



## **CITY OF WELLAND**

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### **HEARING**

Wednesday, April 3, 2019 2:00 p.m.  
City Hall – Room 109  
Log File No. 2019-01

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### **MINUTES**

Committee Members: Diane Zakraysek-Bourque  
John Ingrao - Chair

Staff Present: Adam White – By-Law Enforcement Officer (BEO)  
Tony Ranalli – Building Services Technician/Property Standards Secretary

Others in Attendance: Joseph Schonberger – Appellant  
Cathy Schonberger, 372 Darby Road, RR#1, Port Robinson, ON,

1. Committee Members met at approximately at 2:00 p.m.
2. Adoption of previous minutes.
3. Hearing called to order at 2:00 pm by the Chair and all present introduced themselves.
4. Chair explained the purpose of the Committee and Format of Hearing.
5. Appeal of Mr. Schonberger began for the property municipally known as 281 Moyer Road.
6. Appellant notes this is not a by-law issue. Owned property since 1944. The appellant stated that he served on various advisory committees; i.e. APAC. On Feb. 25<sup>th</sup> received a by-law order, and noted it was not very legible. Appellant notes this property is a wetland. Appellant stated lower-tier municipalities do not regulate woodlands. Appellant noted property is in a provincially significant wetland. Appellant stated the NPCA regulates wetlands and trees. Appellant referred to Section 135.2 of the Municipal Act is the section that refers to trees. Appellant contacted NPCA and marked out trees and said NPCA stated some trees on City property and some on the border of property. Appellant noted he can cut down some trees but cannot use heavy machinery. Appellant stated he contacted Welland Hydro and asked if they contacted the City; Appellant stated they (Welland Hydro) did. Appellant noted he wanted to settle this issue with a site meeting. Appellant corresponded with the by-law officer by email. Appellant wanted to give staff time to rescind the order. Appellant noted he does not feel it necessary because City does not regulate trees and wetlands. Appellant stated because of the emerald ash borer there are many dead trees throughout the city, and tree cutting services are very busy. Appellant noted at no time there was a refusal to cut trees on our property. Appellant notes he feels the City does not return phone calls. Appellant respectfully asks for the City to rescind the order. Appellant noted he will try to meet to trim trees on their deadline.

7. Chair asked the By-Law Enforcement Officer (BEO) for his input on situation.
8. BEO explained he has many years of experience and education as a by-law officer. He received a complaint of dead trees on Jan. 30<sup>th</sup> Jim King of the Eng. Dept. determined the property line. It was marked with flag and tape. On Feb. 19<sup>th</sup> Dave Stevens identified dead ash trees private property – known as 281 Moyer Road. On Feb. 20<sup>th</sup> a property standards order was sent by regular mail. On March 6<sup>th</sup> an email was received from Mr. Schonberger. BEO thought he addressed all concerns. On March 11<sup>th</sup> another email response to Mr. Schonberger. On March 18<sup>th</sup> the BEO sent an email to Dave Stevens to check if any trees are on City property. BEO noted that Dave Stevens responded by email that there are no dead trees on City property. Hardcopy of email form presented to Committee members. On March 19<sup>th</sup> another email response was issued to Mr. Schonberger. BEO stated that in the Niagara Region By-law 30-2008, Section 3, it states no person shall cut/destroy any tree in woodlands. BEO notes that Section 4 of the Region By-Law contains exemptions. In sub-section 4.13, the exemption states by-law does not apply to trees that are dead, diseased, or pose a hazard to human safety. BEO noted that photos were taken on inspection date of Feb. 19<sup>th</sup>. Photos were shown to the Committee members. BEO noted that two months were given for the compliance date. BEO explained that some trees already have fallen on hydro lines.
9. Committee member (Zakraysek-Bourque) asked how many trees are the issue. BEO identified that approximately 12 trees are required to be removed. BEO stated they use an aerial map with a 30 metre buffer to clear trees 30 metres from the property line. The committee asked has hydro trimmed any trees. The BEO responded he does not know, but they (hydro) will trim trees interfering with hydro lines. BEO noted it is not a requirement to communicate with the Appellant; only the Order must be issued. The committee asked if the BEO contacts the NPCA before an order. The BEO responded no.
10. The Appellant presented photos of the site noting the gps location, and how hydro lines are to be maintained. The Appellant notes hydro was working with City staff.
11. The Chair asked the BEO are they clear on the order. The BEO responded yes. The BEO states we use GPS to tag trees and to determine the property line. The Appellant noted that NPCA has an accurate GPS system. The Chair asked the BEO are you clear on trees that are to be removed. The BEO responded we do not tag trees. It is up to the homeowner to determine.
12. The Appellant noted tree cutters are very busy this time of year. The committee asked the BEO how accurate are your measurements. The BEO responded that Jim King is very accurate and has approximately 30 years' experience. The BEO notes that if we cannot find the property bars then we use GPs to determine the property line. The BEO notes that the property boundaries have been established by Jim King who is employed by the City. The Appellant states that there are approximately 12 trees on the homeowner's property that require to be removed. The BEO stated that I cannot determine who marked the trees and that some could have been completed by the City. The Appellant notes the conservation authority marked trees with a 'W'. The Chair asked the BEO how you determine property boundaries. The BEO responded that we take both property line points and use GPS to draw line. The BEO states sometimes we take measurements from a fixed object.
13. The Chair explained to the Appellant, the determining argument is determining the property line. The Appellant states he is willing to work with the City's forestry dept. The Chair asked the Appellant have you received any support from NPCA on location of the property line. The Appellant responded no, but thought the tree markings were the determining factor.

14. Committee member (Zakraysek-Bourque) asked how can this be enforced when the property line is a discrepancy. The committee asked how does an Order get enforced. The BEO responded we confirm the order on site to verify the order. The BEO noted again that the owner is responsible to remove trees and we (City) do not mark trees. The onus is on the Owner to mark trees.
15. The BEO recommended previously by email to the Appellant that the appellant employ a certified arborist to remove the trees. The BEO noted that we identified approximately 12 trees, and that we cannot enter the property and that there may be more trees in question.
16. The Chair asked the Appellant is there any other evidence that supports your claim? The appellant responded that he thought the photographs were sufficient. The appellant notes he can work with the city's forestry department. The BEO noted that if trees in question are on the property line, we will remove the trees including the trees on City property.
17. A March 18<sup>th</sup> email was submitted as evidence by the BEO that noted Dave Stevens did not see any dead/dying/hazardous trees within City property. The committee asked the BEO what he would accept as evidence of trees. The BEO responded he can accept a survey from an Ontario Land Surveyor noting trees otherwise to the order. The Committee also asked the BEO what is the compliance time for an order? The BEO responded usually one month to complete the order and with forested areas usually a two month deadline to complete the order. The BEO also stated that the safety factor determines the deadline date. The BEO noted that two months for this order is justified.
18. The BEO noted the following: On Feb. 20<sup>th</sup> the order was issued. On Jan. 25<sup>th</sup> the complaint came in. On Feb. 25<sup>th</sup> Mr. Schonberger received the order by registered mail. April 17<sup>th</sup> is the deadline date.
19. The Appellant stated that they live in a rural area and it is difficult to work in woodlands. The Appellant stated for example if one finds a Jefferson salamander it will issue a stop work order by the NPCA. The appellant noted that the order makes it difficult to complete the order with the deadline date. The appellant stated that there are dead trees in various areas and he is disappointed in how the City treats their citizens. The Appellant stated the city issued an order that we cannot complete. The appellant noted that it takes time to complete the order, and is not happy about dead trees on hydro lines in that they are very difficult to remove. The Appellant asks that the order be withdrawn and he will get the work done to remove the trees as soon as possible.
20. Committee member (Zakraysek-Bourque) asked the BEO if NPCA has no other jurisdiction to best of your knowledge. The BEO responded in stating the property standards by-law regulates all properties as noted in Section 6. The BEO noted that the Region has a tree by-law also, and that if trees pose a hazard to persons, then the Region by-law is exempt and it then falls under the City by-laws. The BEO noted their protocol is that they will contact the NPCA before they remove trees.
21. Committee member (Zakraysek-Bourque) stated that the notice is properly served and time to complete the order. The committee also notes that the confirmed property line is established by the City. The committee stated to the Appellant if you provide a survey completed by an Ontario Land Surveyor they will take that into consideration. The committee noted that we extend the date and have to take safety into consideration.
22. The BEO noted in the past we received several complaints about trees landing on hydro lines and trees catching fire which caused fire dept. emergency calls.
23. The Chair noted to the Appellant we do trust the issue of the property line and appreciate your input and knowledge and appreciation of the NPCA.

DECISION:

The Committee extend the timeframe for complying with the terms and conditions set out in Order No.: 2019-11 by the deadline date of July 17, 2019.

24. Adjournment