

Submission to General Purposes Committee - March 20, 2006

My name is Joe Oeser, I live at 12004 No. 2 Road and I am not a lawyer.

Tonight I could spend hours talking to you about the tree protection bylaw. I intend to limit myself to the process that got us to this point and where it has gone wrong.

In Canada we are accustomed to politicians who tell us one thing at election time and then do what is right after the election. Setting personal agendas aside, I do not believe that council wanted to have tree owners ready to take up arms or chain saws to defend their property rights. Unfortunately some have already picked up the chain saw. Those of us who really love trees in all their shapes and sizes are hoping we will not need more than our pens and voices.

As a stop work order I can accept the current bylaw as an interim measure if there really was a wholesale assault on our urban forest. I don't believe this was the case - Richmond still has trees today. This is where things started to fall apart.

What makes the current bylaw a good stop work order is exactly what makes it a bad bylaw. What we now have is the equivalent of a sledgehammer that we are trying to use to kill a fly sitting on a window. There is no doubt a sledgehammer has the ability to kill the fly. The only problem is that it must be used with such a light touch that it is more than likely that the fly will disappear before we are able to hit it. Just think of the fly as developers. If we swing the sledge hammer really fast so that the fly can't escape we will break our window. Tree loving home owners are the window.

During the open house I talked to John Irving the city's manager of building approvals who is in charge of this bylaw. I said to him that under the current bylaw I could make a pretty good case to stop all hedge pruning in Richmond. There are references in the bylaw that state I cannot remove the leader from a tree or alter its natural shape. His response was: "we would never enforce that". I am sure he was sincere in his belief. But, could our existing tree bylaw be used to pay for the inevitable cost overruns of the Richmond Oval and the level of enforcement depend on the size of that overrun? Yes. At \$10,000.00 per offense per tree per day one can only imagine the size of overrun that could be covered on the backs of homeowners.

In the bylaw the term substantially destroy is not defined. Could this include aesthetic appearance - yes. Is the only acceptable tree one that has never been shaped? The Japanese gardeners would surely disagree. This is the problem with the sledge hammer approach.

This bylaw sets many dangerous precedents not only in the property rights field but also in other areas. The definition of a watercourse specified in this bylaw would include every ditch in Richmond. Is council really sure we want to do this? There are implications here that may affect the city's ability to do maintenance on ditches.

On Feb. 22 a "Key Stakeholders Workshop" was held. Who were these key stakeholders? They were representatives from the following groups:

Agricultural Advisory Committee

Advisory Committee on the Environment

Urban Development Institute

Greater Vancouver Home Builders Association

There was no group present representing the interest of homeowners. Are homeowners not considered key stakeholders in this process? They are after all the largest group of private property owners in the city. This was the second major flaw.

The third failure of the process came at the open house on March first. Much of the information presented on various poster boards used words and statements which are not used in the bylaw. Let me give you just a few examples. On the activity summary board the last statement said 5 cases of tree cutting were investigated and deemed "legal cuttings under ALR farming activity exemption". There is no such thing in the bylaw. There is senior government legislation, in this case provincial, that protects some farmer rights. But when people read this they assume there is an exemption in the bylaw for the ALR. Misleading to say the least.

On the Frequently Asked Questions board the first one was the most interesting.

1. Is the bylaw going to be withdrawn?

The current bylaw has been adopted by Council. The City will examine how the bylaw can be improved and will develop suggested refinements that can be considered by Council. City staff will be recommending these changes, but not a return to having no bylaw.

While technically totally correct many people unfamiliar with government processes read this as: it's a done deal; there will be a bylaw, all we can do is tinker with it a bit to make it somewhat more acceptable. This totally skews any comments they make on a questionnaire. In reality it's up to you, the mayor and council, if we have a bylaw. City staff did not volunteer this information unless directly asked.

Question number 8 was also interesting.

8. Does the bylaw apply on public lands and in City parks.

Concerns have been raised regarding applicability of bylaw to trees in parks and City land and that the City should be subject to own rules. The current bylaw applies to private property only. Management of trees on City lands is accomplished by the Parks Department through the "Urban Forest Management Strategy", which meets the same objectives as the tree bylaw.

Now let me read to you what the bylaw says on its first page.

Tree Protection Bylaw

The Council of the City of Richmond enacts as follows:

PART ONE: APPLICATION

1.1 This bylaw applies to trees which are:

a) on land owned or in the possession of the City;

I hope you can see the obvious contradiction here. You enacted this bylaw to include city owned land yet the information board at the open house says that the bylaw applies to private property only.

I realize council had a scheduling conflict at the time of the open house. The fourth failure in the process. If you had been available we might not be at this point. You could have gauged opinion for yourself. You lost that chance.

It is rare for such a complete meltdown of due process to occur. What was the original goal? I thought you wanted to protect trees. In reality the direct opposite has happened. Trees are coming down and fewer new trees are being planted. A rather contradictory result. It shouldn't be that long before all trees in Richmond are located in professionally managed parks where the city could charge us a fee just to see them.

Since council has alienated much of the tree owning community, amends must be made to encourage people to plant trees and rebuild trust. Tree owners deserve that much because for the most part we did not clear-cut at the first hint of a tree bylaw being introduced. Some developers did clear-cut. We like our trees too much to do that. A good first step in this process would be to repeal the bylaw. The second step would require some creativity and originality. Don't just follow what other jurisdictions do, find a way to support and reward tree owners; you will always get further with positive incentives than hammering people into compliance. Several letters to the editor have made proposals in this regard.

I am certain that some of the specific bylaw problems I have pointed out are addressed in the new bylaw being presented to you today by staff but they cannot fix the problems with the process. Due diligence and best practices were definitely missing here. Only you can address this problem now.

With the four major failures in this bylaw process I believe your moral and ethical imperative is to repeal the bylaw, make amends to tree owners and if you deem it necessary, start afresh with a different, positive based approach. Nothing is written in stone yet.

Thank you for your time.

Joe