

Corporate Report

NO: R181

COUNCIL DATE: July 18, 2005



REGULAR COUNCIL

TO: Mayor & Council DATE: July 14, 2005
FROM: General Manager, Planning and Development FILE: 7904-0432-00
12626-15000)
SUBJECT: Tree Topping and Removal on Burlington Northern
Santa Fe Railway Property West of 12626 - 15 Avenue
and 1489 - 126A Street

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information; and
2. Authorize the City Clerk to:
 - (a) Schedule a "show cause" hearing at which the owner(s) of Dave Matheson Professional Tree Service (Business License No. 036817) will be given the opportunity to provide information to Council as to why Council should not revoke or suspend the business license of that firm in relation to that firm's part in the unauthorized cutting of trees on Burlington Northern Santa Fe ("BNSF") Railway property in the vicinity of 15 Avenue and 126A Street, during or about early May 2005, which tree cutting was in contravention of the Surrey Tree Preservation By-law, 1996, No. 12880 (the "Tree By-law"); and
 - (b) Provide notice of the hearing and the reason for such hearing to the owner(s) of Dave Matheson Professional Tree Service at least two weeks in advance of the date of the hearing.

BACKGROUND

On May 3 and 4, 2005, City staff received complaints from local residents concerning tree cutting on BNSF Railway land directly west of properties at 12626 - 15 Avenue and 1489 - 126A Street. Staff attended the site on May 5, 2005 to verify and document the alleged tree cutting. Upon inspection, it was clear that a significant number of trees had been topped (Appendix "A"). While on site, staff encountered Mr. Dave Matheson, owner of Dave Matheson Professional Tree Service, who stated he had been hired to remove the tops of the subject trees to enhance the view for Mr. Paul Hough, the owner of 12626 - 15 Avenue. City staff advised Mr. Matheson that cutting, removing or damaging trees without a valid tree cutting permit is a violation of the City's Tree By-law and could result in prosecution. City staff further advised Mr. Matheson that the City had no record of issuing any permit for the subject tree cutting. Mr. Matheson agreed, at that time, not to top any additional trees at this site.

Prior to the topping, Paul Hough had applied to rezone the property at 12626 - 15 Avenue from "Single Family Residential Zone (RF)" to "Single Family Residential Oceanfront Zone (RF-O)" to allow for the construction of a single-family dwelling. Mr. Hough also applied for a Development Variance Permit to vary the front yard (north) setback of the RF-O Zone from 10 metres to 7.6 metres and to vary the rear yard (south) setback from 10 metres to 1.8 metres. These applications are currently being reviewed by Area Planning staff, but will not be brought forward to Council until the unauthorized tree cutting matter has been resolved, unless otherwise directed by Council. Evidence collected by staff indicates that 33 trees of protected size have been topped, including four protected trees

that were cut down completely.

The area of BNSF Railway property where the tree topping occurred, is on a steep slope, consisting of native vegetation in its natural state (Appendix "B"). Local residents have stated that this area was a roosting site for the resident population of bald eagles and supports a wide variety of native fauna. No active eagle nests, or nests of other breeding birds protected under the Provincial *Wildlife Act*, were observed by City staff in the affected area. Staff gathered evidence of damage to 33 trees (i.e., trees with a diameter greater than 30 centimetres at breast height) protected under the Tree By-law. Twenty nine of the protected trees were topped to heights ranging from approximately 4.5 metres (15 feet) to 15 metres (50 feet) (Appendix "C"). Four trees were felled completely, with only stumps remaining. A significant number of smaller trees and native vegetation was also cut with branches and other woody debris left on the slope.

BNSF Railway and the Surrey Fire Department have acknowledged concerns regarding the increased fire hazard now attributed to this site, as a result of the large volume of woody debris remaining on the BNSF Railway property (Appendix "D"). The reduced canopy cover and high rate of desiccation, combined with the increased fuel load, have increased the risk of fire. After inspecting the site, the City's Fire Prevention Captain requested that BNSF Railway remove all dried tree branches as a fire hazard abatement measure. Failure to comply with this request will result in the City acting on BNSF Railway's behalf to clean the site, with an invoice of incurred costs being sent to BNSF Railway for payment.

The City has fielded a large number of complaints from local residents concerned with the extent of tree damage that has occurred, increased risk of fire, loss of eagle roosting habitat and questions regarding slope stability. Letters detailing the topping, with requests for action on the City's behalf, have also been published in local newspapers.

DISCUSSION

Although evidence suggests that most of the same trees were previously topped, approximately five to seven years ago, the health of the trees has been further jeopardized by the current topping and this will accelerate their decline, according to the International Society of Arboriculture, which considers tree topping as "...perhaps the most harmful pruning practice known...". Topping stresses the tree's energy reserves making them more vulnerable to insect and disease infestations, creates large areas of decay and can lead to the death of the trees.

Section 4, "Prohibitions", of the City's Tree By-law states that:

"No person shall cut, remove or damage any Protected or Significant Tree, or cause, suffer or permit any such tree to be cut removed or damaged except where permitted by and in accordance with the terms of this By-law".

The City has no record of having issued any tree-cutting permit for the subject tree cutting.

In accordance with the authority granted to Council under Section 60, Clauses (2) and (3) of the *Community Charter*, S.B.C 2003, c. 26, Council may suspend or cancel a business license for reasonable cause, but before suspending or cancelling a business license, the Council must give the license holder notice of the proposed action and an opportunity to be heard.

CONCLUSION

Based on the above discussion, it is recommended that Council authorize the City Clerk to:

- Schedule a "show cause" hearing at which the owner(s) of Dave Matheson Professional Tree Service will be given the opportunity to provide information to Council as to why Council should not revoke or suspend the business license of that firm, in relation to that firm's part in the unauthorized cutting of trees on BNSF Railway property in the vicinity of 15 Avenue and 126A Street, during or about early May 2005, which tree cutting was in contravention of the City's Tree By-law; and
- Provide notice of the hearing and the reason for such hearing to the owner(s) of Dave Matheson Professional Tree Service at least two weeks in advance of the date of the hearing.

Murray Dinwoodie
General Manager
Planning and Development

PM/kms/saw

Attachments:

Appendix "A" - Photograph Taken from the West Side of 12626 – 15 Avenue

Appendix "B" - Approximate Area Containing Topped Trees

Appendix "C" - Example of Topping

Appendix "D" - Accumulation of Branches and Other Woody Debris

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Appendix "A"

Photograph Taken from the West Side of 12626 – 15 Avenue



Appendix "B"

Approximate Area Containing Topped Trees



Appendix "C"

Example of Topping of Large Diameter Douglas Fir and Smaller Western Red Cedars

Appendix "D"

**Accumulation of Branches and Other Woody Debris Left on the
Slope Has Increased The Risk Of Fire**

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