirmed that if parkland acquisition funds were expended in this community it would undermine the City's ability to acquire parkland in communities where there is currently a deficiency. The Manager of Parks advised that the Parks Division would be willing to provide technical assistance to the FKPS from time to time, but that they could not justify the cost of purchasing and maintaining a pocket park in this location.

The City Landscape Architect contacted the Evergreen Foundation with regard to the possibility of them aiding

the FKPS in purchasing the two lots. The Foundation confirmed that they were aware of the tree and were currently exploring some options for fundraising to acquire the site, but that any purchase would be "in partnership" with the City. The lots are valued at approximately \$140,000 to \$150,000 each for a total of between \$280,000 and \$300,000 to acquire both lots.

## Description and Evaluation of Options

The following provides a brief description and evaluation of options in relation to the request of the FKPS.

Option 1: Proceed as originally intended by allowing the construction of houses on the lots and rely on the terms of the Restrictive Covenant for the ongoing protection and maintenance of the Rock Tree.

Under this option, the City would continue down the path that has been established by Council's decision in May of this year, which would be to allow building construction on the lots on which the tree is located and rely on the provisions of the Restrictive Covenant (as previously documented in this report) that is registered on the title of each of the lots to ensure the ongoing protection of the tree.

### Pros:

- Provides reasonable assurance regarding the ongoing protection and maintenance of the Rock Tree without the need for the City to spend its resources on this matter.
- The split rail fence and the retaining wall physically delineate the "no disturbance" zone so that individuals in the vicinity of the tree are alerted to the special status of the tree.

### Cons:

- Does not satisfy the FKPS that the Rock Tree will be properly protected and maintained.

Option 2: That the City purchase the two lots on which the Rock Tree is located in collaboration with the FKPS and the Evergreen Foundation.

Under this option the City would purchase the lots on which the Rock Tree is located after structuring an appropriate agreement with the FKPS and the Evergreen Foundation in relation to recouping some of the costs of the acquisition through fundraising.

### Pros:

- Would act to insure the Rock tree's ongoing protection and maintenance.
- Would satisfy the FKPS.

### Cons:

- Neither the FKPS nor the Evergreen Foundation have any current funds available to commit to the purchase of the lots and the potential success of their fundraising efforts are very speculative at this time.

- Developing an agreement with the FKPS and/or Evergreen Foundation would take time. The developer is anxious to sell the subject lots and would probably object to having to hold the lots, pending the completion of such an agreement.
- The City would spend park acquisition funds (up to \$300,000) in an area that is already adequately serviced with parkland. This expenditure may jeopardize the City's ability to purchase parkland in other areas of the City where there is currently a parkland deficiency.
- Such an acquisition would set a significant precedent in relation to preserving significant trees within the City.
- The ongoing costs of maintenance of the parkland and the Rock Tree would stretch more thinly the City's current parkland maintenance resources.
- Pocket parks can become sources of nuisance to neighbourhoods (i.e., hang outs for kids, litter, etc.).
- The liability associated with the Rock Tree falling over would accrue to the City if the City owned the land.

## **CONCLUSION**

Based on the above evaluation, it is recommended that Council direct staff to continue to follow the approach to preserving the Rock Tree as documented in Option 1 of this report.

The Rock Tree remains in excellent condition and this status is not expected to change in the near future. It is considered reasonable to build a house on each of the two affected lots without affecting the tree or the boulder at the base of the tree. City staff will ensure that the final owner of each of the lots and the builder of each of the houses, are fully aware of the building restrictions on the lots and of the ongoing maintenance requirements with respect to the Rock Tree. Further, staff will regularly monitor the construction activities on the lots during the house construction process to ensure that the tree is being properly protected and maintained.

It is further recommended that the Acting City Clerk be authorized to forward a copy of this report and Council's resolution to the Ms. Janet Dahr who appeared as a delegation before Council-in-Committee.

Murray Dinwoodie  
General Manager  
Planning and Development

RE/kms/saw

### Attachments:

Schedule "A" – Corporate Report No. L009

Schedule "B" - Photographs

SAW 11/5/02 9:04