

October 3, 2016

The City Council

The Corporation of the City of London Ontario

C/O The City Clerk

City Hall

London, Ontario



Dear Councilors

On behalf of certain residents of Berkshire Village, London I am attaching a copy of a petition concerning a "Nature Restoration Site" (the Site) established a few years ago by a condominium corporation situated on Berkshire Court.

Despite complaints by the petitioners to city staff concerning the state of the Site, no action has been taken by the City to have certain noxious weeds removed from the area in question and therefore the petitioners have little recourse but to seek the assistance of City Council in remedying the unsightly condition. The petition lays out the rationale for the eradication of noxious weeds required by Ontario Provincial Law.

The Site was established with the assistance of the Upper Thames River Conservation Authority in an area that is well beyond the jurisdiction of the Authority.

The petitioners are asking the City Council to direct City Administration to take the remedial action stated under Remedies Sought on page two of the petition.

As a signatory I have been asked to bring this petition to Council and am prepared to speak to this matter at a regularly scheduled Council meeting.

Yours truly

James E. Henkel

## **PETITION**

We, the undersigned residents of Berkshire Village in the City of London, hereby petition the Council of the Corporation of the City of London, Ontario to direct the City Administration to forthwith demand the immediate removal of all noxious weeds situated on the lands in the City of London known as 46, 44, 42, 40 and 38 Berkshire Court, Roll Numbers 070240012310000, 070240012300000, 070240012290000, 070240012280000 and 070240012270000 respectively.

The properties listed above, abut the even numbered residential units from 282 through 296 Berkshire Place and 346 through 368 Berkshire Drive inclusive.

### **Background**

Approximately 3 to 4 years ago, the residents of the above listed properties, with the assistance of the Upper Thames River Conservation Authority and local students, had a number of deciduous and coniferous trees and shrubs planted on the northern portion of the lands in question as outlined in red on Exhibit "A" hereto.

During the following years, the undergrowth in the planted area of Exhibit "A" continued to grow to significant height and density. The result is an unsightly growth of weeds that now occupy an area that was previously (for some decades) well-groomed and attractive open lawn. It should be noted that adjacent residential units to those listed above on Berkshire Court also border on the Berkshire Place and Drive units and have been maintained by the residents as well-groomed and attractive open lawn. Those residential units are numbers 26 through 36 Berkshire Court and are part of the same complex of condominium residences.

### **Recent Activity**

Residents of the Berkshire Place and Drive units abutting the Berkshire Court addresses and those in reasonable proximity to them are unhappy with the unsightly state of the area (see Exhibit "B" - photographs). City Hall personnel attended at the site on two occasions, initially to assess the area and then to discuss the matter with Berkshire Court representatives. The result apparently was that City staff deemed the area to be a "natural re-generation area" but in doing so, neglected to assess the species of plant-life occupying the area.

Signage (see attached Appendix "A") was erected by the Upper Thames River Conservation Authority (the "Authority") on the northern limit of the area along the property line between the Berkshire Court properties and Berkshire Place and Drive residences.

The Authority has no jurisdiction whatsoever over the property as it is well beyond the boundary of the Authority's jurisdiction as evidenced by the map labelled Exhibit "C".

### **The Issues to be Resolved**

The concern rests not with the trees and shrubs that have been planted but with the out-of-control undergrowth.

The area in question has become a haven for noxious weeds that are prohibited by two Ontario Acts; the Noxious Weeds Act and the Weed Control Act.

The particular weeds in question are the nodding thistle and the Canada thistle. Both are non-native species to Ontario and are prohibited as undergrowth for restoration under the aforementioned Acts.

The aforementioned Acts require the permanent destruction of these weeds by the owners of the property and are subject to limited methods of eradication: chemical treatment over a period of time; or physical removal by excavation.

The dominant species in the subject area is the nodding thistle which one could surmise was a deliberate planting by the owners since this weed does not appear in the re-generation area of Berkshire Park nor in any observable degree elsewhere in the neighbourhood including the Salmon property just to the west of the neighbourhood.

Tick-borne diseases such as Lyme disease are becoming more prevalent in southwestern Ontario and in our view this uncontrolled growth provides a perfect habitat for the spread of ticks since deer have been seen on occasion in this area which possibly harbours other wildlife that may become infected, such as mice, foxes, skunks, raccoons and coyotes. Transmission of ticks to cats and dogs that are observed to roam free in the area (notwithstanding city by-laws), provide the perfect vehicle for transmission to controlled pets and humans.

Another issue is the spread of residue from the weeds, particularly from the nodding thistle, which could possibly aggravate conditions for asthma or hay-fever sufferers. This is also causing widespread distribution of seeds from both noxious species increasing their establishment in the area, a matter that should be of concern to the City because of its responsibility to enforce provisions of the Noxious Weeds Act of Ontario.

Some of the relevant provisions of the Noxious Weeds Act of Ontario are outlined in Appendix "A"

## **APPENDIX "A"**

### **Additional Background Information**

Preceding the planting of the trees and shrubs, during the winter, children would use the area in question for tobogganing down the hill. The area was also used by non-residents for travel to and from the neighbourhood as well as residents from Berkshire Court to walk their dogs and access the Berkshire Place streetscape.

As a result of complaints, a no trespassing sign was erected to dissuade Berkshire Village residents from disturbing the quiet enjoyment of the property by Berkshire Court residents.

### **Additional Recent Activity**

The Berkshire Village residents complained to City Hall about the area for a number of reasons, including the habitat for insect infestation such as ticks and fleas as well as the heightened hay-fever incidence and possibility of vermin and unwanted wildlife such as raccoons, skunks and coyotes.

### **Other Conditions Giving Rise to the Issues**

The area has become very unsightly and is more so than the re-generation area adjacent to the City of London garden area in nearby Berkshire Park.

The City of London Yard and Lawn Maintenance By-law PW-9 12003 contains the following definition:

"Naturalized Area "naturalized area" means a portion of a lot where a lawn or perennial garden previously maintained by the owner which has been allowed to re-establish a reproducing population of **native species**, through a combination of natural regeneration and deliberate plantings of species or other species to emulate a natural area"

This same by-law also contains the following exemption provided the exemption remains in conformity to the Ontario Weed Control Act.

"4.7 Wildflower meadow – exemption This by-law does not apply to a wildflower meadow or a naturalized area provided that those areas are managed in accordance with the Weed Control Act, provided that there is no waste, and provided that they do not encroach within the buffer strip."

### **Some Provisions of Relevant Ontario Acts**

The City has responsibility under the Weed Control Act of Ontario. Following are some of the relevant provisions.

#### **Definitions:**

"noxious weed" means a plant that is deemed to be a noxious weed under subsection 10 (2) or designated as a noxious weed under clause 24 (a);

### **Duty to destroy noxious weeds**

3. Every person in possession of land shall destroy all noxious weeds on it. R.S.O. 1990, c. W.5, s. 3.

### **Persons deemed in possession**

4. For the purposes of this Act, the owner of land shall be deemed, unless the contrary is proved, to be the person in possession of it. R.S.O. 1990, c. W.5, s. 4.

### **Time for destruction of weeds**

(2) The order shall be in the prescribed form and shall specify a time of at least seven days, excluding Saturdays and holidays, from the date of the service of the order within which the noxious weeds or weed seeds shall be destroyed. R.S.O. 1990, c. W.5, s. 13 (2).

City administration can examine both aforementioned Acts to assess relevance and the proper course of action to require the owners of the properties to eradicate the noxious weeds.

### **Signage Erected by the UTRCA**

"Nature  
Restoration  
Site  
Please Protect  
Thank You  
Upper Thames River  
Conservation Authority  
[www.ThamesRiver.on.ca](http://www.ThamesRiver.on.ca)"

This signage implies that the Upper Thames River Conservation Authority has jurisdiction of some nature as regards the area and suggests that nonobservance of the signage could result in some manner of sanctions against those who disobey it. It has no such jurisdiction. See Exhibit "C"

## **EXHIBIT "B"**

### **PAGES 1 TO 4**

<b>Page</b>	<b>Description</b>
1 top	Approximate "centre of nature restoration site" showing uncontrolled growth of thistle
1 bottom	"Centre of nature restoration site" viewed from parking lot
2 top	UTRCA signage
2 bottom	Close-up photo of nodding thistle
3 top	Encroachment of nodding thistle onto Sifton property
3 bottom	View of groomed lawn between nature restoration site and residences
4 top	View of eastern corner of nature restoration site and groomed area of Berkshire Court property
4 bottom	View of groomed area east of nature restoration site – condition in which nature restoration site was previously maintained

### **PAGES 5 & 6**

<b>Page</b>	<b>Description</b>
5 top	The photos on pages 5 and 6 show the "naturalized area" adjacent to the Community Garden plots immediately south of 500 Berkshire Drive (the "Berkshire Club") as depicted on page 2 of Exhibit "A". Note the complete absence of nodding thistle and Canada thistle growth. This naturalized area was established years before the Nature Restoration Site on the Berkshire Court property.
5 bottom	
6 top	
6 bottom	

### **PAGE 7**

Extract from government of Ontario website indicating nodding thistle is a noxious weed