

August 28, 2008

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City of Ottawa

Subject: UNA 97 and the May 2008 tree cutting

Thank you for your response of August 21, 2008 regarding the OFGAC July 18th email about the UNA 97 and recent tree clear-cutting.

It was good to see that Nancy Schepers, Deputy City Manager of Planning, wrote to the Chief Operating Officer of Richcraft Homes on July 21st, 2008, outlining the City's concern over the unapproved tree cutting which occurred on the UNA 97. Ms. Schepper's letter also indicates that this kind of action shows the need for an urban tree cutting regulation and that the department will be working towards putting measures in place to ensure that similar actions do not repeat themselves.

It is the opinion of the OFGAC that the City needs to develop the regulatory framework for a tree cutting bylaw without delay. Strong measures must be put in place as quickly as possible because, as this reprehensible action demonstrates, action is clearly urgently required. The bylaw should allow for fines to be imposed when trees are cut without an approved plan as in the case of the UNA 97.

In terms of imposing penalties to the property owner, although the City currently does not have a regulatory framework in place to bring penalties forward for incidents of tree cutting on private lands, there is an opportunity to take action in this case and demonstrate that the City will not tolerate such behaviour in the future. The fact that this particular tree clear-cutting took place during the bird nesting season is a clear violation under the federal Migratory Birds Convention Act and the developer could be charged with an offence under this act.

Taken directly from the Migratory Birds Convention Act (MBC Act) on the Government of Canada website, the Regulations and Penalties are shown below. Note that it provides for hefty fines. Recently, in New Brunswick the Irving Company was charged under the MBCA with destroying a Great Blue Heron colony. They fought the charge but lost in New Brunswick Superior Court. So, the MBCA has teeth and the City should be able to provide the data to the Canadian Wildlife Service to show when the trees were cut down. The environmental studies of the site probably have details of the presence of nests (which were ultimately destroyed as a result of the tree clear-cutting), or a good biologist could testify that such a high quality interior forest would certainly contain nests of birds listed under the MBC Act. OFGAC strongly encourages the City to pursue this avenue of redress so that an example can be made of this developer's action.

Another important step and a necessary tool is a Tree Preservation Plan to support the development application process. However, in order to ensure successful urban tree

conservation, the Development Approvals Divisions and the Environmental Sustainability City Staff need to be involved at earlier stages of the development application and approvals process. A regulatory framework for tree conservation should be initiated when the property's existing vegetation and proposed land use are being discussed. This includes Zoning Amendment applications, as well as, during the development of a community design plan process. By doing so, the City would demonstrate that it is serious about preserving greenspace and supports the Design with Nature principles outlined in the Official Plan.

We look forward to your comments on these proposals and further discussion of the new urban tree by-law.

As always, the OFGAC appreciate the Environmental Sustainability Department's continuing efforts and work towards the preservation of the City's urban tree canopy.

Sincerely,

Nicole Parent, Chair
The Ottawa Forests and Greenspace Advisory Committee

REGULATIONS (Section 12 of the MBCA)

Regulations

12. (1) The Governor in Council may make any regulations that the Governor in Council considers necessary to carry out the purposes and provisions of this Act and the Convention, including regulations

(a) providing for the periods during which, and the areas in which,

(i) migratory birds may be killed, captured or taken,

(ii) nests may be damaged, destroyed, removed or disturbed, or

(iii) migratory birds or nests may be bought, sold, exchanged, given or made the subject of a commercial transaction;

(b) for limiting the number of migratory birds that a person may kill, capture or take in any period when doing so is permitted by the regulations, and providing for the manner in which those birds may then be killed, captured or taken and the equipment that may be used;

(c) respecting the possession of migratory birds and nests that have been killed, captured, taken or removed in accordance with the regulations;

(d) for granting permits to kill, capture, take, buy, sell, exchange, give or possess migratory birds, or to make migratory birds the subject of a commercial transaction;

(e) for granting permits to remove or eliminate migratory birds or nests where it is necessary to do so to avoid injury to agricultural interests or in any other circumstances set out in the regulations;

(f) respecting the issuance, renewal, revocation and suspension of permits;

(g) for regulating the shipment or transportation of migratory birds from one province to another province or country and providing for the imposition of conditions governing international traffic in migratory birds;

(h) for prohibiting the killing, capturing, injuring, taking or disturbing of migratory birds or the damaging, destroying, removing or disturbing of nests;

(h.1) respecting the conditions and circumstances under which migratory birds may be killed, captured, injured, taken or disturbed, or nests may be damaged, destroyed, removed or disturbed;

(i) prescribing protection areas for migratory birds and nests, and for the control and management of those areas;

(i.1) respecting documents, records and data that any person or vessel or class of persons or vessels is required to keep or provide under this Act;

(i.2) excluding from the application of any provision of this Act or the regulations a military vessel, a naval auxiliary vessel or a vessel that is owned or operated by a state while it is being used only on government non-commercial service;

(j) for charging fees for permits, leases, stamps or other authorizing documents required to carry on any activity under this Act or the regulations, and for determining the amount of the fees and the terms and conditions under which they are to be paid;

(j.1) defining, for the purposes of this Act, any word or expression that is used in this Act and is not defined; and

(k) authorizing the Minister to vary or suspend the application of any regulation made under this Act if the Minister considers it necessary to do so for the conservation of migratory birds.

Penalties

(1.1) Every person or vessel that commits an offence is liable

(a) on conviction on indictment, to a fine of not more than \$1,000,000 or to imprisonment for a term of not more than three years, or to both; and

(b) on summary conviction, to a fine of not more than \$300,000 or to imprisonment for a term of not more than six months, or to both.