

Bylaw changes sent back for review amid rights concerns

By Brock Weir

A set of changes outlining how bylaw officers can access privately owned properties has been sent back for further review amid concerns over the rights of property owners.

The changes, which The Auroran reported on last week, received significant scrutiny when they were first presented at General Committee on September 5.

With a week in between the General Committee meeting and last Tuesday's Council meeting, these worries were unabated with some Councillors stating new rules would have 'trampled' the rights of property owners.

Up for discussion were a series of changes to what constitutes 'power of entry' for bylaw officers, which outline a new notification process to property owners on when their properties might be entered, as well as protocols for when properties might be accessed if a property owner is absent or refuses entry to a bylaw officer all together.

A formalized process would have given the occupant 24 hours notice the bylaw department would be accessing their property, but the question of what happens if access is declined raised alarm bells. In one noted hypothetical, if bylaw officers head to the rear of a house and find a locked gate, they would not proceed into the yard.

When Council members were told bylaw officers would not proceed if they found a locked gate in front of them, they questioned whether this would create two sets of property rights: rights for those who had the foresight to install a lock, and a lack of rights for those without a locked gate to their back yard or no gate at all.

'I think this is a step in the right direction,' said Councillor Jeff Thom, before launching into a number of scenarios which concerned him. 'Where I think the process becomes more difficult, as someone who values property rights, there are a couple of different distinctions the Town is setting out here: the Province sets out strict guidelines with respect to dwelling unit versus rear and side yard of the property even though, in my opinion, a person's entire property is sovereign.

'Certainly in criminal proceedings you can't enter onto someone's property without a warrant or consent. That is a problem for me. Just because the Province has made it legal doesn't make it right. Staff has attempted to look at some of the ways we can better inform property owners that we were going to access their property without their consent but it doesn't change the fact that even if after this consultation that is outlined that we will be accessing their property without their consent. They really have no recourse.' This view was shared by Councillor Tom Mrakas, who said just because Provincial legislation allows municipalities like Aurora the right to entry, it shouldn't mean that it is the right thing to do in each and every case.

'I do believe that people have a right to privacy on their property,' he said. 'I do understand that in certain circumstances there might be a need for it where there is a danger to others. I understand in the building inspection process we need our inspectors to have the ability to go onto sites and attend the properties to make sure everything is in compliance.

'I am all for looking at the property standards at the front of the yard and doing what we have to in making sure the appearances of the Town are kept and maintained. Someone's rear yard? I just don't see how we can trample over someone's rights and enter onto their property because their grass is too high. To me, it just doesn't make sense. I don't believe that you should just have the ultimate power to enter onto somebody's property. I do believe what is in front of us is a good start, but I just don't think it is enough.'

While the recommendations were sent back to staff to address the issues outlined by Council, there were some supporters around the table.

Councillor John Abel, for instance, said he experienced a situation while living in Markham where a neighbour had a significant infestation problem. Local bylaw officers had to become involved because a neighbour to neighbour resolution was just not in the cards.

'He wasn't going to cooperate and our livelihood and health was at risk,' said Councillor Abel. 'It was unbearable on a hot summer day. I can see how you would use [these provisions] under different services, and I think we should be able to provide that protection and oversight when needed, and I think that is what [this] report is bearing out. For the health and the benefit of our residents we should be able to have that.'

Mayor Geoff Dawe, on the other hand, expressed his support from a rather different angle.

'I too am highly in favour of property rights,' he said. 'As a matter of fact, I think I brought that up when we were discussing the tree bylaw because what right does the Town have to tell me whether I can take trees off my property or not? This Council voted to tell me how many trees I could take off my property and that, in my opinion, is a direct infringement of my property rights.

'If I happen to live in the northeast corner of Yonge and Wellington, people can tell me what windows I can put in my house and, to

me, that is a direct infringement on my property rights. Why are we okay with that and not this? I don't see a difference.?