

**THE CORPORATION OF THE TOWN OF DUNDAS**

**BY-LAW NO. 4513-99**

**A BY-LAW OF THE CORPORATION OF THE  
TOWN OF DUNDAS, BEING A BY-LAW TO  
PROHIBIT OR REGULATE THE INJURY OR DESTRUCTION  
OF TREES IN AREAS OF THE TOWN OF DUNDAS.**

WHEREAS Section 223.2 of the Municipal Act authorizes local Councils, having a population over 10,000, to pass by-laws affecting private land for prohibiting or regulating the injuring or destruction of trees or any class of trees specified in the by-law in any defined area or on any class of land; requiring that a permit be obtained for the injuring or destruction of trees specified in the by-law; prescribing fees for the permit; and prescribing circumstances under which a permit may be issued;

AND WHEREAS the Town of Dundas has a Tree By-law to regulate trees on public land;

AND WHEREAS the Town of Dundas recognizes the importance of trees in contributing to the attractive character and wellbeing of the community;

AND WHEREAS the Town of Dundas wishes to protect trees on sites (1) where there is development potential for new buildings, (2) in the Cross-Melville Heritage District, (3) on private lands zoned for open space purposes, and (4) on lands that are environmentally significant, these areas are considered the areas of most importance in retaining the attractive character and the wellbeing of the community;

NOW THEREFORE THE CORPORATION OF THE TOWN OF  
DUNDAS ENACTS AS FOLLOWS:

1. TITLE

This By-law may be known as the “Tree Protection By-law”.

2. DEFINITIONS

“Corner Lot” means a lot abutting a street on more than one adjacent side.

“Council” means the Council of the Town of Dundas or successor authority.

“Front Yard” means a yard extending across the full width of a lot between the front lot line and the nearest wall of any principal building or structure on the lot.

Where there is no principal building, the front yard shall be the area between the front lot line and the front yard setback required in the comprehensive Zoning By-law No. 3581-86.

“Officer” means the Director of Planning and Building or delegate.

“Private Land” means any land which is not owned or leased by a public body or agency.

“Pruning” means trimming minor branches to encourage healthy tree growth either through removing deadwood or surplus branches, in order to assist the natural form of the tree in accordance with good arboricultural practice. Cutting to specifically create more space or light is not part of pruning.

“Rear Yard” means a yard extending the full width of a lot between the rear lot line and the principal building. Where there is no principal building the rear yard shall be the area between the rear lot line and the rear lot line setback required in the comprehensive Zoning By-law No. 3581-86.

“Side Yard” means a yard extending from the front yard to the rear yard between the lot line and the principal building. Where there is no principal building the side yard shall be the area between the side lot line and the side yard setback required in the comprehensive Zoning By-law No. 3581-86.

“Tree” means any species of woody plant which has reached or can reach 5 metres high at maturity. Tree refers to an individual tree or group of trees.

### 3. APPLICATION OF BY-LAW

- (a) The affected land is limited to private land (1) shown on Schedules A, B, C, D, F, G, H, I, J, L, M, N, P, Q, T corresponding to the schedules in the comprehensive Zoning By-law No. 3581-86; (2) in the front yard and side yard of any lot and also within 6 metres of the road right of way in a rear yard on a corner lot in the Cross-Melville Heritage District; (3) zoned open space in the comprehensive Zoning By-law No. 3581-86; and (4) designated environmentally significant area by the Region of Hamilton-Wentworth or successor authority except areas covered by the Niagara Escarpment Commission Development Control Area.

- (b) The By-law is limited to trees with a minimum diameter of 0.15 metres (except in the Cross-Melville Heritage District where the minimum diameter is 0.1 metres) at 0.3 metres above the ground with more than 50% of the trunk diameter on private land.
- (c) The By-law is limited to lands which are not subject of a site plan agreement under the Planning Act, not subject to a subdivision agreement under the Planning Act or not subject to other written agreement which covers tree preservation.
- (d) Pruning of trees in accordance with good arboricultural practice in order to maintain the health and safety of the tree is permitted without a permit.
- (e) Trees overhanging onto private land whether they be on public land or on an abutting private property area specifically included under the control of this By-law.
- (f) Public bodies are exempt from this by-law.

#### 4. GENERAL REGULATIONS

- (a) Applications for a permit shall be made by the owner to the Department of Planning and Building stating the number of trees shown on a layout plan, how they are to be affected and the reason for the application.

- (b) No person or corporation shall injure or destroy a tree or cause the injury or destruction of a tree without a permit issued by the officer appointed under this By-law in areas affected by this By-law.
- (c) A permit shall be obtained from an officer following the submission of an application form and review by the officer. Council shall review the application if the Officer intends to refuse permission or if the Officer seeks a Council decision.
- (d) A permit shall be issued where a tree or part of a tree is dangerous, hazardous, dying or dead.
- (e) A permit may or may not be issued based on the following criteria:
  - the rarity of the tree species,
  - the health and safety of the tree,
  - the individual significance of the tree,
  - the contribution to the visual character of the area,
  - the contribution to flood and erosion control,
  - the general desirability of retaining the tree,
  - the replacement plans for the tree,
  - the reasons contained in the application.

- (f) A permit shall not be issued where a healthy, safe tree is proposed to be injured or destroyed to make way for development proposals prior to planning approvals or prior to the execution of site plan or subdivision agreements where applicable on sites in Schedules A, B, C, D, F, G, H, I, J, L, M, N, P, Q, and T attached and forming part of this By-law.

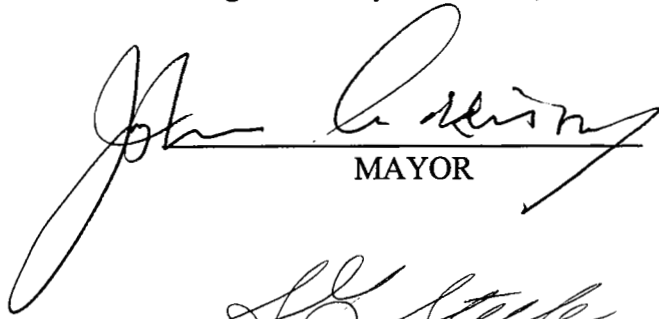
5. CONDITIONS


Conditions may be added to the permit including replacement of the tree or part of a tree based on the equivalent value of the proposed injury or destruction of the tree.

6. OFFENCE

Any person or corporation that contravenes or causes contravention of the provisions of this By-law is guilty of an offence and is liable upon conviction to fines up to the maximum specified in the Municipal Act, for the first offence a maximum of \$10,000 and for subsequent offences a maximum of \$20,000.

Read a First, Second and Third time and PASSED this Eighteenth day of October, 1999.

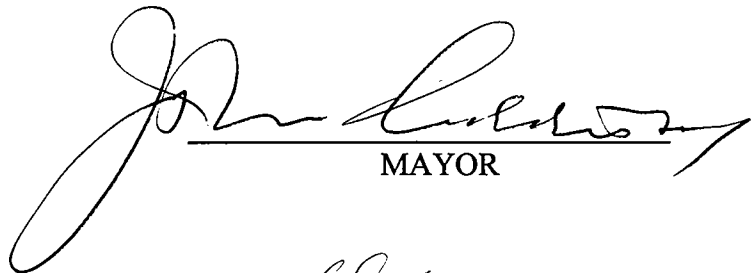
  
MAYOR

  
CLERK

**THESE ARE SCHEDULES A, B, C, D, F, G, H, I, J,  
L, M, N, P, Q AND T OF BY-LAW NO. 4513-99**

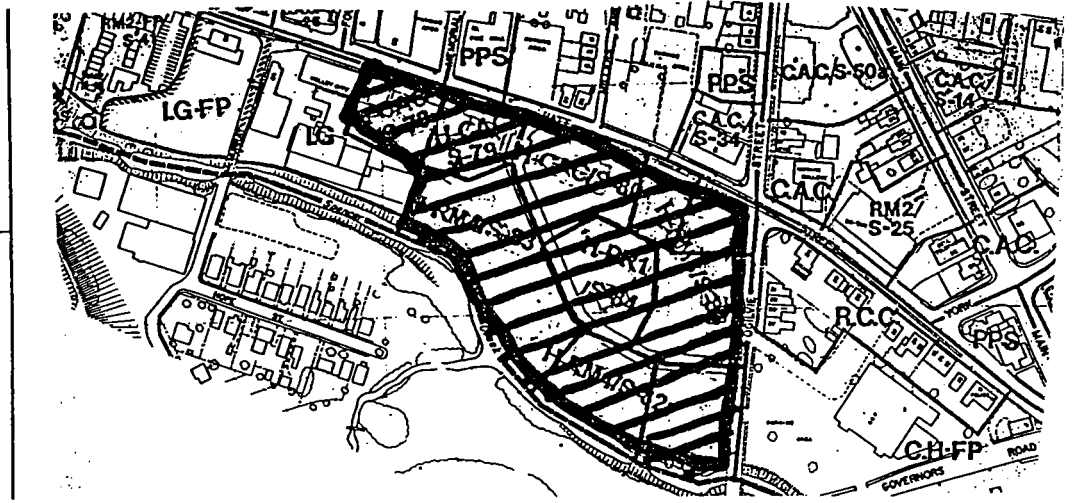
Cross hatching on the Schedules indicates potential development sites which are affected by this By-law.

Dated this Eighteenth day of October, 1999.

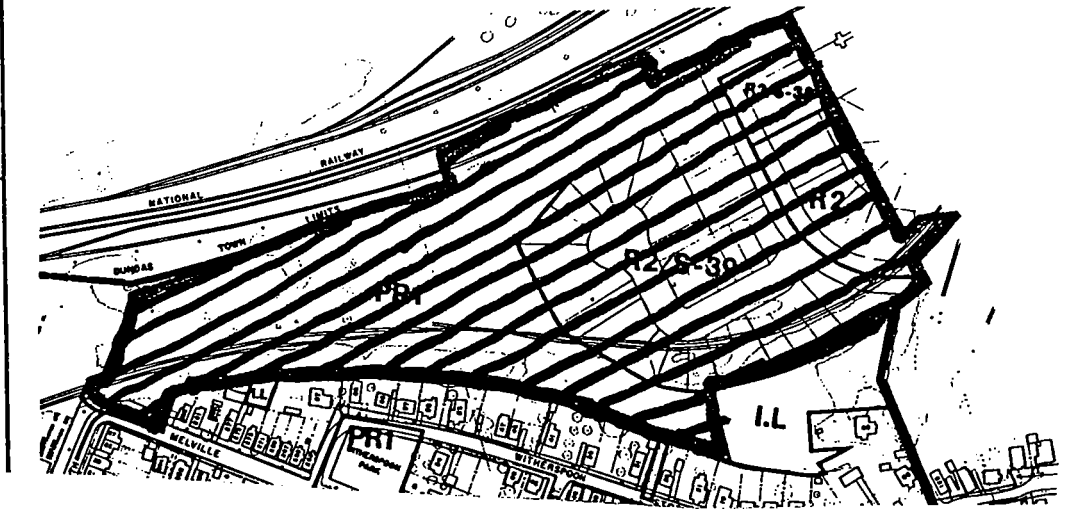
  
MAYOR

  
CLERK

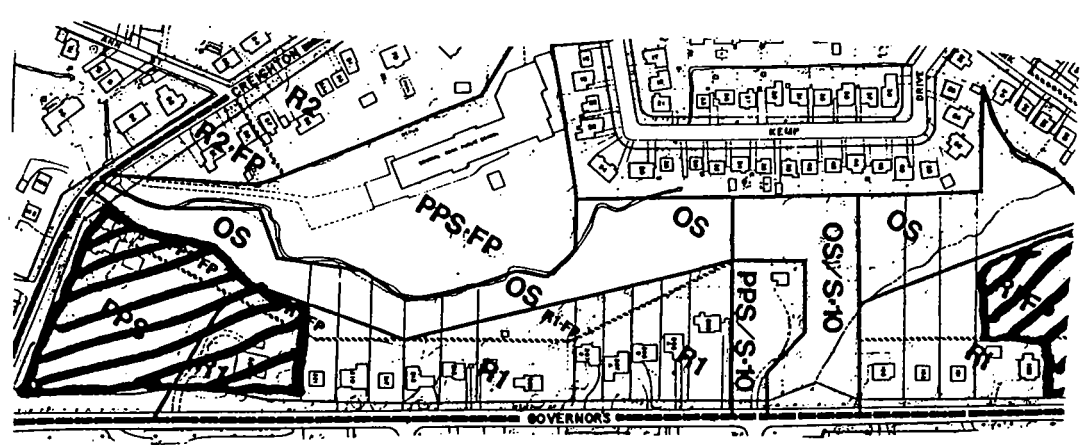
SCHEDULE A  
TOWN OF DUNDAS  
**CENTRAL BUSINESS  
DISTRICT**



SCHEDULE B  
TOWN OF DUNDAS  
**COLBORNE**



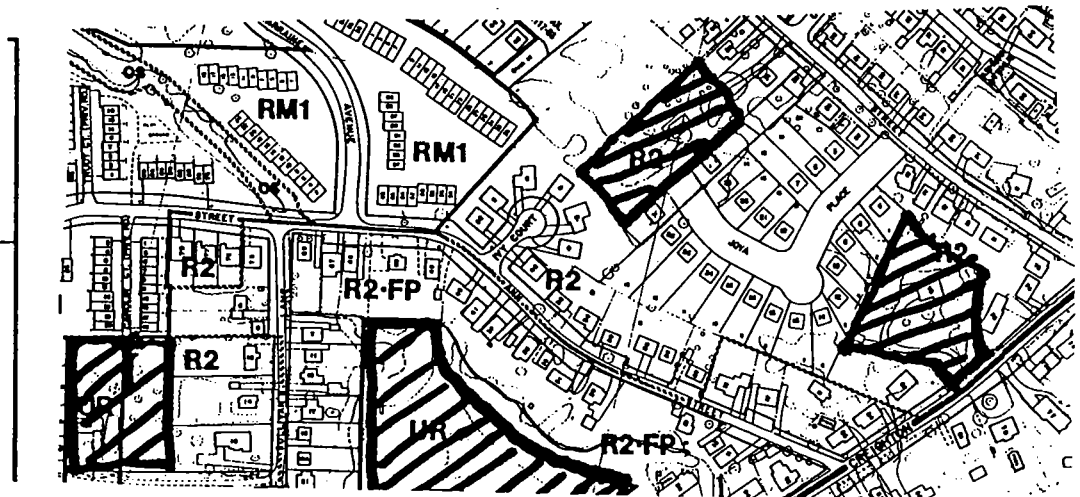
SCHEDULE C  
TOWN OF DUNDAS  
**CREIGHTON EAST**



SCHEDULE D

TOWN OF DUNDAS

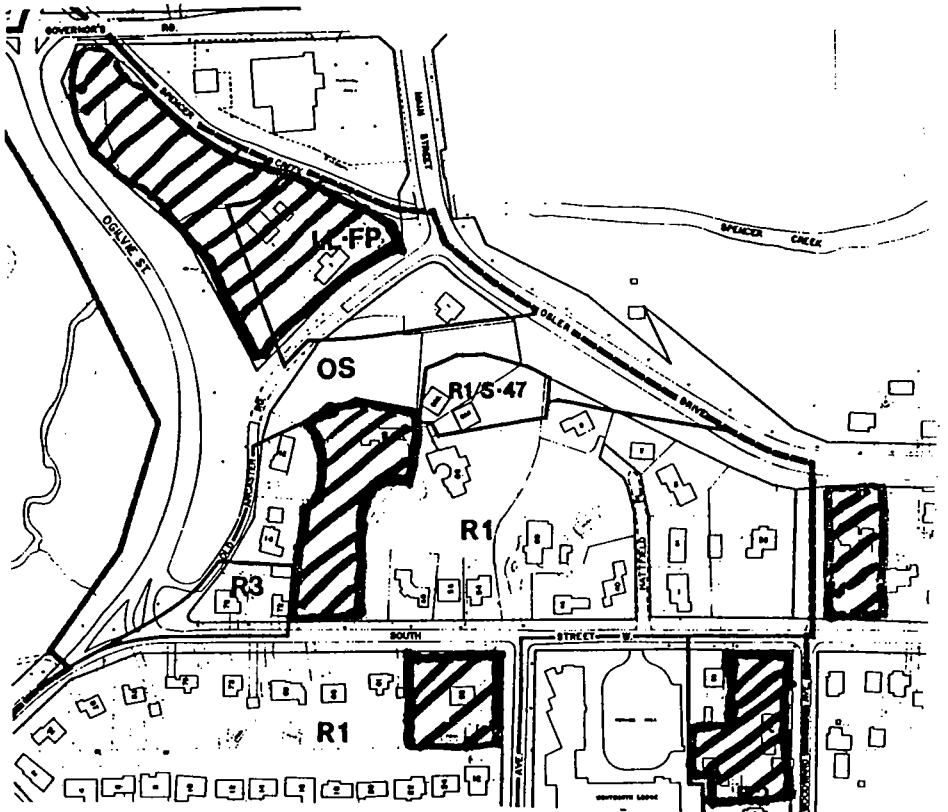
CREIGHTON WEST



SCHEDULE F

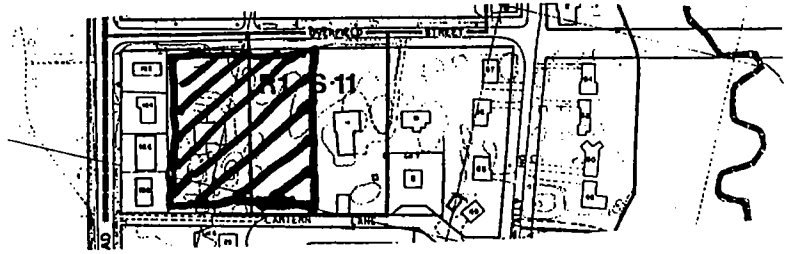
TOWN OF DUNDAS

DUNDANA WEST



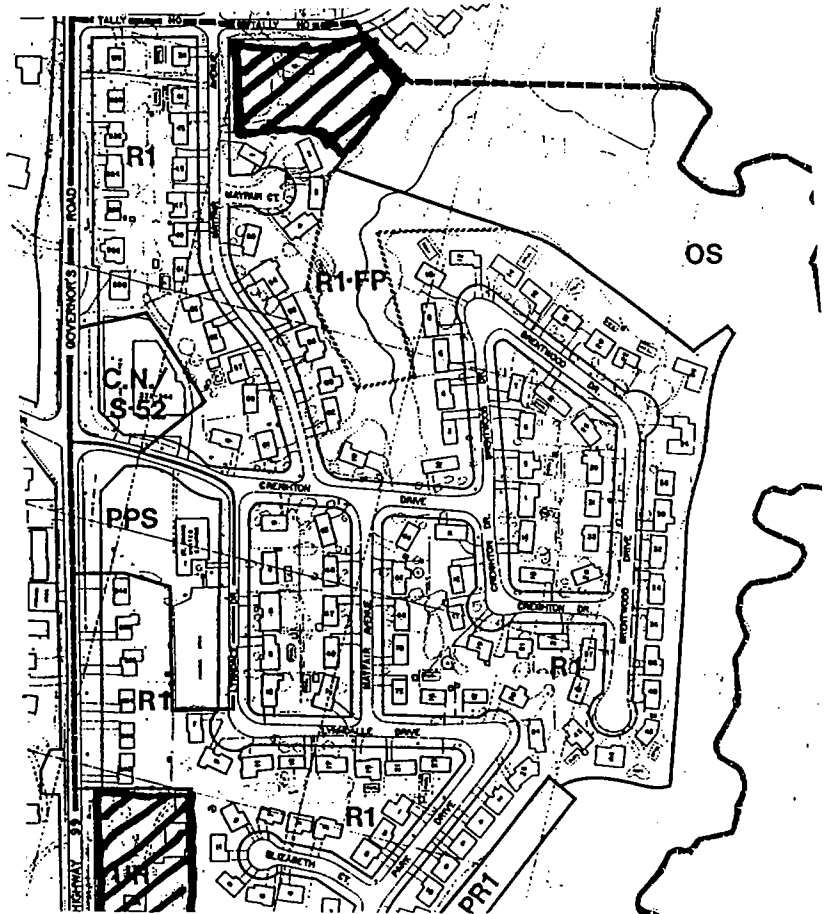
SCHEDULE G

TOWN OF DUNDAS  
HIGHLAND HILLS  
EAST



SCHEDULE H

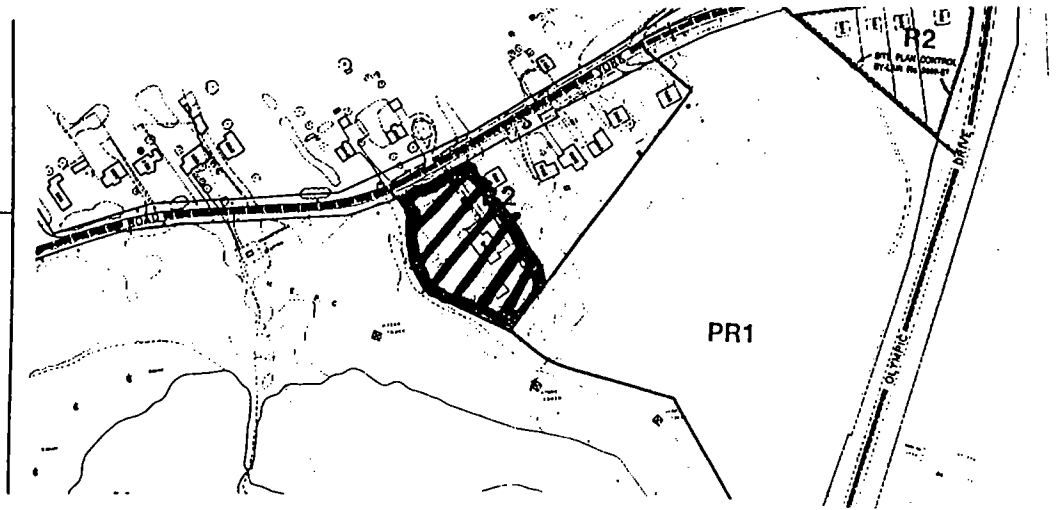
TOWN OF DUNDAS  
HIGHLAND HILLS  
WEST



SCHEDULE I

TOWN OF DUNDAS

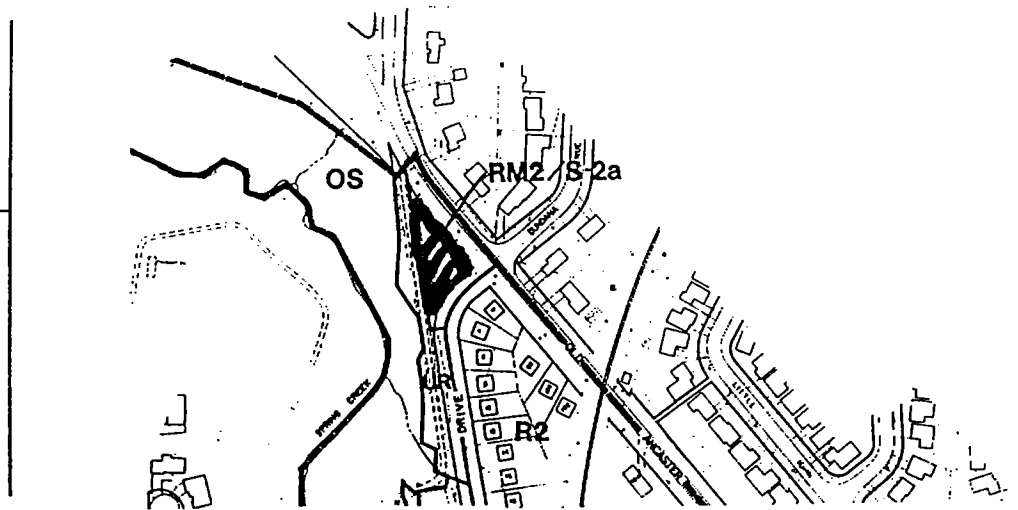
**HUNTER**



SCHEDULE J

TOWN OF DUNDAS

**PLEASANT VALLEY  
EAST**



SCHEDULE L

TOWN OF DUNDAS

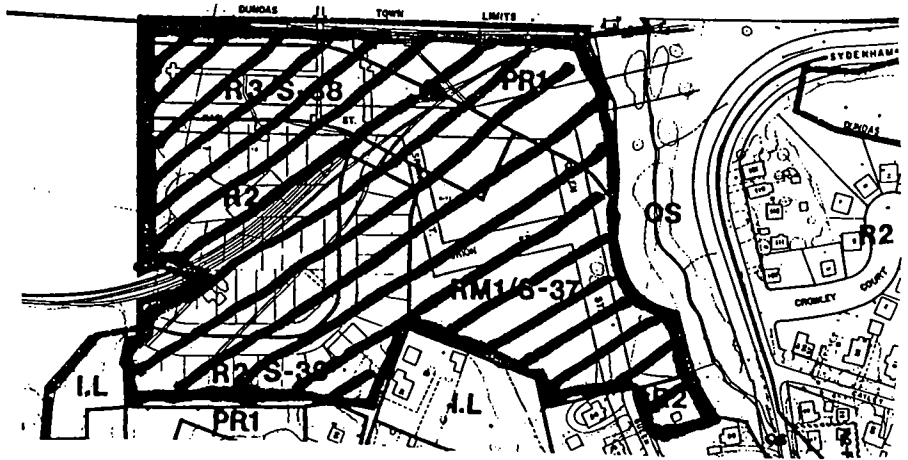
**SPENCER CREEK**



SCHEDULE M

TOWN OF DUNDAS

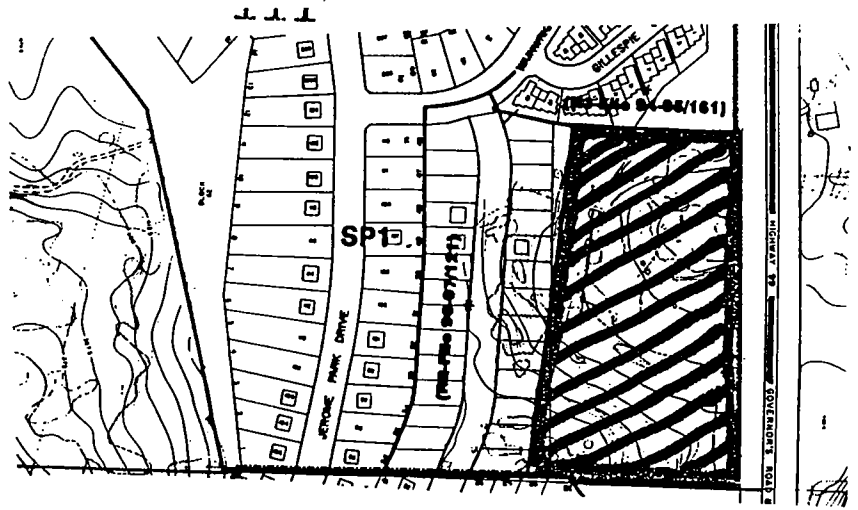
**SYDENHAM**



SCHEDULE N

TOWN OF DUNDAS

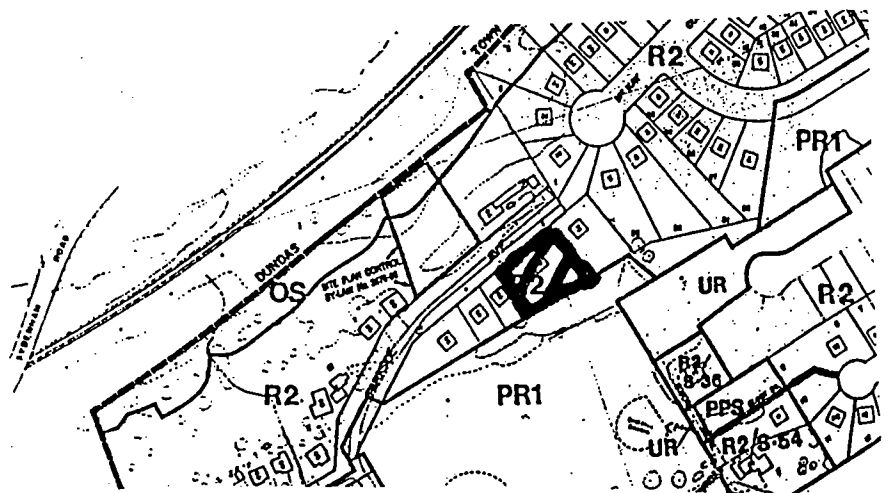
**TURNBULL**



SCHEDULE P

TOWN OF DUNDAS

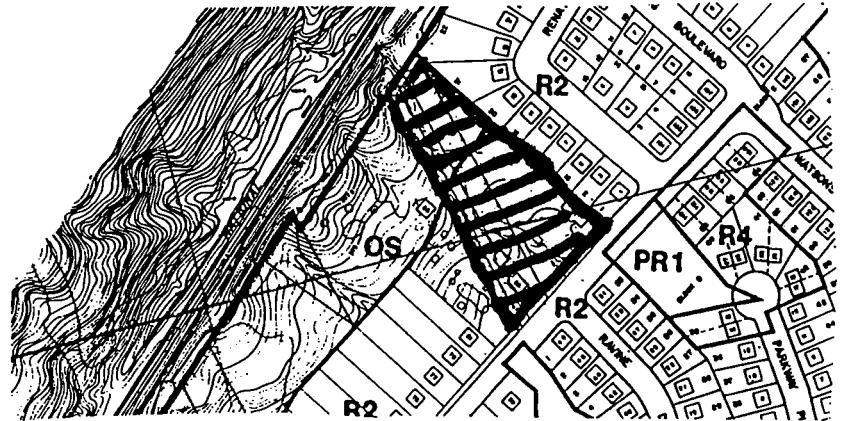
**YORK HEIGHTS**



SCHEDULE Q

TOWN OF DUNDAS

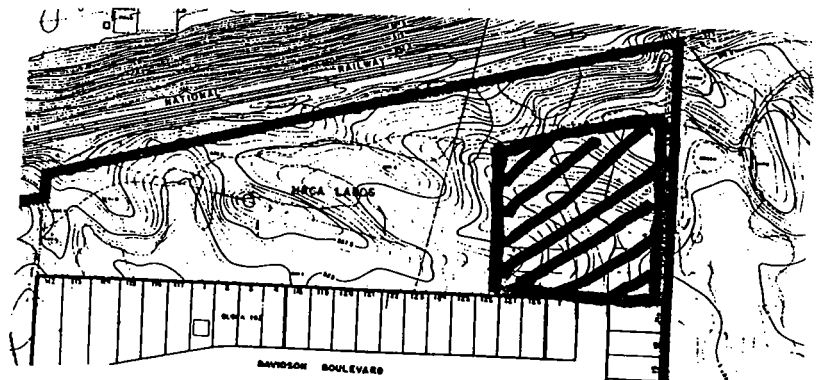
**YORK ROAD**



SCHEDULE T

TOWN OF DUNDAS

**MORDEN**



### Explanatory Note

Trees and woodlands perform many valuable environmental functions:

- purify the air and counter the greenhouse effect
- moderate temperature by acting as air conditioners
- provide shade and windbreak
- provide noise buffering and visual screening
- stabilize the ground and control the water
- provide wildlife habitat and sustenance
- create aesthetic and recreational benefit
- provide wood, fruit, nuts, syrup and oils.

The purpose of the By-law is to protect trees on private land particularly where the wellbeing and the character of community is most threatened. The areas included are (1) proposed development sites without protection through an agreement with the Town, (2) Open Space Zones as defined in the Zoning By-law, (3) Environmentally Significant Areas as defined by the Region of Hamilton-Wentworth, and (4) the front, side and flankage rear yards in the Cross-Melville Heritage District.

The By-law requires a permit to injure or destroy trees in the affected areas although pruning for the health of the tree is exempt from requiring a permit. It requires an application for a permit and provides criteria for issuing permits.

Convictions under the current Municipal Act have a maximum fine of \$10,000 for the first offence and \$20,000 for a subsequent offence.

P.D. Report #99-66

**Authority:** Item 13, Public Works, Infrastructure  
and Environment Committee  
Report 06-010 (PW06034a)  
CM: June 14, 2006

**Bill No. 151**

## **CITY OF HAMILTON**

### **BY-LAW NO. 06-151**

#### **To Regulate the Planting, Maintenance, and Preservation of Trees on or Affecting Public Property**

**WHEREAS** Council deems it in the public interest to protect Hamilton's tree assets on Public Property to preserve the quality of life and environment for the present and future inhabitants, and to ensure that any necessary tree removal is considered in advance and carried out under conditions as may be imposed;

**AND WHEREAS** *the Municipal Act S.O. 2001, Chapter 25* as amended, Sections 2 and 8 through 11, allows that Council may provide necessary and desirable services, manage and preserve public assets, foster environmental well-being, and exercise specific and general powers to act, and to regulate and prohibit the acts of others;

**AND WHEREAS** the City, pursuant to Section 135 of *the Municipal Act S.O. 2001, Chapter 25* may by by-law prohibit or regulate the injuring or destruction of trees;

**AND WHEREAS** the City, pursuant to Section 141 of *the Municipal Act* may provide trees to the owners of land adjacent to any highway;

**AND WHEREAS** the City, pursuant to Section 62(1) of *the Municipal Act* may, at any reasonable time, enter upon land lying along any of its highways to inspect trees and conduct tests on trees; and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

**AND WHEREAS** the City, pursuant to Section 62(2) of *the Municipal Act* may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the Employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

**AND WHEREAS** *the City of Hamilton Act, 1999, S.O. 1999, Chapter 14, Schedule C* did incorporate, as of January 1st 2001, the municipality known as the "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to the following former area municipalities, namely: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; the Corporation of the Town of Flamborough; The Township of Glanbrook; The Corporation of the City of Hamilton; and the Corporation of the City of

Stoney Creek, and to the Regional Municipality of Hamilton-Wentworth, all hereinafter referred to as the "former municipalities";

**AND WHEREAS** *the City of Hamilton Act, 1999*, provides that the By-laws of the former municipalities continue in force and effect in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

### **Definitions and Application**

1(1) In this By-law:

- (a) "City" as the context requires, means the municipal corporation "City of Hamilton" or the geographical limits of the municipality;
- (b) "Contractor" means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (c) "Council" means the Council for the City of Hamilton and includes its successor;
- (d) "Destroy" in relation to a tree includes any action which causes or results in the death of the tree, not limited to but including the acts of cutting, burning or knocking over the tree, and "destruction" shall have a corresponding meaning;
- (e) "Diameter at Breast Height or "DBH" means the diameter, including the bark, of the trunk of a tree measured at the lower of (a) a point 1.3 meters (4 feet and 3 inches) above the ground in an undisturbed state at the base of the tree, (b) in the case where the main trunk of the tree splits below the point in (a) the point of measurement shall be at the point on the tree trunk where the trunk separates, or (c) at the top of the stump of the tree where the tree has been cut down and all that remains of the stump is below the point in (a);
- (f) "Director" means the Director of Operations and Maintenance for the City and includes the Director's designate or successor;
- (g) "Drip Line" means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;
- (h) "Emergency Work" means any work carried out by the City, a public utility service, or other authority and its contractors, whether above and below ground level, which is work necessary in an emergency situation for maintenance, or to restore or ensure service is maintained, and specifically includes the following whether as a repair, upgrade, or new installation, and without limiting the generality of the foregoing: utility

work, storm or accident damage repairs, road work, storm sewer and sanitary sewer work;

- (i) "Employee" means all employees, servants, and agents of the City of Hamilton or contractors hired by the City of Hamilton;
- (j) "Forestry and Horticulture Section" means the Forestry and Horticulture Section of the Operations and Maintenance Division within the Public Works Department of the City of Hamilton and includes its successor;
- (k) "Forestry Management Plan" refers to all City of Hamilton policies and procedures governing forest health, tree maintenance, planting requirements, activities affecting public trees, and includes the policies attached to this By-law as schedules;
- (l) "Good Arboricultural Practice" shall be a reference to the guidelines and practices relating to proper tree maintenance and care, as defined and published by the ISA (International Society of Arboriculture);
- (m) "Highway" means a common and public highway under the jurisdiction of the City of Hamilton, and includes any bridge, trestle, viaduct or other structure forming part of a highway, and includes any portion of a highway to the full width thereof;
- (n) "Improper Pruning" means trimming a tree so as to cause irreversible damage in a manner contrary to Good Arboricultural Practices;
- (o) "Injure" includes any act or treatment which causes irreversible damage to a tree and includes, but is not limited to the acts of changing grades around trees so as to affect further growth or health of the tree by exposing roots or burying the trunk or branches, compacting soil over root areas so as to prevent sufficient absorption by the tree of water, severing or damaging roots, the improper application of chemicals, improper pruning or the removal of bark and "injuring" and "injury" shall have corresponding meanings;
- (p) "Municipal Law Enforcement Officer" means a person appointed as such under this or any by-law of the City;
- (q) "Naturalized Area" means an area that has been set aside by the City of Hamilton for the undisturbed growth of any tree species where the desired effect is that of natural growth, and for the purposes of this By-law the term will include municipal woodlots and woodlands;
- (r) "Officer" means any person designated by the Director to carry out duties, issue orders or take actions under this By-law, and the term includes the Director;

- (s) "Operations and Maintenance Division" refers to the Operations and Maintenance Division of the Public Works Department of the City of Hamilton and includes its successor;
- (t) "Pest" means any organism, including but not limited to such things as insects or diseases whether viral, fungal, or bacterial, which directly or indirectly cause irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
- (u) "Planning and Economic Development Department" refers to the Planning and Economic Development Department for the City of Hamilton and includes its successor;
- (v) "Private Property" means land other than public property, and includes those public unassumed alleys which have been occupied or fenced by a person other than the City;
- (w) "Private Tree" means any tree which has greater than fifty (50) per cent of its trunk diameter measured at ground level on private property;
- (x) "Pruning" means the cutting away of parts of a tree for reasons including but not limited to: safety concerns; maintenance of legislated clearances; tree health and vitality; disease control; clearance for pedestrian and vehicular traffic; visibility clearance for stop signs, traffic signals, and bus stops; clearance for buildings; removal of deadwood; crown thinning for tree health or to improve sunlight penetration; crown balancing to correct storm damage; crown reduction when overall size is considered problematic; or clearance from hydro lines and other utilities;
- (y) "Public Property" includes a highway, park, public unassumed alley, or any other public place or land owned by, or leased to, or controlled by, or vested in, the City;
- (z) "Public Tree" means any tree which has greater than or equal to fifty (50) per cent of its trunk diameter measured at ground level on public property, and "public tree" shall be used interchangeably with "municipal tree", "municipally owned tree", "City tree" or "City owned tree";
- (aa) "Public Works Department" means the Public Works Department for the City of Hamilton and includes its successor;
- (bb) "Removal" means the elimination, in whole or in part, of a tree;
- (cc) "Tree" means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity;

- (dd) "Tree Maintenance" includes all operations of watering, trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing, and any other like activity;
  - (ee) "Tree Protection Zone (TPZ)" means a restricted area, enclosed by fencing, around the base of a tree with a minimum radius equal to the drip line, which serves to protect a tree and its root zone;
  - (ff) "Work" means the labour, task, duty, function, or assignment often being a part or a phase of a larger activity or project, and shall include, but not be restricted to, excavation, construction, development, ditching, tunnelling, trenching, soil disturbances, or compaction.
- 1(2) In this By-law, the singular tense is deemed to be inclusive and interchangeable with the plural tense; the plural tense is deemed to be inclusive and interchangeable with the singular tense.
- 1(3) In this By-law, where both metric and imperial measurements are given for the same item, the imperial measurement is provided for convenience only and is approximate.
- 2(1) Subject to subsection 2(2), this By-law applies to:
- (a) Persons within the City of Hamilton;
  - (b) Public trees; and
  - (c) Private trees, which pose a threat or hazard to persons or property on public property.
- 2(2) This By-law does not apply to:
- (a) Trees in private woodlands, as woodlands are defined in By-law No. R00-054 of the former Regional Municipality of Hamilton-Wentworth, or such successor by-law enacted under the authority of Section 135 of *the Municipal Act*;
  - (b) Woodlots, as defined in By-law No. 4401-96, as amended of the former City of Stoney Creek; or
  - (c) The matters listed in sub-section 135(12) of the Municipal Act.
- 2(3) The requirements and prohibitions in this By-law are in addition to any applicable prohibitions or requirements in the City of Hamilton Parks By-law No. 01-219 as amended, and in the event of conflict, the provisions which are most protective of trees prevail.

**Authority of the Director**

- 3(1) The Director is hereby authorized to administer and enforce this By-law and has delegate authority granted by Council to execute the provisions of this By-law or to provide consent or approval where required, including the imposition of conditions as necessary to ensure compliance with this By-law and ensure minimal removal or other negative effects from removal of trees.
- 3(2) The Director may request municipal law enforcement officers to enforce this By-law, who shall have the authority to carry out inspections, issue orders, and otherwise enforce this By-law, and the Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.
- 4 The Director has the authority to develop and maintain a Forestry Management Plan including level of service standards and practices / guidelines.
- 5 Where consent of the Director is required under this By-law, and where permission or approval has been refused, or where permission or approval has been granted and subsequently withdrawn, written justification must be provided to the individual detailing the basis for not granting approval.
- 6 In addition to the authority otherwise provided in this By-law and subject to the Council authorized budget, the Director is authorized to perform or arrange the performance of the following duties:
  - (a) Supervision of the planting, care, and maintenance of public trees;
  - (b) Supervision of the pruning or removal of trees:
    - (i) Upon public property;
    - (ii) Upon private property where the branches extend over public property and the removal is performed by City employees or contractors; or
    - (iii) Upon a highway where the branches of any public or private tree extend over a highway and the removal is performed by City employees or contractors.
- 7 The Director, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S. C. 1990, c.22, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.

### **Prohibitions Against Injury or Destruction**

- 8 No Person shall undertake to or cause or permit the undertaking of any of the following actions towards a public tree:

- (a) Injure, remove, disturb, damage, destroy, cut above or below ground, spray, prune, or alter in any way a public tree; without prior approval and compliance with terms provided in Section 10, or as provided for in the City of Hamilton Public Tree Removal Policy; or
- (b) Deposit, place, store, or maintain any stone, brick, sand, concrete, soil, or any material, equipment, or vehicles that may impede the free passage of water, air, or nutrients to the roots of a public tree, or perform any work within the dripline of a public tree which causes the destruction of, removal of, or injury to the tree, without prior approval and compliance with terms provided in Section 10; or
- (c) Fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any public tree in any manner, or around, on or through the stakes or posts that protect such tree; or
- (d) Cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any public tree, to come in contact with any public tree, or apply to a public tree or an area used by said tree's root system; or
- (e) Set fire to or permit any fire to burn where such fire or the heat thereof will injure any portion of any public tree; or
- (f) Interfere with fences, structures, barriers delineating tree protection zones, or associated signage or other protective devices around any public tree; or
- (g) Alter or change any soil levels on public property within the drip line of any public tree in a manner likely to cause injury to said tree; without prior approval and compliance with terms provided in Section 10; or
- (h) Excavate any ditch, tunnel, trench, or lay any walkway or driveway, or disturb the soil on public property, within the drip line of a public tree; without prior approval and compliance with terms provided in Section 10; or
- (i) Climb, or permit any person under their care or control to climb any public tree.

9(1) A person who damages or injures a public tree on public property or who causes or permits a person to damage or injure such a tree, shall be subject to the regulations listed in the City of Hamilton Reforestation Policy – Municipally Owned Lands in addition to any necessary enforcement under this By-law.

9(2) Where a person reports having injured or damaged a public tree, or where a person is found to have injured or damaged a public tree, the Director shall issue an order requiring that the person arrange for the payment of restitution in accordance with the regulations of the City of Hamilton Reforestation Policy –

Municipally Owned Lands, in addition to any necessary enforcement of this By-law.

### **Protective Measures For Trees During Construction**

- 10 Any person undertaking to perform any work within the drip line of a public tree, requires the consent of the Director, and shall follow the regulations and conditions listed in the City of Hamilton Tree Preservation and Protective Measures For Trees Affected by Construction Policy and otherwise shall comply with any conditions imposed through the Director's consent.

### **Planting of Trees**

#### **Prohibited Species**

- 11(1) No person shall plant or place, or cause or permit the planting or placing of a tree of the type or species listed below upon public property:
- (a) *Acer negundo* - Manitoba Maple;
  - (b) *Acer saccharinum* - Silver Maple;
  - (c) *Populus* spp. - Poplar Species;
  - (d) *Salix* spp. - Willow Species;
  - (e) *Ulmus pumila* - Siberian Elm; or
  - (f) *Ginkgo biloba* - Female only.
- 11(2) Unless authorized by the Director in writing, no person shall plant or place, or cause or permit the planting or placing of any coniferous trees upon public property.

#### **Planting Trees on Public Property**

- 12(1) No person shall, without prior written consent of the Director, plant or cause to be planted any tree on public property.
- 12(2) The City reserves the right, at its sole discretion, to plant, or to have planted trees on any portion of public property.
- 12(3) All trees planted by the City of Hamilton, or by any contractor or person on public property, are subject to this By-law, the City of Hamilton Street Tree Planting Policy – New Developments; and the City of Hamilton Street Tree Planting Policy – Planning & Design.
- 12(4) Any Tree planted or located on a highway is deemed to be a public tree and is subject to all the provisions and regulations contained in this By-law as well as

to the City of Hamilton Street Tree Planting Policy – New Developments; City of Hamilton Street Tree Planting Policy - Planning & Design; and the City of Hamilton Street Tree Planting Policy – Rural Roadways.

13(1) Notwithstanding Section 12;

- (a) Any tree planted on public property with or without the consent of the Director, is the property of the City, is deemed to be a public tree, and is subject to all terms and conditions as set out in this By-law;
- (b) For greater certainty, a tree referred to in subsection (a) above may be treated as a public tree or removed as provided for in this By-law, and in particular, any tree removed by the City may be removed without compensation owing by the City, and if removed by someone other than the City without the required permission for removal by the City, may result in enforcement, claims for compensation, and replanting costs and orders, and if such tree planted is a prohibited species, may be removed by the City or its contractors at the expense of the person planting or causing such planting to occur.

#### **Tree Planting on Private Property**

- 14(1) Any tree planted on private property, whether planted by the City or by any other person, is the property of the land owner and as such is the owner's sole responsibility.
- 14(2) The owner of property on which a private tree is standing shall not permit or leave the tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe use of the highway.

#### **Removal of Trees**

- 15 All authorized public tree removals and all private tree removals or pruning carried out by or on behalf of the City shall be performed by the City or by a contractor approved by the Director.
- 16 Excluding those public tree removals performed as "necessary for the public interest", as that phrase is defined in Section 18:
  - (a) The removal of all live, healthy public trees shall be subject to the provisions of the City of Hamilton Reforestation Policy - Municipally Owned Lands; and the City of Hamilton Public Tree Removal Policy;
  - (b) A person removing, injuring or damaging a public tree, where the Director in his sole discretion, decides that the tree needs to be replaced, shall, in addition to any enforcement of this By-law, be subject to the requirements of the City of Hamilton Reforestation Policy.

## **Public Tree Removals**

- 17 The Director is authorized to remove or cause to be removed a tree or part thereof on public property when it is considered "necessary for the public interest", as that phrase is defined in Section 18, or in accordance with the City of Hamilton Public Tree Removal Policy.

## **Necessary for the Public Interest**

- 18 For the purpose of Section 17, "necessary for the public interest" means removal for one or more of the following reasons:
- (a) A tree is decayed in whole or in part;
  - (b) A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;
  - (c) A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
  - (d) A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events, or by pruning;
  - (e) A tree planted along a highway which obstructs or impedes the safe use of the same;
  - (f) A tree whose root system has been proven to compromise the structural integrity of the foundation of any building; or
  - (g) A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.

## **Naturalized Areas**

- 19(1) No person shall remove, or cause, or permit the removal of any public tree that has fallen in a naturalized area from such area.
- 19(2) Any public tree that has fallen in a naturalized area and impedes on the use of public property may be cut back by the City of Hamilton so as to provide safe access and use of the public property, however, the tree will not be removed from the area.

## **Private Trees**

- 20(1) Subsections (2) and (3) of this section do not apply where the City does not enter private property for its property or highway maintenance purposes, and in particular do not apply when the City, from its own property, removes the portions of private trees growing upon or over its property and highways for the purposes of property or highway maintenance so as to ensure reasonable or appropriate use of the property or highway as determined solely by the City and the elimination of dangers or obstructions for users of the City properties or highways; and further, any rights or permissions granted in this or any by-law to persons to maintain trees on private property or part of the road allowance, or other public property shall be subject to this provision for needs or maintenance purposes and so as to allow the City to meet the legal obligations to maintain its highways and carry out its intentions towards use of its properties for its own and the public benefit.
- 20(2) Pursuant to section 62 of the *Municipal Act, 2001* and in accordance with section 431 of that Act where required, a municipal employee or a contractor of the municipality, for the purpose of tree trimming in relation to highways or for the maintenance of highways, may where necessary, at any reasonable time, enter on lands adjacent to any of its highways to:
- (a) inspect or conduct tests on trees; or
  - (b) remove decayed, damaged or dangerous trees or their branches, where in the opinion of the employee or contractor, the tree or branch poses a danger to the health and safety of any person using the highway.
- 20(3) Pursuant to subsection 62(2) of *the Municipal Act, 2001* a municipal employee or a contractor, where such person is of the opinion that a tree or branch of land adjacent to the highway poses an immediate danger to the health and safety of any person using the highway, where necessary and in accordance with paragraphs (b), (c) or (d) of section 431 of that Act where required, may enter the land without notice to remove the tree or branch.
- 20(4) Subsections 20(2) and (3) do not permit entry into a building on the land excepting where proper notices have been given or permissions obtained.
- 20(5) The owner of private property shall ensure that all trees growing partially on public property are maintained in good condition and state of repair, free of decay or damage, such that the tree or branches thereof do not pose a danger to persons on City properties or its highways.
- 20(6) The obligations in subsection 20(5) shall be deemed to include the requirement of the owner to cause or carry out such inspections and testing as are reasonably necessary to determine the condition of the private tree and its branches.

## **Regulations and Enforcement**

## **Exclusions and Exceptions**

- 21 The provisions of this By-law shall not apply to:
- (a) The employees of the City of Hamilton while engaged in the performance of their duties;
  - (b) The operators, drivers and attendants of authorized emergency services vehicles, Police Officers, Officers of the Hamilton Fire Service, or Municipal Law Enforcement Officers appointed by the Council of the City of Hamilton, while engaged in the performance of their duties; or
  - (c) The operators, drivers and attendants of authorized public utility companies including, but not limited to, a natural gas utility, a hydro electric provider, and any other public utility, or telecommunication company, provided that their vehicles and crews are clearly identified by a crest or other marking and provided the operator, driver or attendant is actively engaged in the provision of any emergency services offered by the utility.

#### **Enforcement**

- 22 A Municipal Law Enforcement Officer, an employee of the City designated as an officer by the Director for the purpose of this Section or a police officer is authorized to inform any person of the provisions of this By-law, to issue warnings or notices, and to issue an order for discontinuance or for compliance therewith in the terms and content required by Section 137 of the *Municipal Act, S. O. 2001, c. 25*.
- 23(1) A Municipal Law Enforcement Officer or police officer may enforce the provisions of this By-law.
- 23(2) An officer appointed for the purposes of this By-law may be issued identification by the Director for purposes including the issuing of orders.

#### **Penalty and Remedies for Breach or Contravention**

- 24 Any Person contravening any provision of this By-law or contravening an order to discontinue issued under this By-law pursuant to section 137 of the *Municipal Act* is guilty of an offence, and upon conviction is liable to the fines and obligations for replanting and rehabilitation specified in Section 138 of the *Municipal Act, S.O. 2001, Chapter 25*.
- 25(1) In addition to any other remedy and to any penalty imposed by the By-law, a court in which a conviction has been entered under this By-law, and any court of competent jurisdiction thereafter may:
- (a) Make an Order prohibiting the continuation or repetition of the offence by the person convicted; and

- (b) Order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

25(2) Where under this By-law a person is required or directed that a matter or thing be done and the person defaults or otherwise fails to comply, the Director may, pursuant to section 427 of the *Municipal Act, 2001*, carry out the thing or cause the matter to be done at the person's expense, and recover the City's costs as defined in that section by action or by adding the costs to the tax roll for the person and collecting them in the same manner as taxes.

### **Severance**

26 Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force or effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

### **Short Title**

27 The Short Title of this By-law shall be "The City of Hamilton Public Trees By-law".

### **Repeals and Enactment**

28(1) The following By-laws of the former area municipalities, as may be amended, are hereby repealed: By-law No. 4156-95 (Stoney Creek), By-law No. 91-36-P (Flamborough), By-law No. 4502-99 (Dundas), By-law No. 4486-99 (Dundas), By-law No. 241-82 (Glanbrook), and By-law No. 92-155 (Hamilton).

28(2) By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended in the following respects:

- (a) At the beginning of subsection 4(2), deleting the words "Subject to the provisions of this By-law respecting trees on highways, and";
- (b) Within subsection 4(2) repealing the words "grass, flowers and trees" and replacing them with the words "grass and flowers";
- (c) Section 5 of By-law No. 86-077 (Hamilton Streets By-law), as amended, is hereby repealed;
- (d) Sub-section 16(9) of By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended by repealing the words "of trees" after the word "climbing"; and

- (e) In all other respects, By-law No. 86-77 (Hamilton) is confirmed without change.
- 28(3) By-law No. 328-86 (Glanbrook) as may be amended is hereby further amended by deleting “tree,” from clause 8(g), and in all other respects, By-law No. 328-86 (Glanbrook) is confirmed without change.
- 28(4) By-law No. 2000-118 (Ancaster) as may be amended, is hereby further amended in the following respects:
- (a) the title to By-law No. 2000-118 (Ancaster) is repealed and replaced with the following:

“Being a By-law to Prohibit the Injury or Destruction of Specified Classes of Trees on Private Property in the Geographic District of former Town of Ancaster in the City of Hamilton”;
  - (b) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.20 with the following:

“2.20 “Owner” means the owner as registered on title to the lands.”;
  - (c) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.31 with the following:

“2.31 “woodland” means any area of private land of 0.2 hectare (0.5 acres) or more with at least:

    - (i) 1000 trees per hectare (405 trees per acre) of any size;
    - (ii) 750 trees per hectare (303 trees per acre) measuring over 5 centimetres (2 inches) DBH;
    - (iii) 500 trees per hectare (202 trees per acre) measuring over 12 centimetres (5 inches) DBH; or
    - (iv) 250 trees per hectare (101 trees per acre) measuring over 20 centimetres (8 inches) DBH, not including orchards or plantations.

For the purposes of this By-law, the boundary of the woodland shall be defined by the ecological limit of the woodland and not by private property boundaries, and shall include the area up to the drip line of the woodland and any corridors measuring up to 30 metres in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature.”;

- (d) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 3.1.2(i) with the following:  
“(i) Heritage Trees on private lands located outside of Woodlands;”;
- (e) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 5.1.1(ii) with the following:  
“(ii) for the removal of Heritage Trees on private lands within 7.5 metres (25 feet) of the outer edge of an Occupied Building;”;
- (f) By-law No. 2000-118 (Ancaster) is further amended by repealing Sections 2.25, 5.1.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5 and 9.3.6 in their entirety; and
- (g) In all other respects By-law No. 2000-118 (Ancaster) is hereby confirmed without change.

28(5) By-law No. 4513-99 (Dundas) as may be amended, is hereby further amended by repealing and replacing subsection 3(e) with the following:

“(e) Trees overhanging onto private land from abutting private lands are specifically included under the Control of this By-law.”

29 Further to Section 28, any references to the aforementioned By-laws and schedules in other City policies, signage or By-laws, as amended, antedating the passing and enactment of this By-law, shall be deemed a reference to this By-law.

30 This By-law shall come into force and take effect on the date of its passing and enactment.

**PASSED and ENACTED** this 14<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK

**Authority:** Item 15, Economic Development  
and Planning Committee  
Report 010-001 (PDO02229(d))  
CM: January 27, 2010

**Bill No. 013.**

**CITY OF HAMILTON**

**BY-LAW NO. 10-013**

**To Amend: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth**

**WHEREAS** Council wishes to amend the appeal processes provided for in: By-law No. 2000-118, the Town of Ancaster Tree Protection By-law; By-law No. 4513-99, the Town of Dundas Tree Protection By-law; By-law No. 4401-96, the City of Stoney Creek Tree By-law; By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth Woodland Conservation By-law;

**AND WHEREAS** the *City of Hamilton Act, 1999* did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is successor to the following former area municipalities: The Corporation of the Town of Ancaster, The Corporation of the Town of Dundas, The Corporation of the Town of Flamborough, The Corporation of the Township of Glanbrook, The Corporation of the City of Hamilton, and The Corporation of the City of Stoney Creek; and the successor the former Regional Municipality of Hamilton Wentworth;

**AND WHEREAS** the *City of Hamilton Act, 1999* provides that the by-laws of the former area municipalities and the former Regional Municipality of Hamilton Wentworth remain in force, in respect of the part of the municipal area to which they applied on

December 31, 2000, until they expire or are repealed or amended to provide otherwise;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

**By-law No. 2000-118, the Town of Ancaster Tree Protection By-law**

1. Subsection 9.1 of By-law No. 2000-118 of the Town of Ancaster is deleted and replaced with following new subsection 9.1:

**9.1 APPEALS REGARDING PERMITS**

- 9.1.1 An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
2. By-law No. 2000-118 of the Town of Ancaster is amended by adding the Appeal Schedule, attached to this By-law as Schedule A.
3. Subsections 8.2 and 9.2 of By-law No. 2000-118 of the Town of Ancaster are deleted.
4. Sections 3 and 4 of Schedule "G" or By-law No. 2000-118 of the Town of Ancaster referring to an appeal are deleted.

**By-law No. 4513-99, the Town of Dundas Tree Protection By-law**

5. By-law No. 4513-99 of the Town of Dundas is amended by adding following new section 5a after section 5:

**5a. APPEALS**

An appeal of the conditions imposed on a permit or of a permit refusal shall be

conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

6. By-law No. 4513-99 of the Town of Dundas is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

**By-law No. 4401-96, the City of Stoney Creek Tree By-law**

7. Sections 22 and 23 of By-law No. 4401-96 of the City of Stoney Creek are deleted and replaced by the following new section:

**APPEAL TO THE ECONOMIC DEVELOPMENT AND PLANNING COMMITTEE**

22. An appeal of the conditions imposed on a Permit or of a Permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.
8. By-law No. 4401-96 of the City of Stoney Creek is amended by adding the Appeal Schedule attached to this By-law as Schedule A.
9. Subsections 29(h) and (i) and section 33 and 34 of By-law No. 4401-96 of the City of Stoney Creek are deleted.
10. The third and fourth recitals of Schedule “E” of By-law No. 4401-96 of the City of Stoney Creek referring to an appeal are deleted.

**By-law No. R00-054, the Regional Municipality of Hamilton-Wentworth**

11. Subsections 5(h) to (m) inclusive of By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth are deleted and replaced with the following new subsection:

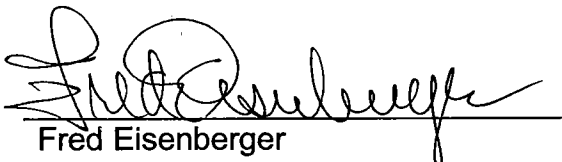
5(h) An appeal of a permit refusal shall be conducted as set out in the Appeal Schedule attached to and forming part of this By-law.

12. By-law No. R00-054 of the Regional Municipality of Hamilton-Wentworth is amended by adding the Appeal Schedule attached to this By-law as Schedule A.

**General**

13. This By-law comes into force on the day it is passed.

**PASSED** this 27<sup>th</sup> day of January, 2010

  
Fred Eisenberger  
Mayor

  
Kevin C. Christenson  
City Clerk

Schedule A

**APPEAL SCHEDULE**

1. For the purposes of this Schedule:  
“**applicant**” means an applicant for a permit under this By-law;  
“**City**” means the City of Hamilton incorporated as of January 1, 2001 under the *City of Hamilton Act, 1999*;  
“**Economic Development and Planning Committee**” means the City of Hamilton’s Economic Development and Planning Committee or any successor committee; and  
“**permit**” means a permit under this By-law.
  
2. An applicant for a permit who does not agree with the conditions imposed in a permit or with the refusal of a permit may appeal by requesting a hearing before the Economic Development and Planning Committee which, in the place of City Council, shall hear the appeal.
  
3. A request for a hearing by an applicant under section 2 shall be in writing, accompanied by the applicable fee and delivered to the Clerk of Economic Development and Planning Committee within 20 days of the date the permit is refused. The applicant shall also include the grounds for their appeal.
  
4. Where a request for a hearing meeting the requirements of section 3 has been delivered to the Clerk of the Economic Development and Planning Committee, the hearing shall be scheduled before the Economic Development and Planning Committee and notice of the hearing date shall be given to the applicant who requested the hearing. The notice of hearing shall include:
  - (a) a statement of the time, date and purpose of the hearing; and
  - (b) a statement that if the applicant does not attend the hearing, the

Economic Development and Planning Committee may proceed in their absence without notice to them.

5. The notice of hearing under section 4 may be given by delivering it personally or by sending it by prepaid registered mail to the last known address of the applicant on file with the City. Service by registered mail shall be deemed to have taken place 5 business days after the date of mailing unless the person to whom it is being given establishes that they, acting in good faith, through absence, accident, illness or other cause beyond their control did not receive the notice of appeal until a later date.
6. The Economic Development and Planning Committee shall hold a hearing pursuant to the *Statutory Powers Procedure Act* at the time, date and place set out in the notice of hearing and the Economic Development and Planning Committee may recommend to Council that a permit be refused or issued or that a condition be confirmed, rescinded, varied or imposed on a permit.
7. The Economic Development and Planning Committee shall have regard to the following matters, where relevant, as may be raised at a hearing:
  - (a) this By-law and other applicable law;
  - (b) circumstances and facts raised by the evidence of the parties; and
  - (c) whether strict application of the provisions of the By-law in the context of the circumstances and facts raised by the evidence of the parties would result in unusual hardship for the applicant or be inconsistent with the general intent and purpose of this By-law.
8. The Economic Development and Planning Committee shall forward a report to City Council on its final decision arising from each hearing or opportunity for a hearing.
9. City Council, after considering a report of the Economic Development and Planning Committee, may refuse or issue a permit or confirm, rescind, vary or

impose a condition on a permit, all without a hearing, having regard to the matters considered by the Economic Development and Planning Committee,

this By-law and other applicable law.

10. After City Council has made a decision in respect of a report of the Economic Development and Planning Committee, notice of that decision shall be sent to the applicant by personal delivery or by registered mail to the last known address of the applicant on file with the City.