



**The Corporation of the City of St. Catharines
CITY COUNCIL AGENDA
Regular, Monday, October 30, 2017
Council Chambers, City Hall, 6:30 PM**

His Worship Mayor Walter Sendzik takes the Chair and opens the meeting

Page

- 1. Mayor's Report**
- 2. Adoption of the Agendas**
- 3. Adoption of the Minutes (Council and General Committee)**
 - 3.1 [Regular Meeting of Council, Minutes of October 16, 2017.](#)
 - 3.2 [General Committee, Minutes of October 16, 2017](#)
 - 3.3 [Special Meeting of Council, Minutes of October 18, 2017](#)
- 4. Declarations of Interest**
- 5. Public Meetings Pursuant to Planning Act and Notice By-law**
 - 5.1 **Public Meeting Pursuant to Planning Act**
Planning Act Public Meeting – Information Report
Application for Draft Plan of Standard Condominium Approval for 6-Unit Townhouse Development at 17 East Street; Owners: Nazli Eroglu and Jose Santos.; Agent: ElaArc Inc.
 - 5.2 **Public Meeting Pursuant to Notice By-law**
Stop Up, Close and Declare Surplus the Lane between Lakeside Drive and Runcorn Street (PIN 46301-0066 LT), Realty File 16-003
 - 5.3 **Public Meeting Pursuant to Notice By-law**
By-law to Regulate Trees on or Affecting City Property
- 6. Presentations**
 - 6.1 Peter Jekel, Manager, Environmental Health, Niagara Region Public Health and Sandra Burrows, Chief Building Official/Manager of Building and Development
Re: Rat / Rodent Population
- 7. Delegations**
- 8. Call for Notices of Motion**

4 - 18

19 - 22

23 - 44

9. Motions

9.1 Port Dalhousie Piers

Whereas the Port Dalhousie Piers were closed by the Federal Department of Fisheries and Oceans in March 2015 due to structural and safety issues and have remained closed for more than 2 years, restricting public access and enjoyment of the piers and sections of the public waterfront; and

Whereas the piers remain closed and there is no current timeline or estimation of when the Federal government plans to repair and restore the piers; and

Whereas the Port Dalhousie piers are an integral part of our public waterfront which is undergoing a significant revitalization; and

Whereas Council approved support for the community's preference to fully restore public pedestrian access, supporting amenities and boat mooring based on rehabilitation options presented by the Department of Fisheries and Oceans, Small Craft Harbours to the community and Council in May 2016;

Therefore Be it Resolved that the City of St. Catharines Council provide direction to the Mayor and CAO to communicate the City's interest in negotiating the transfer of ownership and responsibility of the piers from the Department of Fisheries and Oceans to the City, contingent on adequate Federal funding to repair and reopen the piers, as estimated between \$28 million to \$33 million; and

Further Be it Resolved that the City's interest to negotiate transfer of ownership and responsibility for the piers be communicated to the Department of Fisheries and Oceans, the Minister, and St. Catharines MP Chris Bittle to pursue repair work to begin as expeditiously as possible.

10. Resolve into General Committee

11. Motion Arising from In-Camera Session

12. Motion to Ratify Forthwith Recommendations

Page

13. By-laws

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13.1 Reading of By-laws

14. Agencies, Boards, Committee Reports

14.1 Minutes to Receive:

- Environmental Sustainability Committee, [May 17, 2017](#) and [September 28, 2017](#)
- Green Advisory Committee, [October 18, 2017 Draft](#)

15. Adjournment



CITY OF
ST. CATHARINES

Corporate Report

Report from: Planning and Building Services, Planning Services

Date of Report: September 28, 2017

Date of Meeting: October 30, 2017

Report Number: PBS-264-2017

File: 60.46.431

Subject: *Planning Act Public Meeting – Information Report*

Application for Draft Plan of Standard Condominium Approval for 6-Unit Townhouse Development at 17 East Street; Owners: Nazli Eroglu and Jose Santos.; Agent: ElaArc Inc.

Recommendation

That Council receive this report for information purposes; and

That Council consider the Recommendation Report regarding application for approval of a draft plan of standard condominium at the meeting of Council on November 27, 2017, at least 14 days after the public meeting of October 30, 2017, pursuant to Section 51(20) of the Planning Act. FORTHWITH

Summary

This Information Report provides Council and the public with information concerning the application for draft plan of standard condominium for lands at 17 East Street (Appendix 1) to be considered at a public meeting scheduled for October 30, 2017. This report provides an overview of the application and a summary of applicable planning policies, circulation comments, and public input thus far. A Recommendation Report containing planning analysis, addressing any outstanding concerns raised at the public meeting, and providing a staff recommendation will be considered by Council at its November 27, 2017 meeting.

The following items are appended for Council's reference:

- Appendix 1: Location Map
- Appendix 2: Garden City Plan, Land Use (Schedule D1)
- Appendix 3: Garden City Plan, Land Use (Schedule E5)
- Appendix 4: Zoning
- Appendix 5: Draft Plan of Standard Condominium
- Appendix 6: Site Plan
- Appendix 7: Landscape Plans
- Appendix 8: Elevations

Report

Proposed Development

The draft plan of standard condominium application seeks approval for the creation of six 3-storey townhouse units accessed by way of a private road extending off of 17 East Street. Also included are common element areas, which include a private road, servicing, parking and landscaped areas. The proposed Draft Plan of Condominium is attached in Appendix 5. The proposed development has a density of 40.4 units per hectare.

Location and Site Description

The site is located in the Central Planning District on the west side of East Street, north of Welland Avenue. A location map is attached as Appendix 1.

The site is vacant and has a site area of approximately 0.15 hectares. The property has a frontage of 16 m along East Street.

Surrounding land uses include:

North:	Detached dwellings
South:	A commercial plaza
East:	A mix of detached dwellings and one 3-storey apartment building
West:	A mix of detached dwellings and two 3-storey apartment buildings

Circulation of Application

This application for draft plan of condominium approval was circulated to all appropriate departments and agencies for their comments and requirements. There were no objections received. Most departments and agencies confirmed that their technical requirements will be addressed through the site plan approval process currently underway (site plan approval is discussed further in the Planning Context section of this report).

Planning Context

Provincial and Regional Policy Context

The subject property is located within a settlement area under the 2014 Provincial Policy Statement (PPS) and the Built-Up Area for St. Catharines as delineated by the Provincial Growth Plan for the Greater Golden Horseshoe (Growth Plan). The PPS and Growth Plan contain policies that direct growth and development to settlement areas, encourage the development of complete communities, support intensification, and require the provision of an appropriate range of housing types and densities to meet the social, health and well-being requirements of current and future residents. Land use patterns shall be based on densities and a mix of land uses that efficiently use land, resources, infrastructure, and public service facilities which are planned or available to settlement areas.

Similarly to the Growth Plan, the Regional Official Plan (ROP) directs development to take place in urban areas and supports intensification where appropriate servicing and infrastructure exists. The ROP reiterates the land use pattern policies and objectives of the Provincial Policy Statement for residential intensification and sustainable communities outlined above and establishes a residential intensification target of 95 % for the St. Catharines Built-Up Area.

This application proposes residential development that is in keeping with Provincial and Regional land use policies. The proposed townhouse dwelling type expands the offering of townhouse units within this neighbourhood. The proposal utilizes services available to the site, demonstrating an efficient use of land, infrastructure, and public services and facilities.

Official Plan (Garden City Plan)

The City's Official Plan, the Garden City Plan (GCP), designates the lands as Neighbourhood Residential (Appendix 2), providing for a range of housing opportunities, types, forms and density. Schedule E5 of the GCP (Appendix 3) provides additional direction for land uses which are located within the Central Planning District and designates the lands as Medium Density Residential, permitting detached, semi-detached, duplex, triplex, quadplex, fourplex, townhouse and apartment dwellings at density range generally between 25 and 99 units per hectare of land.

At a proposed density of 40 units per hectare, this development complies with the density policies of the Garden City Plan. The proposed townhouse dwellings are permitted within the Medium Density Designation, will support a wider variety of housing, assist with the intensification of the area and help accommodate projected growth in a sustainable manner.

The proposed development complies with the policies of the Garden City Plan and no amendment is required.

Zoning By-law

Zoning By-law 2013-283 zones the lands as Medium Density Residential (R3) (Appendix 4). The R3 zone permits detached, semi-detached, duplex, triplex, quadplex, fourplex, townhouse and apartment dwellings, and private road development and long term care facilities. As proposed, this private road townhouse development meets all the provisions of the Zoning By-law. No amendments or variances to the By-law are required.

Draft Plan of Condominium

The applicant proposes standard condominium tenure – a form of property ownership – for six townhouse dwelling units with exclusive front and rear yard amenity areas and driveways within the common element areas. The condominium plan also includes common element areas for two visitor parking spaces and landscaped areas. Condominium tenure allows each dwelling unit to be sold individually.

Section 51(24) of the Planning Act directs the matters to be considered in recommending approval for a Draft Plan of Condominium. They include:

- The development does not have a detrimental effect on matters of provincial interest, it is not premature and is in the public interest.
- The proposal complies with the Official Plan, and the lands are suitable for development as proposed.
- The proposed lots are of appropriate size and shape, and adequate for the development of detached dwellings in accordance with the Zoning By-law and proposed amendment.
- The proposed development is compatible with the surrounding residential neighbourhood.
- The existing utilities and services are adequate to support the development.
- The size, elevation, grading and adequacy of the proposed road has been reviewed by staff and is acceptable.

The site plan approval process also considers these matters prior to final approval. The Condominium Corporation will assume the responsibility of the Site Plan Agreement.

Site Plan Control

In accordance with the City's site plan control by-law, the applicant is required to enter into a site plan agreement with the City prior to the issuance of a building permit for the townhouse units. The site plan agreement will address matters related to access and parking, lighting, buffering, servicing, storm water management, tree preservation, building placement, façade finishes and treatments, among other matters. The applicant will be required to post securities to ensure the terms of the agreement are carried out. Upon approval, the site plan agreement will be registered against the title of the lands and be legally binding upon the existing and future property owners, including the condominium corporation.

An application for site plan approval has been made and is under review. The applicant has worked with staff to refine the site plan, landscape plan and building elevations (Appendices 6 to 8). Final refinements are being made to the landscape plan to improve site buffering from surrounding residential uses. Other required plans, including civil and lighting plans, have been refined and are found to be acceptable.

Public Open House

An open house was hosted by Planning Services on August 15, 2017. The purpose of the meeting was to present the applicant's proposal and provide an opportunity for questions to be asked and comments to be received by City staff before formulating a recommendation. Input was also received regarding the Site Plan Agreement application. Four members of the public attended. The applicant and agents were also in attendance. Comments received at the open house are summarized below, with corresponding staff responses. Staff has not received written comments from the public to date.

Vegetation

Comment: How are the existing trees being preserved? Which trees are to be removed and which ones will be preserved?

Response: A tree preservation plan has been submitted and is under review by City Staff, which proposes that 5 out of 8 trees on site be retained. When a tree straddles a property line between two neighbours, no detrimental action can be taken on the tree without the consent of both parties.

Previous Application

Comment: Has there been a previous application at this address?

Response: Yes, there was an approved application for an 11 unit apartment building in 1991.

Traffic

Comment: Speeding is an issue on East St. Is there a possibility of adding speed bumps?

Response: There are minimum criteria a street must meet before considering traffic calming; including a minimum length of 250 metres. East Street is only 200 metres. Given the characteristics of East Street, the Traffic Department is of the opinion that it's highly unlikely that the street would satisfy the technical requirements (speed and volume) set out in the policy.

Parking

Comment: Residents preferred the option of the site plan with the visitors parking noting that parking was already an issue on East Street.

Response: The applicant shared two options with the public; one with visitor parking and one without visitor parking. The plan with visitor parking (two spaces) is proposed to be implemented as shown in Appendix 6.

Comment: It was requested that more landscape screening be added between the neighbouring property and the visitor parking.

Response: The applicant has submitted updated landscape plans to improve buffering around the visitor parking area. Additionally, a board-on-board wood fence will be constructed around the perimeter of the entire site to help mitigate the effects of vehicle headlights.

Waste Collection

Comment: Garbage pickup was identified as a problem in the general area. At times, tenants of multi-unit buildings exceed container limits and waste is left at the curb.

Response: Niagara Region is responsible for waste collection in St. Catharines. The limits for waste collection include 1 container per unit, and unlimited recycling. The Region should be contacted regarding any waste collections issues in the area.

Future Residents

Comment: Will the proposed units be “geared to income”?

Response: The Applicant responded that the proposed units are condominiums to be sold individually. A price point has not yet been identified.

Storm Water

Comment: Pooling water was said to be an issue at the back corner of the plaza site where it meets the subject lands and 114 Page St. Residents noted that the area has a very high water table.

Response: Through the site plan approval process the owner has submitted an acceptable site services and grading plan which demonstrates that stormwater will be managed within the site and will not impact adjacent property owners. The site will utilize grading and swales that drain toward three new catchbasins to be installed at the southwest, southeast, and northeast sections of the site. These catchbasins will then drain via new storm sewers to the existing municipal sewer system at East Street.

Privacy

Comment: Property owners to the west commented that the townhouses would decrease the privacy in their backyard.

Response: The proposed townhouses are three storeys, which is permitted, and meet the property line setback requirement of the Zoning By-law. To assist with mitigating privacy concerns, a board-on-board wood fence is proposed along all property lines. Further, existing mature trees at the west end of the site are proposed to be retained, which help to mitigate effects of overlook. Part of the southerly and westerly elevation of the end unit contains a stairwell which does not contain windows.

Public Notice

In accordance with established procedures, notices for the public meeting have been circulated.

Financial Implications

All costs associated with this development are at the expense of the developer. No financial impacts to the City are triggered by this application.

Relationship to Strategic Plan

Economic Sustainability

The approval of this condominium supports the goals for economic sustainability by:

- Facilitating private investment through development in the City (Goal 1)
- Enhancing the property tax base (Goal 1.2)

Conclusion

In summary, this report provides the planning context and explains the application for Draft Plan of Condominium for 17 East Street. The plan of condominium will allow each of the proposed townhouse dwellings to be sold individually. The Site Plan Agreement is being reviewed and will be registered on the lands regulating form and function of the development.

Notification

It is in order to advise ElaArc Inc., 88 Sutherland Crescent, Ancaster, Ontario, L9K 0G9.

Prepared by:

Sean House,
Student Planner

Prepared by:

Aaron Butler, MCIP, RPP
Planner I

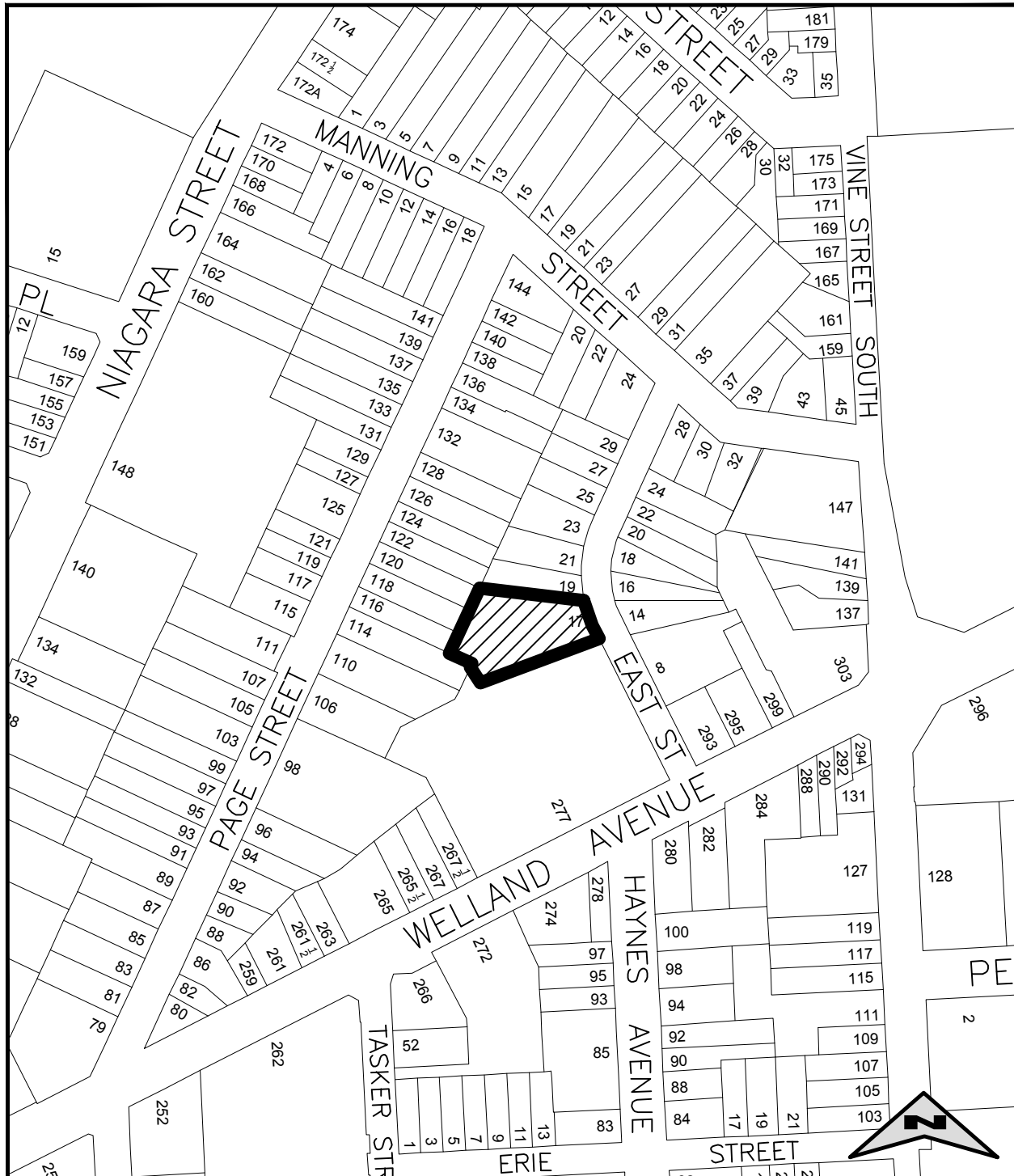
Submitted by:

Judy Pihach, MCIP, RPP
Manager of Planning Services

Approved by:

James N. Riddell, M.P.L., MCIP, RPP
Director of Planning and Building Services

Location Map



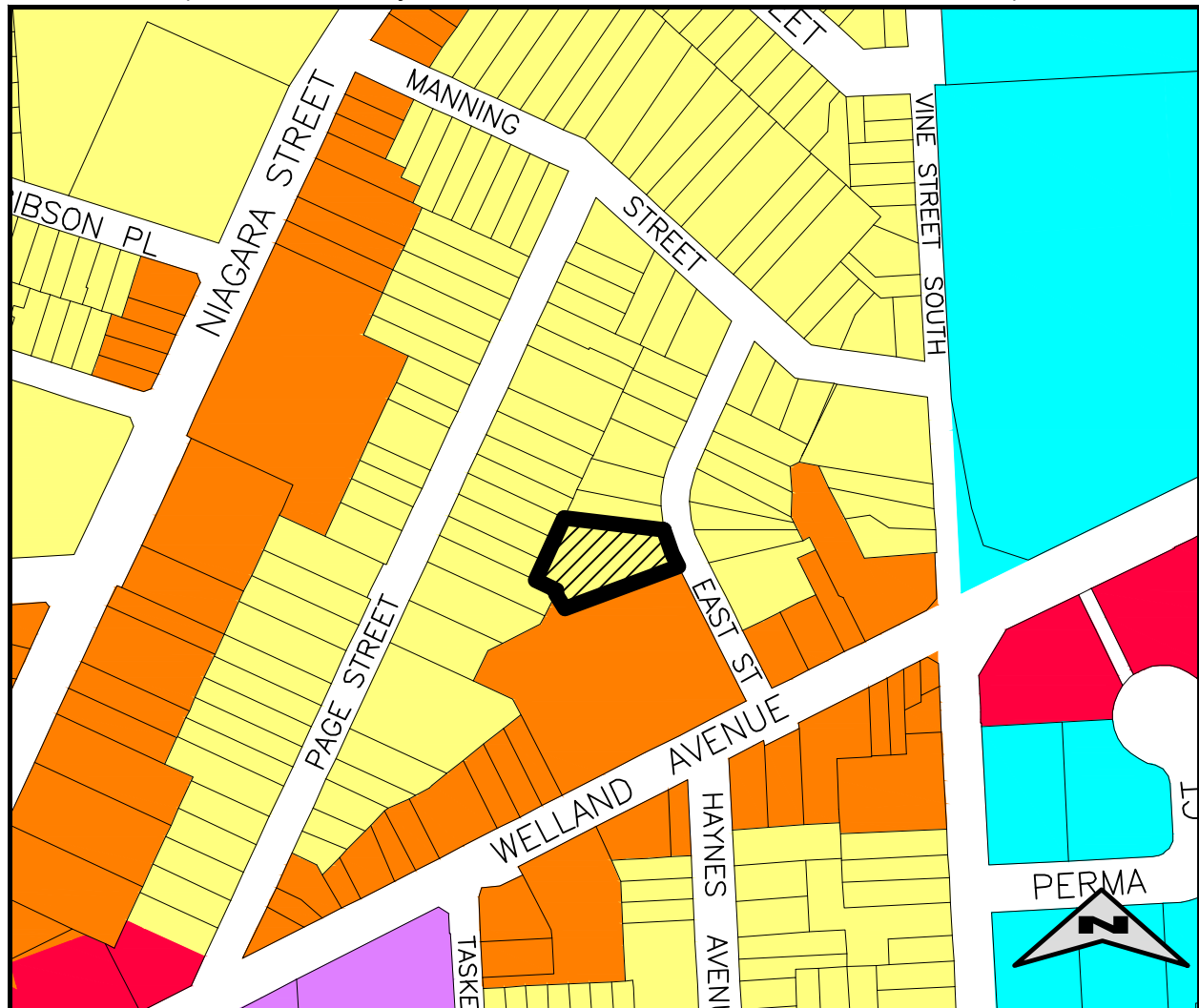
Subject Lands

17 East Street

Files: 60.46.431 & 60.51.954

Existing Land Use Designation

(The Garden City Plan - General Land Use Plan, Schedule D1)



Subject Lands

17 East Street

Land Use Designations

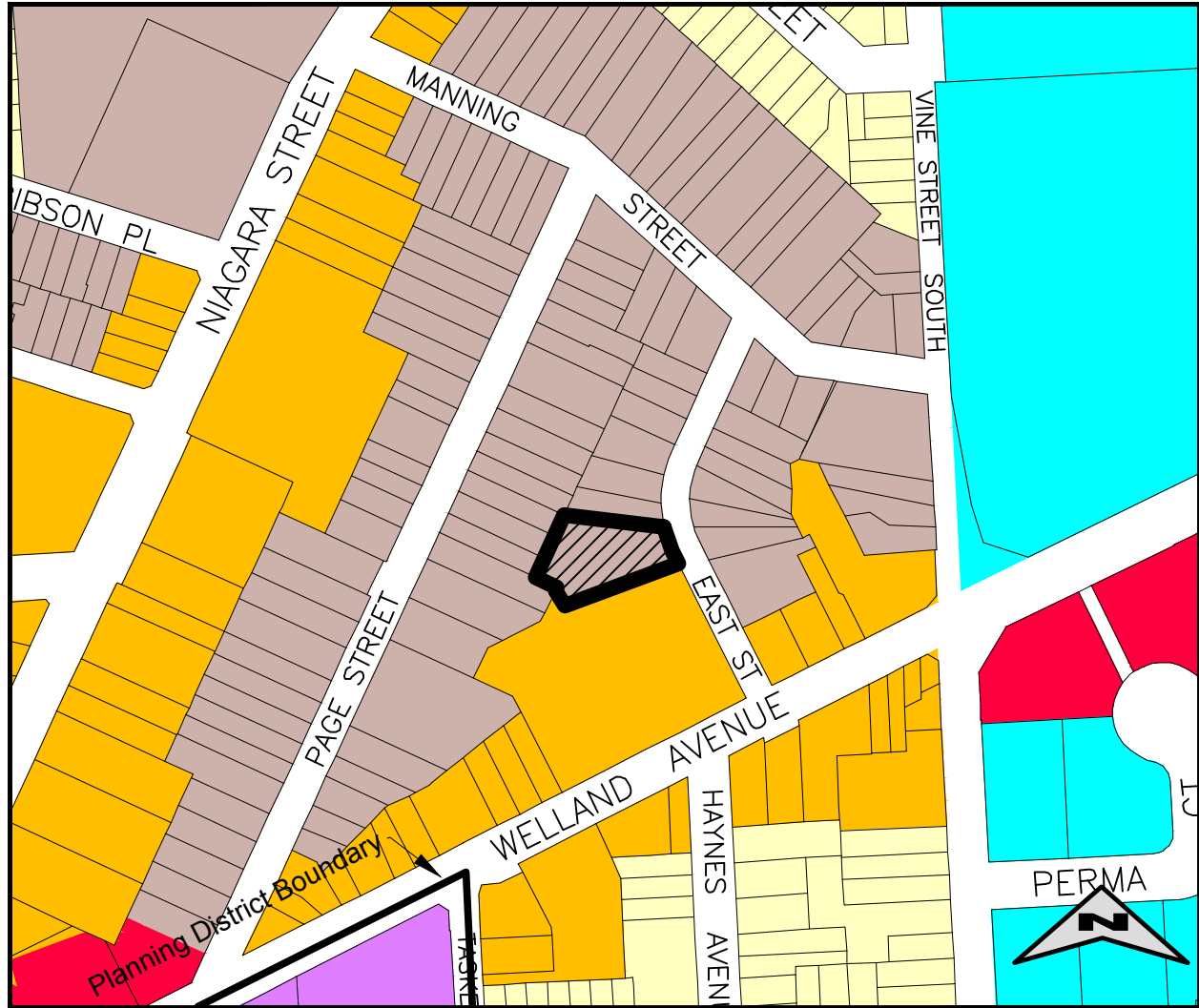
Neighbourhood Residential
Employment
Commercial

Mixed Use
Downtown

Files: 60.46.431 & 60.51.954

Existing Land Use Designation

(The Garden City Plan - Central Planning District, Schedule E5)



Subject Lands

17 East Street

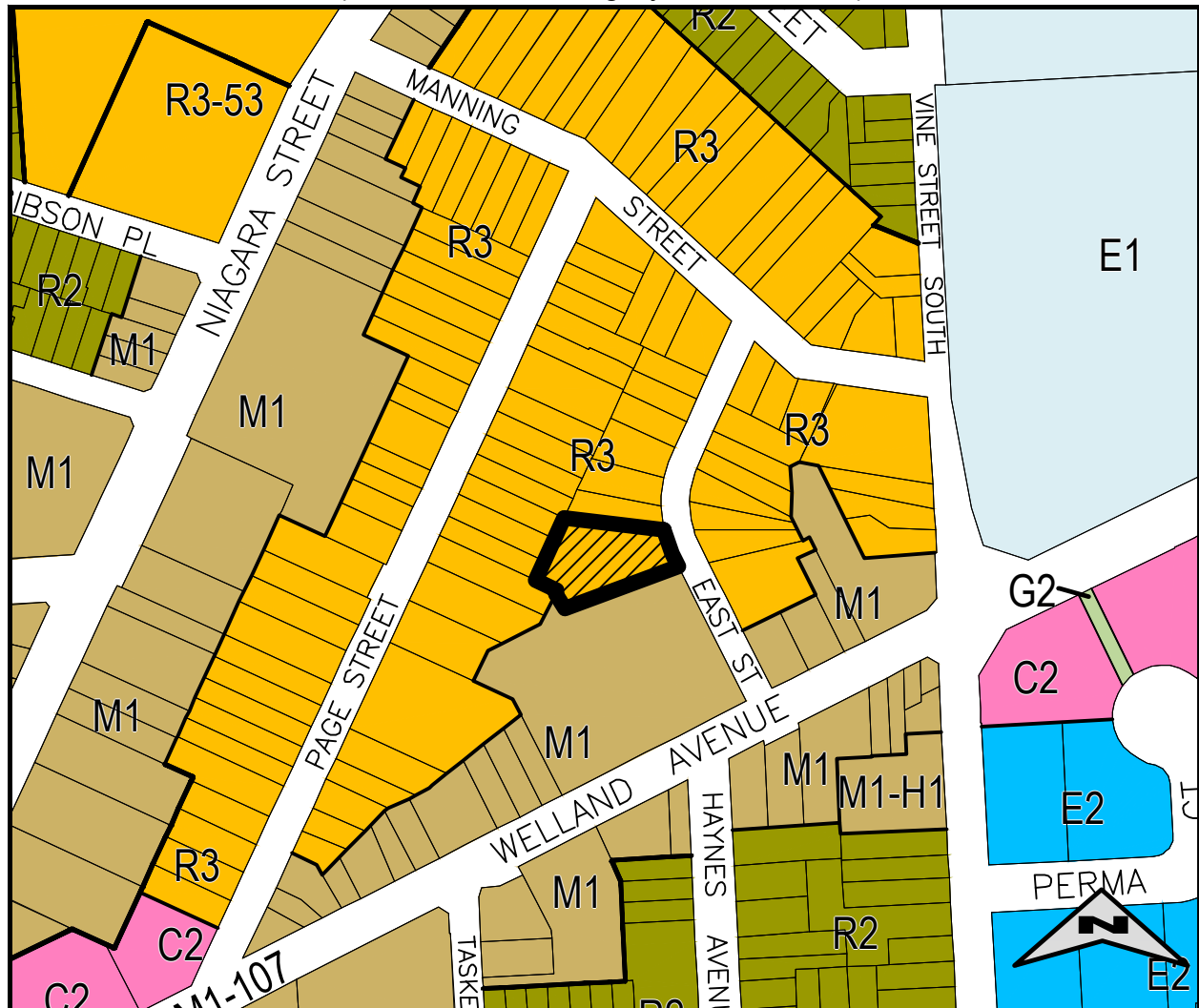
Land Use Designations

 Low Density Residential	 Arterial Commercial
 Medium Density Residential	 Mixed Use
 Community Commercial	 General Employment

Files: 60.46.431 & 60.51.954

Existing Zoning

(Schedule A - Zoning By-law 2013-283)



Subject Lands

17 East Street

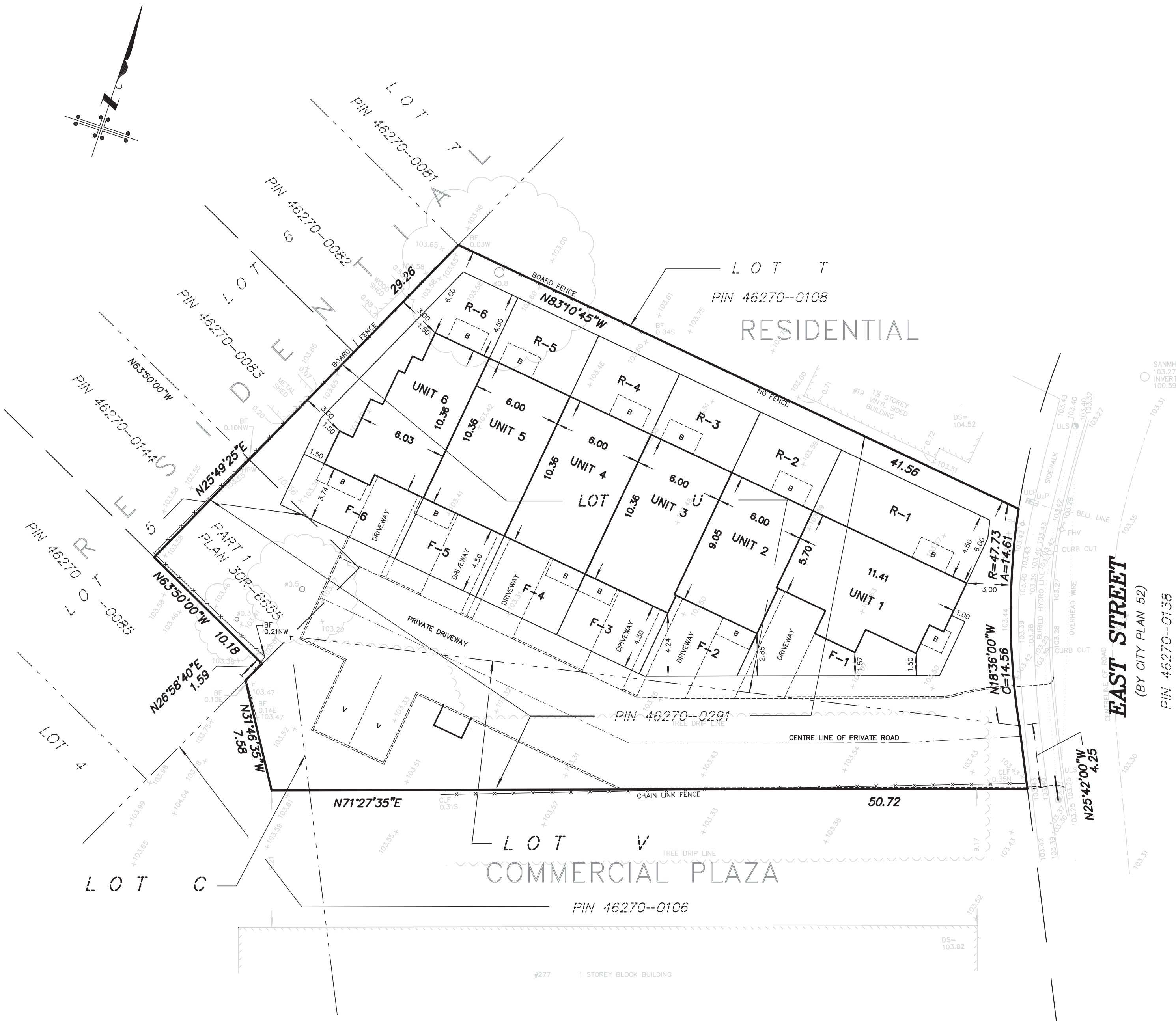
Zones

R2 Low Density Residential
- Traditional Neighbourhood
R3 Medium Density Residential
C2 Community Commercial

E1 Business Commercial Employment
E2 General Employment
M1 Medium Density Mixed Use
G2 Minor Green Space

Files: 60.46.431 & 60.51.954

SHEET 1 OF 1
RESIDENTIAL UNITS 1 TO 6 INCLUSIVE



"METRIC" DISTANCES SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY DIVIDING BY 0.3048



DRAFT PLAN OF STANDARD CONDOMINIUM
LOT U, AND
PART OF LOTS 5, C & V
CITY PLAN 52

BEING IN THE
CITY OF ST. CATHARINES
REGIONAL MUNICIPALITY OF NIAGARA
SCALE 1 : 200

0 5 10 20 metres
MacKAY, MacKAY & PETERS LIMITED - 2017

Legend :

PIN DENOTES PROPERTY IDENTIFICATION NUMBER
B DENOTES BALCONY / PORCH / PATIO AS THE CASE MAY BE
V DENOTES VISITORS PARKING
F-# DENOTES EXCLUSIVE USE AREA - FRONT YARD
R-# DENOTES EXCLUSIVE USE AREA - REAR YARD

ADDITIONAL INFORMATION [REQUIRED UNDER SECTION 51 (17) OF THE PLANNING ACT.]

- (A) (B) (C) (E) (F) (G) (J) - AS SHOWN ON DRAFT PLAN
- (D) CONDOMINIUM - 6 RESIDENTIAL UNITS
- (H) MUNICIPAL WATER
- (I) CLAY
- (K) FULLY SERVICED
- (L) NONE

NOTE

UNDERLYING TOPOGRAPHIC INFORMATION AS PER PLAN BY
MACKAY MACKAY & PETERS DATED MARCH 24, 2017 (PROJECT NO. 17-013)

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE BOUNDARIES OF THE LAND TO BE SUBDIVIDED AND THEIR RELATIONSHIP TO THE ADJACENT LANDS ARE ACCURATELY AND CORRECTLY SHOWN ON THIS PLAN.

AUGUST 25, 2017
DATE

Ross A. Clarke
ROSS A. CLARKE
ONTARIO LAND SURVEYOR
FOR: MACKAY MACKAY & PETERS LIMITED

OWNER'S CERTIFICATE

I HEREBY AUTHORIZE MacKAY, MacKAY & PETERS LIMITED, ONTARIO LAND SURVEYORS TO PREPARE AND SUBMIT THIS DRAFT PLAN OF CONDOMINIUM TO THE CORPORATION OF THE CITY OF ST. CATHARINES FOR APPROVAL.

AUGUST 25, 2017
DATE

Nazli Eroglu
NAZLI EROGLU

CAD FILE: E:\30 & 59\ NIAGARA\30\ NORTH NIAGARA\REGISTERED PLAN\GITY PLAN 52\LOTS C, U, V\17-013\17-013-D.DWG	
MACKAY MACKAY & PETERS LIMITED Established 1906	ONTARIO LAND SURVEYORS 3380 SOUTH SERVICE ROAD BURLINGTON, ONTARIO L7N 3J5 PHONE: (905) 639-1375 FAX: (905) 333-9544 e-mail: halton@mmplimited.com Records of Sewell & Sewell and Yates & Yates LTD.
	DRAWN BY: R.D.
	PARTY CHIEF: N/A
	CHECKED BY:
PROJECT NO.: 17-013-D	

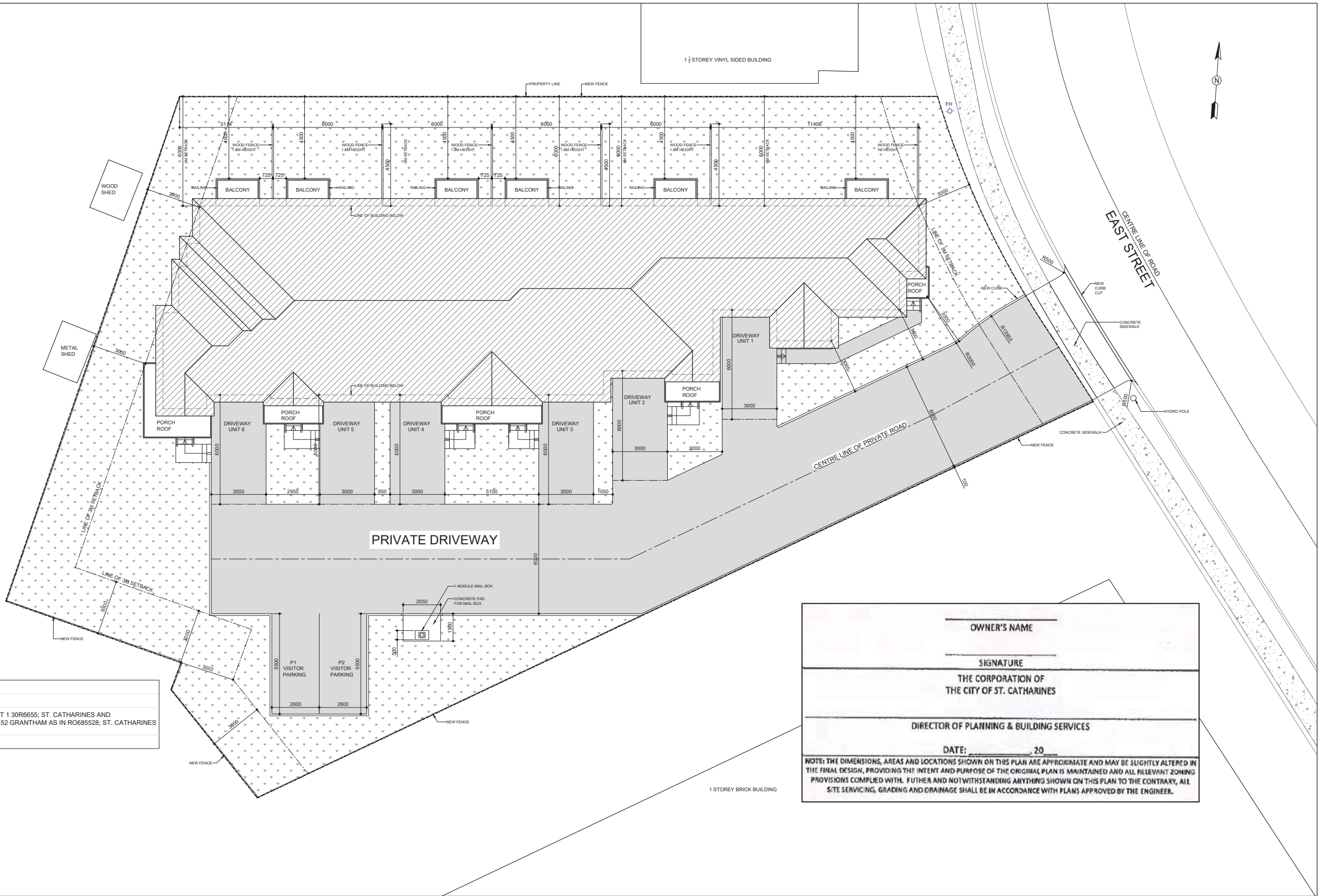
LEGEND

- PAVED AREAS
- PROPERTY LINE
- SETBACK LINE
- ROOF
- LANDSCAPED AREAS
- FENCE

SITE INFORMATION	
LOT AREA	1485m2
GROSS AREA	1120m2
FIRST FLOOR	368m2
SECOND FLOOR	387m2
THIRD FLOOR	365m2
LANDSCAPED AREAS	674m2
PAVED AREAS	443m2

ZONING INFORMATION (R3 ZONING)	
FRONT YARD	3m to dwelling 6m to garage
REAR YARD	6m
EXTERIOR SIDE YARD	3m to dwelling 6m to garage
MAX. BUILDING HEIGHT	11m
MIN. LANDSCAPED OPEN SPACE	25%

PROPERTIES	
PIN	46270-0291 LT
DESCRIPTION	PT LT 5 E/S PAGE ST CY PL 52 GRANTHAM PT 1 30R6655; ST. CATHARINES AND LT U CY PL 52 GRANTHAM; PT LT V, C CY PL 52 GRANTHAM AS IN R0685528; ST. CATHARINES
ADDRESS	17 EAST STREET, ST. CATHARINES



OWNER'S NAME
SIGNATURE
THE CORPORATION OF THE CITY OF ST. CATHARINES
DIRECTOR OF PLANNING & BUILDING SERVICES
DATE: 20
NOTE: THE DIMENSIONS, AREAS AND LOCATIONS SHOWN ON THIS PLAN ARE APPROXIMATE AND MAY BE SLIGHTLY ALTERED IN THE FINAL DESIGN, PROVIDING THE INTENT AND PURPOSE OF THE ORIGINAL PLAN IS MAINTAINED AND ALL RELEVANT ZONING PROVISIONS COMPLIED WITH. FURTHER AND NOTWITHSTANDING ANYTHING SHOWN ON THIS PLAN TO THE CONTRARY, ALL SITE SERVICING, GRADING AND DRAINAGE SHALL BE IN ACCORDANCE WITH PLANS APPROVED BY THE ENGINEER.



Architectural Services

25 Main Street West, Unit 730
Hamilton, Ontario L8P 1H1
Phone: (905) 522-7797

SEAL



2017-09-26
NAZLI ELA EROGLU
LICENCE
6936

ISSUED FOR

SITE PLAN APPROVAL

PROJECT NAME

TOWNHOUSE DEVELOPMENT
17 EAST STREET
ST. CATHARINES, ON

DRAWING TITLE

SITE PLAN

DRAWN BY	AE
CHECKED BY	EE
SCALE	1:100
DATE DRAWN	2017/09/26
PROJECT NO. 2016-XXX	DRAWING NO. A-101



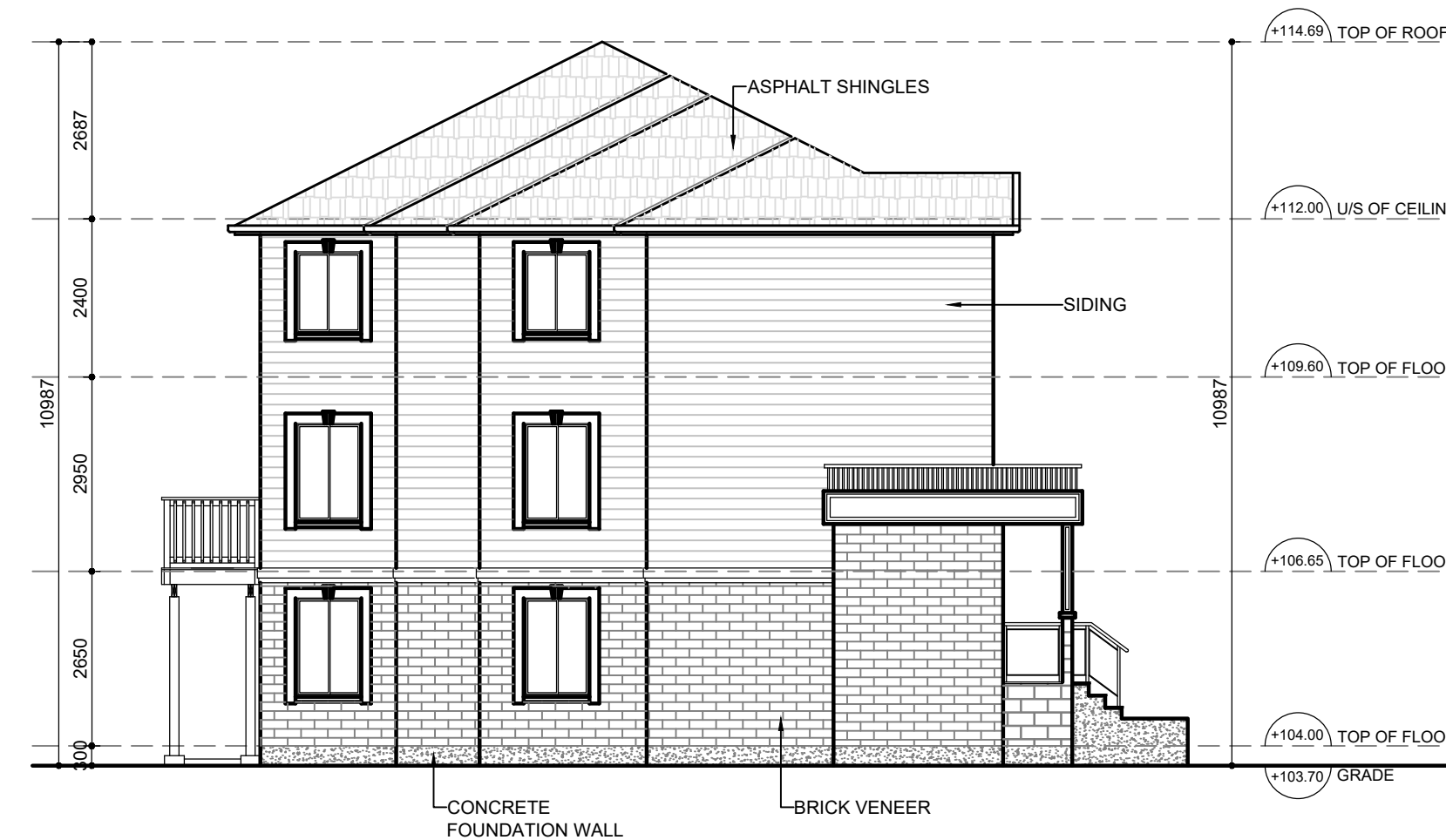
1 SOUTH ELEVATION
Scale: 1:100



2 EAST ELEVATION
Scale: 1:100



3 NORTH ELEVATION
Scale: 1:100



4 WEST ELEVATION
Scale: 1:100

ElaArc
Architectural Services
25 Main Street West, Unit 730
Hamilton, Ontario L8P 1H1
Phone: (905) 522-7797



ISSUED FOR
SITE PLAN APPROVAL

PROJECT NAME
**TOWNHOUSE DEVELOPMENT
17 EAST STREET
ST. CATHARINES, ON**

DRAWING TITLE
ELEVATIONS

DRAWN BY	AE
CHECKED BY	EE
SCALE	1:100
DATE DRAWN	2017/08/29
PROJECT NO.	DRAWING NO.
2016-XXX	A-104



CITY OF
ST. CATHARINES

Corporate Report

Report from Financial Management Services, Property Management

Date of Report: October 11, 2017

Date of Meeting: October 30, 2017

Report Number: FMS-274-2017

File: 16.7.99

Subject: Stop Up, Close and Declare Surplus the Lane between Lakeside Drive and Runcorn Street (PIN 46301-0066 LT), Realty File 16-003

Recommendation

That Council declare surplus the lane between Lakeside Drive and Runcorn Street, Township Plan 112 (the “lands”), as shown on Appendix 1 attached hereto, subject to the City retaining an easement over the lands for storm drainage purposes; and

That Council authorize the stopping up and closing of the lane between Lakeside Drive and Runcorn Street, Township Plan 112 (PIN 46301-0066 LT), as shown on Appendix 1; and

That public notice, in accordance with By-law 2007-310, be provided and the public be given the opportunity to object to the stop up and close prior to the passing of the by-law, prior to consideration of this report; and

That Council authorize the disposal of the lands to the abutting property owner subject to the terms and conditions outlined in In-Camera Report FMS-275-2017; and

That Council waive Sections 4.6 and 4.7 of By-law 2007-309 relating to notification to School Boards and placing of a “For Sale” sign and listing the property on the local Real Estate Board; and

Further, that the City Solicitor be directed to prepare the necessary by-laws. FORTHWITH

Background

This report is being brought forward as the result of a formal expression of interest of the owners of 102 Broadway Avenue to acquire the lane between Lakeside Drive and Runcorn Street, a portion of which is adjacent their property. When there is a written inquiry about purchasing a City owned property, staff investigates and researches the property to determine if the property has potential for disposal. If there is potential for disposal, City departments are notified, through the Property Coordinating Committee. The Property Coordinating Committee responds with concerns, comments and recommendations regarding the viability of disposing of the property.

As the lane is considered a public highway, it must be stopped up and closed prior to any disposition. Therefore, the public will be given the opportunity to object to the stop up and close prior to the passing of the by-law prior to the consideration of this report.

Report

The lane between Lakeside Drive and Runcorn Street is presently an active drainage swale and is considered a public highway. TES advises that they would support the stopping up, closing and sale of the lands provided an easement is retained over the entire lane for storm drainage purposes, which would prevent any structures from being built on the lands. TES has also requested that all building plans for the property at 102 Broadway be reviewed by the City to ensure that storm drainage is not compromised. The purchaser has agreed to these conditions.

The lands are adjacent to three properties in total, and staff approached the owners of the other two properties to see if they had an interest in acquiring the portions of the lane adjacent to their properties. Neither party was interested in acquiring portions of the lane, therefore, staff recommend selling the entire lane to the owner of 102 Broadway.

Property information was circulated to the Property Coordinating Committee made up of staff from Legal and Clerks Services, Transportation and Environmental Services, Planning and Building Services, Parks Recreation and Culture Services, and Financial Management Services. It was determined by the Committee that the City no longer requires these lands, subject to the easement to be retained as indicated in this report. In order to proceed with the disposal, staff make the recommendations to stop up, close and declare the lands surplus.

The stopping up and closing of a public highway requires that public notice to hear any objections to the proposed stop up and close be given in accordance with the City's Public Notice By-law 2007-310 prior to the passage of the by-law to stop up and close the highway. Members of the public that wish to speak to the recommendation will be provided an opportunity to address Council. Subject to Council's approval, after hearing from any members of the public, the necessary by-law will be presented to Council at this meeting. The Municipal Act then requires that a certified copy of the by-law be registered in the Registry Office for Niagara North to give it effect.

Due to the size and shape of the lane and the requirement for a storm drainage easement over the entire lane, the lands are not developable in isolation. The City also requires that the title of the lane be merged with 102 Broadway.

Staff request the procedures outlined in Property By-law 2007-309 relating to notification of Niagara Region and School Boards, placing of a "For Sale" sign and listing the property on the local real estate board be waived.

Should Council approve the stop up, close and declare surplus of the lands, further recommendations that outline the terms and conditions of the sale are outlined in In-Camera Report FMS-275-2017 for Council approval.

Financial Implications

The costs to the Corporation to stop up and close the land and convey the required easement will be the responsibility of the adjacent property owner. In-Camera Report FMS-275-2017 outlines the financial terms and conditions of the sale.

Relationship to Strategic Plan

Economic Prosperity for All is enhanced through:

- Effective asset management, which, in this case, is receipt of revenue through the sale of a vacant parcel of underutilized land.

Conclusion

This report recommends the stop up, close and declare surplus of the lane between Lakeside Drive and Runcorn Street, Township Plan 112. Should Council approve these recommendations, next steps, including the financial and business terms of sale, are outlined in In-Camera Report FMS-275-2017 for Council consideration and approval.

Prepared by:

Stephanie Tripp
Manager Realty Services

Submitted and Approved by:

Kristine Douglas
Commissioner of Corporate Services (Acting)



----- 102 Broadway



CITY OF
ST. CATHARINES

At the meeting of October 16, 2017, General Council **AGENDA ITEM #5.3**
approved the **Recommendation** to hold a public meeting
on October 30, 2017, at which time Council will consider
the **STAFF RECOMMENDATION**.

Corporate Report

Report from Parks, Recreation and Culture Services, Parks, Cemeteries, Forestry
and Horticulture

Date of Report: October 4, 2017

Date of Meeting: October 16, 2017

Report Number: PRCS-195-2017

File: 68.31.1, 68.31.192

Subject: By-law to Regulate Trees on or Affecting City Property

Recommendation

That Council refer the report from Parks, Recreation and Culture Services dated September 18, 2017, regarding a by-law to regulate trees on or affecting City property, for consideration by City Council to a public meeting scheduled for October 30, 2017. FORTHWITH

Staff Recommendation

That Council approve the proposed by-law to regulate trees on or affecting City property, as attached in Appendix 1; and

That Council approve the amendment to By-law 70-57, a By-law to Regulate Public Parks in the City of St. Catharines (as amended), as proposed within the report from Parks, Recreation and Culture Services dated September 18, 2017; and

That the Rates and Fees By-law be amended to include a fee for a permit to injure or destroy a City or shared tree of \$100 per tree plus \$50 for each additional tree; and

Further, that Council refer the request to increase the Parks, Recreation and Culture Services complement by one to oversee and to enforce this new regulation to the Budget Standing Committee Meeting for their consideration. FORTHWITH

Summary

This report is in response to Council's March 20, 2017 motion for staff to prepare a by-law for trees on public property. This report recommends a new by-law to regulate trees on or affecting City property (the By-law) that aligns with similar by-laws in other Ontario municipalities. The proposed By-law would apply to all City property, including streets, parks and watercourses.

The draft By-law is attached as Appendix 1 and protects City trees, protects trees that are on the boundary between City and private property, and requires that trees be maintained so that they do not obstruct the use of City property or pose a danger to City property or anyone using City property.

If approved, the By-law would be implemented proactively through a permit process and enforced through complaints wherein violations are subject to prosecution and penalties for conviction. It is expected that one full time staff would be required to enforce the by-law; this request should be reviewed by the Budget Standing Committee. Without additional staff, the City would not be able to support the required permit system, inspections or enforcement.

The Green Advisory Committee reviewed the draft By-law on August 23, 2017, and approved the following motion:

That the Green Advisory Committee, having reviewed the draft By-Law, provides its full and unanimous support for the proposed Public Tree By-Law as a key element of the overall urban forestry management plan.

As directed by Council, a separate report on a private property tree by-law is forthcoming and is expected in Q1 2018. The development of this By-law was prioritized above a private property tree by-law because it is impractical to propose regulations on trees on private property that are over and above the regulations and protections of trees on City property. The draft By-law is recommended regardless of whether Council approves a private property tree by-law.

Background

On March 20, 2017, Council received a report on a Tree Management Framework ([PRCS-052-2017](#)). This report responds to the following motion stemming from that report:

That Council direct staff to prepare a comprehensive tree by-law that addresses trees on public property based on the framework presented within this report.

By-law 70-57, as amended, “a By-law to Regulate Public Parks in the City of St. Catharines” (the “Parks By-law”), currently protects trees on City property. Since the Parks By-law was approved, there have been a number of changes that warrant the creation of a new by-law for City trees, including recent case law that impacts how tree ownership is determined, changes to the Municipal Act that impact enforcement, increase maximum fines, and give municipalities new powers with respect to trees that are not owned by the City but which lie along a public highway.

Report

This report presents a draft by-law to regulate trees on or affecting City property (the By-law) which is attached as Appendix 1 for Council’s consideration. All comparator municipalities have by-laws that protect City trees, and the proposed by-law aligns with best practices of recent public tree by-laws in Ontario.

Trees are an important component of the City’s infrastructure; they contribute to environmental sustainability by cleaning the air, storing carbon, combatting the urban heat island effect, and providing shade. They beautify our community, increase civic pride and contribute to property values. The proposed By-law will better protect City

trees supporting the City's environmental and canopy cover goals. Further, the By-law respects the City's economic investment into trees by ensuring that, when trees do need to be removed, the cost of removing and replacing those trees is borne by the individual that benefits from the removal instead of being paid for out of the general tree planting fund.

Overview of the By-law

Authority of the Director of Parks, Recreation and Culture Services

The By-law formalizes a number of existing authorities of the Director of PRCS, including the authority to:

- Select the location, species, size and condition of trees to be planted on City property;
- Plant, maintain, treat, transplant, and remove City trees, and refuse requests for such actions;
- Remove an object that adversely affects a City tree; and
- Delegate these powers to City staff and contractors.

In relation to the By-law, the Director would be authorized to:

- Administer and enforce the By-law, including through the assistance of City staff and contractors;
- Issue permits and impose permit conditions;
- Issue orders; and
- Develop and issue related standards and policies.

Definitions and prohibitions on trees

A City tree is defined as a tree whose trunk is wholly located on City property. The following prohibitions apply to City trees:

- Cannot injure or destroy a City tree without a permit from the City; and
- Cannot plant a tree on City property without a permit from the City.

A shared tree is defined as a tree whose trunk is located on the boundary between City property and one or more private properties. The following prohibition applies to shared trees:

- Cannot injure or destroy a shared tree without a permit from the City and written permission from all owners.

A private tree is defined as a tree whose trunk is wholly located on private property. The following prohibition applies to private trees:

- Owners must maintain trees so that they do not obstruct the use of City property, pose a danger to City property, or pose a danger to anyone using City property.

Permits and permit conditions

A permit must be obtained from the City in order to injure or destroy a City or shared tree (for the latter, written permission is also required from any other property owners).

The City may impose conditions on a permit, including but not limited to:

- Conditions consistent with good tree care practices;
- Measures required to protect trees impacted by the work;

- The manner and timing of the work;
- The period of time for which the permit is valid;
- That the work be performed by, or under the supervision of, the City, its agent, or a qualified contractor (at the approval of the City), at the cost of the Applicant;
- The provision of a financial security to ensure compliance with the permit;
- In the case of destruction or removal, payment to replace the tree – this payment is calculated based on a tree valuation method established by the International Society of Arboriculture, the Council of Tree and Landscape Appraisers or any other specifications adopted by the City.*

* When a public tree is approved to be removed (e.g. the removal of a street tree to accommodate an approved driveway when there is no alternative location for the driveway), staff recommend that a tree valuation method, such as that developed by the International Society of Arboriculture, be used, when appropriate, to determine the replacement value of the tree. While this aligns with current operating practices, this differs from The Garden City Plan which includes a provision that “The City shall establish a 2 for 1 public tree replacement program”. The tree valuation method is used by many municipalities as it better accounts for the environmental, economic and social benefits of the specific tree being removed and better compensates the City for the financial investment it has made into that tree over time.

A permit would not be required for requests to injure or destroy a tree that is reviewed as part of a planning application. This is because the cost to review the request is included in the planning review fee and any conditions or securities related to tree protection or replacement can be included in the planning agreement (e.g. site plan agreement, subdivision agreement, etc.). Staff will review planning applications with the same lens as permit applications submitted under the by-law.

As the proposed By-law would not be applicable law under the Building Code Act, PBS would not be able to withhold a building permit that proposes to injure or destroy a City or Shared Tree. If the applicant is agreeable to tree-related conditions being attached to the building permit then a tree permit would not be required. Otherwise, the applicant would be responsible for obtaining the tree permit separately, prior to commencing any work that may impact City or Shared Trees.

Trees along highways (i.e. City streets)

In accordance with section 62 of the Municipal Act, the By-law authorizes the City to enter upon lands along its highways to:

- Inspect trees and conduct tests on trees; and
- Remove decayed, damaged or dangerous trees or branches that pose a danger to the health or safety of any person using the highway.

Orders

If a contravention of the By-law has occurred an officer may issue an order to:

- Discontinue the contravening activity; and/or
- Complete work to correct the contravention.

The order must identify the location and particulars of the contravention, the work that must be completed or the activity that must be discontinued and compliance dates. If an order is not complied with by the required date, the City may carry out the work at the expense of the person directed to do the work.

Offenses and penalties

Upon conviction, a person who contravenes the By-law is liable to the following maximum fines:

- For a first offence: \$1,000 per tree to a maximum of \$10,000 (or \$5,000 per tree to a maximum of \$50,000 for corporations)
- For a second offence: \$2,500 per tree to a maximum of \$25,000 (or \$10,000 per tree to a maximum of \$100,000 for corporations)
- In addition to the above fines, a special fine can be pursued when the By-law or order contravention resulted in an economic gain; this special fine may exceed \$100,000

These fines are in addition to any costs imposed by the City to rehabilitate or replace the injured or destroyed tree.

Exemptions

The By-law includes a number of exemptions, the majority of which, such as activity undertaken by surveyors and electrical transmitters and distributors, are required under the Municipal Act. Additional exemptions include:

- The pruning of City tree by a public utility provided that pruning is carried out in accordance with good arboricultural practices; and
- Work completed by emergency personnel in responding to an emergency.

This by-law does not apply to cases where the public notifies the City that a City tree is a health or safety concern. These trees are inspected and removed by the City or its contractor on a priority basis at the City's expense.

Effective date

If approved, the By-law is not proposed to come into effect until June 1, 2018. This time is required for staff to develop and implement the supporting materials discussed below. Until the By-law comes into effect public trees would continue to be protected under the Parks By-law.

Permit fees

Based on a review of permit fees of other municipalities (shown in Appendix 2) staff recommend the following fee structure for the injury and destruction of City and shared trees:

Number of Trees	Permit Fee
1	\$100
Additional Trees	\$50

These fees would be reviewed annually through the Schedule of Rates and Fees.

There would be no fee for a permit to plant a tree on City property.

Resources required to enforce the By-law

In order to be effective, by-laws need to be enforced. Given the current complement, there are no staff resources that can be allocated to implement and enforce the proposed By-law. It is anticipated that one full time staff would be required to implement the By-law, including issuing permits, carrying out inspections and enforcing contraventions of the By-law. This staff would also play a key role in educating the public about tree care and protection, would support staff in protecting trees through City projects and would improve the City's review of tree protection plans submitted through planning applications including monitoring during construction to ensure compliance. Should Council approve a private property tree by-law in the future (report expected Q1 2018), this staff would contribute towards the staff needs to enforce the private property tree by-law.

Other required resources include: vehicle, uniform, work space, hardware, software, and training.

Amendments to the Parks By-law required

As a corresponding housekeeping item, if the proposed By-law to regulate trees on and affecting City property is approved, it is recommended that the Parks By-law be amended as of the effective date of the proposed By-law to remove references to City trees. References to other plants and shrubs would be retained to ensure there is continued protection of this vegetation.

Process to approve the By-law

If Council wishes to pursue approval of the draft By-law, the following process is required:

1. Statutory public meeting (notice to be issued in accordance with Notice By-law)
2. Council motion to approve the By-law, amendment to the Parks By-law, and addition to the Rates and Fees By-law (outlined in the staff recommendation of this report)
3. Council refers By-law to Budget Standing Committee for consideration of operating impact (referral is identified in the staff recommendation of this report)

Next steps following approval

If Council approves the draft By-law, it would come into force on June 1, 2018. This lag time is required for staff to prepare and implement the resources and materials required to support the By-law, including:

- Tree protection policies that provide specifications and standards for construction near trees
- Permit forms, permits and related systems
- Review and report to Council on set fines to support the enforcement of the by-law
- Recruit and train staff
- Public education and communication

Until the by-law comes into effect, public trees would continue to be protected under the Parks By-law.

Financial Implications

If Council approves the draft By-law, there will be an estimated annual operating impact of one full time staff (plus equipment) to review permits and enforce the by-law. Without additional staff, the City does not have the resources to enforce the by-law.

Relationship to Strategic Plan

This report is related to the environmental sustainability goal to lead in the protection of our environment for future generations and the action item to continue to achieve the tree canopy targets identified in the Urban Forestry Management Plan.

Conclusion

In response to Council's direction, this report provides a By-law to regulate trees on or affecting City property. The By-law aligns with those of comparator municipalities and takes full advantage of opportunities through the Municipal Act to protect trees on public property. There are currently no staff resources available to enforce the proposed By-law and as such, it is recommended that the Budget Standing Committee review the requested increase in staff complement.

Prepared by:

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Submitted by:

John Bellehumeur, Manager of Parks, Cemeteries, Forestry and Horticulture

Approved by:

Phil Cristi, Director of Parks, Recreation and Culture Services (Acting)

CITY OF ST. CATHARINES**BY-LAW NO. 2017-###****A By-law to Regulate Trees on or Affecting City Property**

WHEREAS The Corporation of the City of St. Catharines considers trees to be a valuable resource that contribute to the environmental, economic and social well-being of the City;

AND WHEREAS The Corporation of the City of St. Catharines deems it desirable to regulate the planting, protection, maintenance and removal of City Trees, trees jointly owned by the City and Private Property Owners, and trees growing on privately owned lands adjacent to City Property;

AND WHEREAS Sections 8, 9 and 11 of the Municipal Act, 2001 authorize a municipality to pass by-laws necessary or desirable for municipal purposes, and in particular, Paragraphs 4, 5, 6 and 8 of Subsection 11(2) authorize by-laws respecting public assets of the municipality, the economic, social and environmental well-being of the municipality, the safety and well-being of persons and the protection of persons and property;

AND WHEREAS Section 135 of the Municipal Act, 2001 authorizes a local municipality to prohibit or regulate the Destruction or Injuring of Trees;

AND WHEREAS Section 429 of the Municipal Act, 2001 authorizes a municipality to establish a system of fines for offences under a By-law of the municipality passed under the Municipal Act, 2001;

AND WHEREAS Section 62(1) of the Municipal Act, 2001 authorizes a municipality, at any reasonable time, to 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 Section 62(2) of the Municipal Act, 2001 authorizes an employee or agent of a municipality to remove a decayed, damaged or dangerous tree or branch of a tree immediately and 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 Section 391(1) the Municipal Act, 2001 authorizes a municipality, amongst other things, to delegate its authority, to impose fees or charges on persons for services or activities provided or done by or on behalf of it, to provide for inspections and inspection Orders, and to make Orders to discontinue activity or to do work;

NOW THEREFORE the Council of the Corporation of the City of St. Catharines enacts the following:

1. DEFINITIONS

1.1. For the purposes of this by-law the following definitions shall apply:

APPLICANT means the Person who submits an application to the City under this By-law;

BUSINESS DAY means 8:30 a.m. to 4:30 p.m. on any day on which the City of St. Catharines' administration buildings are open for business;

CITY means the geographical area of the City of St. Catharines or the municipal corporation as the context requires;

CITY PROPERTY means any land that is under the jurisdiction and control of the City, including Highways, parks, watercourses, and natural areas;

CITY TREE means any Tree whose Trunk is wholly located on City Property, and includes a Tree that was planted on City Property without permission of the City;

COUNCIL means the Council of The Corporation of the City of St. Catharines;

CROWN means any portion of a Tree containing the majority of the branches and leaves located from the top of the Tree to the lowest permanent Limbs.

DESTROY means the removal of a Tree or Injury resulting in the death or ruin of a Tree by cutting, burning, uprooting, chemical application or other means including irreversible Injury that may result from neglect, accident or design and the term **DESTRUCTION** has a corresponding meaning.

DIRECTOR means the Director of Parks, Recreation and Culture Services for The Corporation of the City of St. Catharines or his or her designate;

DRIP LINE means the outer boundary of an area on the surface of the ground that corresponds to the outer edge of the Crown of a Tree;

GOOD ARBORICULTURAL PRACTICES means Tree planting, pruning and maintenance practices endorsed by the International Society of Arboriculture;

HIGHWAY includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct, or trestle, any part of which is intended for, or used by, the public for the passage of vehicles and people and includes the area between the lateral property lines thereof, and for greater certainty shall include sidewalks, boulevards and the entire right of way;

INJURE means any action which causes, or is likely to cause, physical, biological or chemical damage to a Tree and includes, but is not limited to, intentional or unintentional, harm, damage or impairment caused by physical, biological or chemical damage and the term **INJURY** has a corresponding meaning. **INJURY** includes, but is not limited to:

- (i) Pruning, trimming, removing, severing or altering a Tree;
- (ii) Relocating or removing a Tree;
- (iii) Placing any item on a Tree or within the Drip Line of a Tree which may impede the free passage of water, air, or nutrients to the roots of a Tree;
- (iv) Affixing bills, notes, signs, lighting or other items to a Tree;
- (v) Defacing, marking, cutting, breaking, or peeling a Tree;
- (vi) Performing any work, including excavating, grading, constructing, developing, ditching, tunnelling, trenching, disturbing soil, compacting soil, altering surface treatments within the Drip Line or Tree Protection Zone of a Tree that is not carried out in accordance with any applicable City policies which are in effect from time to time;
- (vii) Performing any work on a Tree that is not carried out in accordance with applicable City policies which are in effect from time to time;
- (viii) Fastening any object to a Tree or to the stakes or posts that protect a Tree;
- (ix) Allowing a toxic substance to come into contact with a Tree;
- (x) Setting a fire that affects a Tree;
- (xi) Altering or removing anything protecting a Tree including stakes, poles, trunk wraps or watering bags;
- (xii) Climbing a Tree.

LIMB means a large branch of a Tree and the term **LIMBS** has a corresponding meaning;

OFFICER includes:

- (i) The Director;
- (ii) Any Person appointed by Council or by the Director for the enforcement or administration of this By-law;
- (iii) Any Person employed by the City whose duties are to enforce or administer this By-law; and
- (iv) A Provincial Offences Officer as defined by the *Provincial Offences Act*, R.S.O. 1990, c. P. 33.

ORDER means any Order to discontinue an activity that contravenes this By-law as contemplated by Section 8.1 herein, or any Order to do work to correct a contravention of this By-law issued pursuant to Section 8.3 herein;

OWNER means a Person having any right title, interest, or equity in land including right, title, interest, or equity to the Trees standing on the land;

PERMIT means a Permit issued pursuant to this By-law;

PERSON includes an individual, sole proprietorship, firm, partnership, limited partnership, trust, corporation, association, organization or body corporate, or an individual in his or her capacity as a trustee, executor, public administrator or other legal representative;

POLICY means a Policy respecting Trees which the Director is authorized to issue under this By-law or that is otherwise issued by the City;

PRIVATE PROPERTY means land other than City Property and the term **PRIVATE PROPERTIES** has a corresponding meaning;

PRIVATE TREE means any Tree whose Trunk is wholly located on Private Property;

SECURITY means a payment to the City or an irrevocable letter of credit from a financial institution to specify and lodge a requisite sum of money that the City may draw upon in full to satisfy any Permit condition(s) or other requirements as set out in this By-law where an Applicant fails to do so;

SHARED TREE means a Tree whose Trunk is partly located on City Property and partly located on one or more Private Properties;

TREE means a woody perennial plant or part thereof which has reached, or is expected to reach based on the Manual of Woody Landscape Plants: Their Identification, Ornamental Characteristics, Culture, Propagation and Uses (Michael A. Dirr), a height of at least 3 metres at physiological maturity, and includes the whole and/or parts of the roots, branches, Trunk and Crown;

TREE PROTECTION ZONE means a restricted area around the base of a Tree which serves to protect a Tree and its root zone as established by the Director or another authorized City employee or agent in accordance any applicable City by-law or Policy;

TREE VALUE means the monetary value of a Tree as determined through the most current methods and procedures established by the International Society of Arboriculture, the Council of Tree and Landscape Appraisers or any other specifications adopted by the City;

TRUNK means that part of the Tree from its point of growth away from its roots up to where it branches out to permanent Limbs and foliage. For greater clarity, where it is obvious that a Limb which originally marked the upper limit of the Trunk has been removed, that original Limb shall mark the upper limit of the Trunk, notwithstanding the removal of such Limb.

2. APPLICATION

- 2.1.** This by-law shall apply to all land within the limits of the City of St. Catharines.
- 2.2.** The provisions of this By-law apply in addition to the provisions contained in any other applicable By-laws of the City or applicable regional, provincial or federal statutes or regulations.

3. POWERS

- 3.1.** With respect to City Trees, the Director is authorized to, without notice or compensation to any Person:
 - 3.1.1.** Plant Trees on City Property;
 - 3.1.2.** Select the location, species, size and condition of Trees to be planted on City Property;
 - 3.1.3.** Maintain, inspect, treat, transplant, or remove any City Tree;
 - 3.1.4.** Remove any object or thing that adversely affects a City Tree;
 - 3.1.5.** Refuse a request made by any Person to plant, remove, maintain, inspect, treat or transplant a City Tree;
 - 3.1.6.** Delegate the above powers to an employee or agent of the City.

4. PROHIBITIONS

4.1. PROHIBITIONS FOR CITY TREES

- 4.1.1.** No Person shall Injure or Destroy a City Tree, or permit the Injury or Destruction of a City Tree.
- 4.1.2.** No Person shall plant a Tree on City Property, or permit the planting of a Tree on City Property.
- 4.1.3.** Despite Section 4.1.1 and Section 4.1.2 of this By-law, a Person may Injure or Destroy a City Tree, or plant a Tree on City Property, if:
 - 4.1.3.1.** A Permit is first obtained from the Director in accordance with this By-law;
 - 4.1.3.2.** The work is done in accordance with the conditions of the Permit; and
 - 4.1.3.3.** The work is done in accordance with all applicable by-laws, statutes, regulations, standards and policies.

4.2. PROHIBITIONS FOR SHARED TREES

- 4.2.1. No Person shall Injure or Destroy a Shared Tree, or permit the Injury or Destruction of a Shared Tree.
- 4.2.2. Despite Section 4.2.1 of this By-law, a Person Tree may Injure or Destroy a Shared Tree, if:
 - 4.2.2.1. Prior written permission is obtained from all Owners of the Shared Tree;
 - 4.2.2.2. A Permit is obtained from the Director in accordance with this By-law before the Injury or Destruction takes place;
 - 4.2.2.3. The work is done in accordance with the conditions of the Permit; and
 - 4.2.2.4. The work is done in accordance with all applicable by-laws, statutes, regulations, standards and policies.
- 4.2.3. Despite Section 4.2.1 the City may inspect or conduct tests on Shared Trees and remove decayed, damaged or dangerous Shared Trees, or part thereof, as provided for in Section 7.2 and Section 7.3 of this By-law.

4.3. PROHIBITIONS FOR PRIVATE TREES

- 4.3.1. No Owner of a Private Tree shall:
 - 4.3.1.1. Allow a Private Tree to obstruct the use of any City Property;
 - 4.3.1.2. Allow a Private Tree to pose a danger to City Property or to any Person accessing City Property; or
 - 4.3.1.3. Maintain or fail to maintain a Private Tree in such a condition so as to create an obstruction as described in Section 4.3.1.1 or create a danger as described in Section 4.3.1.2 of this By-law.

4.4. GENERAL PROHIBITIONS

- 4.4.1. Despite Section 4.1.3 and Section 4.2.2 of this By-law a Permit is not required when the work has been approved as part of an approval issued by the City in accordance with the *Planning Act*.
- 4.4.2. Despite Section 4.1.3 and Section 4.2.2 of this By-law a Permit is not required when, in the opinion of the Director, a Building Permit has been issued that adequately addresses any issues relating to a Tree which would otherwise be resolved through a Permit.

- 4.4.3.** No Person shall contravene the terms or conditions of a Permit issued pursuant to this By-law.
- 4.4.4.** No Person shall fail to comply with an Order issued pursuant to Section 8 of this By-law.
- 4.4.5.** No Person shall hinder an Officer in the lawful carrying out of his or her duties under this By-law.

5. PERMIT CONDITIONS

- 5.1.** The Director may impose conditions to a Permit as contemplated by Section 4.1.3 and Section 4.2.2 of this By-law, including but not limited to the following:
 - 5.1.1.** Any condition consistent with Good Arboricultural Practices;
 - 5.1.2.** The manner and timing of the Injury and/or Destruction;
 - 5.1.3.** A specified period for which the Permit is valid, after which the Permit will lapse;
 - 5.1.4.** That the work be performed by or under the supervision of the City, its agent, or a qualified contractor, at the cost of the Applicant. Any contractor hired by the Applicant is required to provide confirmation of Workplace Safety and Insurance Board and commercial general liability insurance to the satisfaction of the City;
 - 5.1.5.** The measures required to protect any Trees that may be impacted by the work;
 - 5.1.6.** The provision of any Security necessary to ensure compliance with any conditions imposed;
 - 5.1.7.** Where Injury to the Tree is approved, the provision of a Security equal to the Tree Value to be used for replacement Tree planting should the Tree be Destroyed; and
 - 5.1.8.** In the case of Destruction, payment to the City for replacement Tree planting which shall be calculated based on the Tree Value.

6. ADMINISTRATION

- 6.1.** The Director is authorized to administer and enforce this By-law including, but not limited to:

6.1.1. Arranging for the:

6.1.1.1. Assistance or work of City staff or City agents;

6.1.1.2. Issuance of Permits and the imposition of conditions on Permits, as authorized under this By-law;

6.1.1.3. Making of Orders, as authorized under this By-law;

6.1.2. Issuing standards and policies with respect to Trees on or affecting City Property which may include but are not limited to criteria to guide the Director in exercising his or her discretion concerning such matters as issuing a Permit and conditions of a Permit under Section 4.1.3 and 4.2.2 of this By-law; and

6.1.3. Prescribing the format and content of any forms, Permits or other documents required under this By-law.

6.2. Officers authorized to enforce this By-law shall have the authority to:

6.2.1. Carry out inspections;

6.2.2. Obtain court Orders or warrants, as may be required;

6.2.3. Commence actions on behalf of the City to recover costs or restrain contravention of this By-law, as deemed necessary;

6.2.4. Make Orders or other requirements, as authorized under this By-law; and

6.2.5. Give immediate effect to any Orders or other requirements made under this By-law.

7. ENTRY AND INSPECTIONS

7.1. An Officer may enter on land at any reasonable time, and in accordance with the conditions set out in Sections 435 and 437 of the Municipal Act, 2001, for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

7.1.1. This By-law;

7.1.2. An Order made pursuant this By-law;

7.1.3. A condition of a Permit granted pursuant to this By-law; or

- 7.1.4.** An Order of the Court prohibiting the continuation or repetition of an offence under this By-law pursuant to Section 431 of the Municipal Act, 2001.
- 7.2.** An Officer may at any reasonable time, enter upon land lying along any Highway, to:
 - 7.2.1.** Inspect or conduct tests on Private Trees and Shared Trees;
 - 7.2.2.** Remove decayed, damaged or dangerous Private Trees and Shared Trees, or part thereof if, in the opinion of the Officer, the Trees or branches pose a danger to health and safety of any Person using the Highway.
- 7.3.** An Officer may arrange for the removal of a decayed, damaged or dangerous Tree or branch of a Tree immediately and without notice to the Owner of the land upon which the Tree is located if, in the opinion of the Director, the Tree or branch poses an immediate danger to the health or safety of any Person using the Highway.
- 7.4.** An Officer may, for the purposes of an inspection under Section 7.1 or Section 7.2 of this By-law and in accordance with the conditions set out in Section 436 of the Municipal Act, 2001:
 - 7.4.1.** Require the production for inspection of documents or things relevant to the inspection;
 - 7.4.2.** Inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - 7.4.3.** Require information, in writing or otherwise, from any Person concerning a matter related to the inspection;
 - 7.4.4.** Alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples, or photographs necessary for the purposes of the inspection.
- 7.5.** An Officer may undertake an inspection pursuant to an Order issued by a Provincial Judge or Justice of the Peace under Section 438 of the Municipal Act, 2001 in accordance with the conditions set out in that Section.

8. ORDERS

- 8.1.** If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an Order requiring the Person who contravened the By-law, or who caused or permitted the contravention or the Owner or occupier of the property on which the contravention occurred, to discontinue the contravening activity.

8.2. An Order under Section 8.1 shall set out:

- 8.2.1.** Reasonable particulars of the contravention adequate to identify the contravention and the location of the property on which the contravention occurred; and,
- 8.2.2.** The date or dates by which there must be compliance with the Order, which may be of immediate effect should the Officer determine that the circumstances warrant.

8.3. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an Order requiring the Person who contravened the By-law or who caused or permitted the contravention or the Owner or occupier of the property on which the contravention occurred, to correct the contravention.

8.4. An Order under Section 8.3 shall set out:

- 8.4.1.** Reasonable particulars of the contravention adequate to identify the contravention and the location of property on which the contravention occurred;
- 8.4.2.** The work to be completed which may include but is not limited to, requiring any one or more of the following:
 - 8.4.2.1.** Removal of any item which may impede the free passage of water, air, or nutrients to the roots of a Tree;
 - 8.4.2.2.** Removal of any object fastened to a City Tree or to the stakes or posts that protect a Tree;
 - 8.4.2.3.** That any structure protecting a Tree that has been altered or removed be restored to its original condition;
 - 8.4.2.4.** That any soil level within the Drip Line of a Tree that has been altered be restored to its original condition;
 - 8.4.2.5.** That any excavation of a ditch, tunnel or trench within the Drip Line of a Tree be filled;
 - 8.4.2.6.** The removal of any walkway, driveway, or hard surface laid within the Drip Line of a Tree;
 - 8.4.2.7.** Payment to the City for the cost associated with the rehabilitation or replacement of any Tree which has been Injured or Destroyed as determined by the Director in accordance with any applicable Policy;

- 8.4.3.** The date or dates by which the must be complied with; and,
- 8.4.4.** Any other requirements, which may include but are not limited to the provision of Securities and insurance, at the discretion of the Officer acting reasonably.
- 8.4.5.** Notice that if the Order is not complied with, then the work may be completed by the City at the expense of the Person ordered to do the work.
- 8.5.** Service of an Order made under Section 8.1 or Section 8.3 may be given personally or by registered mail to the last known address of:
 - 8.5.1.** The Person ordered to do the work; and
 - 8.5.2.** Such other Persons affected by the Order as an Officer determines.
 - 8.5.3.** Service by registered mail shall be deemed to have taken place five (5) Business Days after the date of mailing.
- 8.6.** In addition to service in accordance with Section 8.5, an Order made under Section 8.1 or Section 8.3 may be served by an Officer by placing a placard containing the Order in a conspicuous place on the property where the contravention occurred.

9. REMEDIAL ACTION

- 9.1.** Where a Person does not comply with an Order made pursuant to this By-law, an Officer, with such assistance by others as may be required, may carry out such direction or requirement at the expense of the Person directed or required to do the work by the Order.
- 9.2.** The City may recover the costs of doing any remedial work from the Person directed or required to do the work by action or by adding the costs to the tax roll of that Person and collecting them in the same manner as property taxes, pursuant to Section 446 of the Municipal Act.

10. OFFENCES AND PENALTIES

- 10.1.** Every Person who contravenes any provision of this By-law, and every director or officer of a Corporation who knowingly concurs in the contravention of this By-law by the Corporation is, upon conviction, guilty of an offence and is liable:
 - 10.1.1.** On a first offence, to a fine of not more \$10,000 or a fine of \$1,000 per Tree, whichever is greater; and,

- 10.1.2.** On any subsequent offence, to a fine of not more than \$25,000 or a fine of \$2,500 per Tree, whichever is greater.
- 10.2.** Despite Section 10.1, if a corporation is convicted of an offence,
 - 10.2.1.** On a first offence the maximum penalty imposed on the corporation is \$50,000 or \$5,000 per Tree; and,
 - 10.2.2.** On subsequent offence the maximum penalty imposed on the corporation is \$100,000 or \$10,000 per Tree.
- 10.3.** Every Person who is convicted of an offence under this By-law may be liable, in addition to the fines established under Sections 10.1 and 10.2, to a special fine, which may exceed \$100,000, designed to eliminate or reduce any economic advantage or gain from contravening this By-law or failing to comply with an Order made under this By-law.
- 10.4.** Where a Person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an Order:
 - 10.4.1.** Prohibiting the continuation or repetition of the offence by the Person convicted;
 - 10.4.2.** Requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 10.5.** The Injury or Destruction of each Tree is one offence in a series of multiple offences.
- 10.6.** Costs imposed by the City for the rehabilitation or replacement of a Tree pursuant to an Order issued under this By-law are in addition to and not in substitution for the payment of any penalty imposed by a court of law for the commission of an offence under this By-law of any other applicable legislation.
- 11. CONFLICT**
 - 11.1.** In the event of a conflict between this By-law and any other applicable By-law, statute or regulations:
 - 11.1.1.** Where one or more conflicting provisions provides for public health or safety, then the provision which is most protective of public health or safety prevails; or

- 11.1.2. Where none of the conflicting provisions provides for public health or safety, then the provision which is most protective of Trees prevails.

12. EXEMPTIONS

12.1. This by-law does not apply to:

- 12.1.1. Activities or matters undertaken by a municipality or a local board of a municipality;
- 12.1.2. Activities or matters undertaken under a licence issued under the *Crown Forest Sustainability Act, 1994*;
- 12.1.3. The Injuring or Destruction of Trees by a Person licensed under the *Surveyors Act* to engage in the practice of cadastral surveying or his or her agent, while making a survey;
- 12.1.4. The Injuring or Destruction of Trees imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under section 41, 51 or 53, respectively, of the *Planning Act* or as a requirement of a site plan agreement or subdivision agreement entered into under those sections;
- 12.1.5. The Injuring or Destruction of Trees imposed after December 31, 2002 as a condition to a development permit authorized by regulation made under section 70.2 of the *Planning Act* or as a requirement of an agreement entered into under the regulation;
- 12.1.6. The Injuring or Destruction of Trees by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act, 1998*, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- 12.1.7. The Injuring or Destruction of Trees undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*; or
- 12.1.8. The Injuring or Destruction of Trees undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land,
 - 12.1.8.1. That has not been designated under the *Aggregate Resources Act* or a predecessor of that Act, and
 - 12.1.8.2. On which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*. 2001, c. 25, s. 135 (12); 2002, c. 17, Sched. A, s. 27 (3, 4).

12.1.9. The pruning of City Trees by any public utility as necessary to comply with safety regulations and to maintain safe operation of its facilities provided that the pruning is carried out in accordance with Good Arboricultural Practices.

12.1.10. Where removal or pruning of a City Tree is determined to be necessary by emergency personnel responding to an emergency situation. Emergency personnel shall notify the Director of the emergency and work completed on the City Tree as soon as possible.

13. SEVERABILITY

13.1. Each provision of this By-law is independent of all other provisions, and if any provision is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this by-law remain valid and enforceable.

14. REFERENCES TO LEGISLATION

14.1. All references to Acts of the Legislature, Regulations and By-laws include applicable amendments, including an implied reference to successor Acts, Regulations and By-laws.

15. TRANSITIONAL RULES

15.1. After the date of the passing of this By-law, By-law No. 70-57, as amended, shall apply only to those Trees in which an Order or permissions have been issued prior to the date of passing of this by-law, and then only to such Trees until such time as the work required by such Order or permission has been completed or any enforcement proceedings with respect to such Order or permissions carried out by the municipality shall have been concluded.

16. DATE OF EFFECT

16.1. This By-law comes into force and takes effect on June 1, 2018.

Permit fees of comparator municipalities

Municipality	Permit Fees
Barrie	No fee
Guelph	\$122 per permit
Kingston (currently under review)	\$91.90 per permit (1-5 trees) \$183.75 per permit (6-15 trees) \$367.25 per permit (15+ trees)
Kitchener	\$120 per permit
Thunder Bay	No fee
Windsor	No fee
Cambridge	No fee
Niagara Falls	No fee
Oshawa	No fee
Waterloo	No fee

Permit fees of other Ontario municipalities

Municipality	Permit Fee
Hamilton	\$75 per tree (max. \$225)
Mississauga	\$393 for 3 trees \$89 for each additional tree
Oakville	\$50 for first tree in a 12-month period \$325 for each additional tree
Ottawa	\$100 per tree
Richmond Hill	\$150 per tree \$50 for ea. additional tree (max \$400)
Toronto	Construction related: \$334.06 per tree \$699.31 per tree (if boundary tree) Non-construction related: \$111.67 per tree \$233.10 per tree (if boundary tree)

By-laws to be considered Monday, October 30, 2017

- (a) A By-law to amend By-law No. 89-2000 entitled “A By-law regulating traffic and parking on City Roads.” (One reading - with respect to parking prohibitions on Hill Park Lane. Delegation By-law 2004-277, as amended.)
- (b) A By-law to authorize Agreements with respect to Computer Aided Fire Dispatch with area municipalities. (One reading - with respect to Fire Dispatch agreements with 11 area municipalities for the years 2018 and 2022. Delegation By-law No. 2004-277, as amended.)
- (c) A By-law to authorize a contract with Kerry T. Howe Engineering Ltd. (One reading - with respect to Bessborough Drive Watermain and Sanitary Sewer Improvements, under Project No. P17-007. Delegation By-law No. 2004-277, as amended.)
- (d) A By-law to authorize a contract with CCS Canada Div UTC Canada Corp. (One reading - with respect to City Hall Chiller Replacement, under Project No. P16-140. Delegation By-law No. 2004-277, as amended.)
- (e) A By-law to authorize a contract with Quartek Group Inc. (One reading - with respect to Burness Drive Watermain and Sanitary Sewer Improvements, under Project No. P17-008. Delegation By-law No. 2004-277, as amended.)
- (f) A By-law to authorize a Renewal of the Support Service Agreement with Bell Canada. (One reading - with respect to Bell AQSPPlusP system support for Fire and Emergency Management Services. Delegation By-law No. 2004-277, as amended.)
- (g) A By-law to amend By-law No. 2002-81 entitled “A By-law to appoint certain employees of the Canadian Corps of Commissionaires (Hamilton) as municipal law enforcement officers.” (One reading - with respect to appointment. Delegation By-law No. 2004-277, as amended.)
- (h) A By-law to authorize the release of an easement over certain lands on Registered Plan 30R-14122, municipally known as 527A Glendale Avenue. (One reading – with respect to Oaktree Estates Subdivision. Delegation By-law No. 2004-277, as amended.)
- (i) A By-law to assume and declare certain lands to be highways and to be known as Oliver Lane and Kenmar Court. (One reading – with respect to Oaktree Estates Subdivision. Delegation By-law No. 2004-277, as amended.)
- (j) A By-law to assume and declare certain lands to be a highway and to be known as Parkside Drive and Moes Crescent. (One reading – with respect to Broadway Gardens Subdivision. Delegation By-law No. 2004-277, as amended.)

- (k) A By-law to authorize the release of agreements over certain lands municipally known as 4 Berkley Drive. (One reading – with respect to 4 Berkley Drive. Delegation By-law No. 2004-277, as amended.)
- (l) A By-law to impose certain rates and fees charged by The Corporation of the City of St. Catharines with respect to certain administrative matters. (One reading - with respect to 2018 Schedule of Rates and Fees. Council, October 16, 2017, Item No. 5.1.)
- (m) A By-law to amend By-law No. 2004-277 entitled “A By-law to authorize delegation of certain matters to staff.” (One reading - with respect to approval of Designated Property Grant Program Applications. General Committee, October 16, 2017, Item No. 3.4.)
- (n) A By-law to close permanently the lane between Lakeside Drive and Runcorn Street, as shown on Township Plan 112, being PIN 46301-0066 (LT), in the City of St. Catharines, Regional Municipality of Niagara. (One reading – with respect to the lane between Lakeside Drive and Runcorn Street, adjacent to 102 Broadway Street. To be considered by Council, October 30, 2017.)
- (o) A By-law to amend By-law No. 2013-283 entitled “A By-law to regulate the use of land, the bulk, height, location, erection and use of buildings and structures, the provision of parking spaces and other associated matters in the City of St. Catharines.” (One reading – with respect to 200 Bunting Road. To be considered by General Committee, October 30, 2017.)
- (p) A By-law to authorize an agreement with Hemson Consulting Ltd. (One reading - with respect to the Employment Land Needs Assessment study on a City-wide basis. To be considered by General Committee, October 30, 2017.)
- (q) A By-law to confirm the proceedings of council at its meeting held on the 30th day of October, 2017 and at its special meeting held on the 18th day of October, 2017. (One reading - with respect to confirming the proceedings of the meeting held on October 30, 2017 and of the Special Meeting of Council held on October 18, 2017.)