
HALDIMAND COUNTY

Report LSS-10-2025 Tree Planting and Encroachment on County Owned Lands – Empire Corners



For Consideration by Council in Committee on February 25, 2025

OBJECTIVE:

To report on resident concerns regarding the tree planting program at Empire Corners and to seek direction with respect to the encroachments on the County-owned stormwater block behind Kramer Court, ensuring alignment with the County's practices and long-term sustainability goals.

RECOMMENDATIONS:

1. THAT Report LSS-10-2025 Tree Planting and Encroachment on County Owned Lands – Empire Corners be received;
2. AND THAT staff proceed with Option 1 as outlined within Report LSS-10-2025.

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EXECUTIVE SUMMARY:

In January 2024, Council approved the "Trees for All" Program, which included a tree planting initiative at the Empire Corners property, specifically the stormwater block behind Kramer Court. During due diligence, it was discovered that some neighbouring residents had encroached on the property and raised concerns about the planned tree planting program. Residents voiced opposition based on aesthetics, safety and misunderstandings regarding the land's intended use.

Staff have presented three options for Council's consideration:

- 1) Proceed with the tree planting program, removing all encroachments (recommended);
- 2) Proceed with Option 1 plus constructing a fence;
- 3) Abandon the balance of the program at this site and allow the encroachments to remain.

Option 1 is the recommended choice, as it aligns with the County's goals for sustainability, stormwater management, the approved forestry program and complies with the County's Parks & Facilities By-law 1534-15. It ensures the intended use and long-term health of the stormwater block, and supports the environmental benefits of the tree planting initiative. This approach removes the encroachments and will help mitigate flooding, improve water quality, and promote biodiversity, while maintaining the integrity of the land for future generations.

BACKGROUND:

In January 2024, staff report FPC-01-2024 Trees for All Program, was presented to Council. The report identified several Haldimand County owned parcels for reforestation through a partnership with the Niagara Peninsula Conservation Authority (NPCA).

One of the identified areas for the program was the Empire Corners property - County-owned stormwater block located behind Kramer Court, identified as the “Planting Area” in purple highlight on Attachment 1. The work under this program is administered by the Facilities, Parks, Cemeteries & Forestry Operations (FPCF) Division.

As part of the standard due diligence process, surveyor services were engaged to stake the property boundaries and confirm the limits of County-owned property, ensuring trees are planted only within County lands. After the boundary staking was completed, it became evident that residents adjacent to the southern area of the stormwater block had been mowing the area and that several unauthorized encroachments onto County property were present. These encroachments include stockpiled concrete blocks; a raised garden bed that altered the grades; installed drainage pipes; stockpiled rocks; and an electrical outlet. Additionally, while on site, neighbouring residents voiced their concerns about the proposed tree planting initiative.

In August, FPCF staff installed 15 "Natural Area" signs (Attachment 2) along the northern border of the County-owned lands to mark the property limits permanently. However, staff observed during a subsequent visit that one of the signs had been removed.

Following the sign installation, a letter (Attachment 3) was sent to local residents to notify them of the tree planting program and request removal of items encroaching on County property. The letter outlined the purpose of the afforestation and naturalization, which includes improving pollinator habitats during the early grassland stage; increasing biological diversity and wildlife habitats; enhancing the landscape’s ability to sequester carbon helping to mitigate climate change; and intercepting stormwater run-off and reduce erosion. As a result, a resident removed the raised garden, however, many of the encroachments still remain.

In September 2024, residents in the area submitted emails to Council, expressing opposition to the naturalization of the stormwater block. The concerns included:

- Lack of consultation with abutting property owners with no opportunity for input.
- Opposition to converting the “beautifully manicured parkland” into an unkept area, negatively impacting the enjoyment and safety of the property.
- Desire to maintain the area for children and pets to roam and to preserve community integrity and aesthetics.
- Prior tree planting on the north side of the creek is perceived as unsuccessful, with most trees dying and the area becoming unkempt.
- Concerns about wild animals, such as foxes and coyotes, rodents, West Nile mosquitos, ticks, and noxious weeds from the naturalization process which could pose a safety risk to children and pets in the area.
- An understanding that the open space behind Kramer Court was designated as “parkland” when properties were purchased.

Residents proposed the following alternatives:

- Continue tree planting while allowing residents to maintain the area without affecting the trees.
- Commit to staying at least five feet from the creek to reduce injury and risks during maintenance.
- Allow residents to sign waivers absolving the County of liability for injuries.
- Plant woolly creeping thyme and clover to maintain visual appeal and reduce risks to children and pets.

Staff have considered these alternatives and comments have been incorporated into the Analysis section below.

Additionally, in response to the resident concerns, Council directed staff to prepare a report for a future Council in Committee meeting regarding the tree planting program at Empire Corners, noting that the planting program south of the creek has been postponed pending further direction from Council.

In addition to the tree planting program review and report to Council, it is also necessary to advise Council regarding the unauthorized encroachments onto County owned property.

ANALYSIS:

Resident Concerns

The concerns expressed by the residents fall within two main categories:

- opposing the naturalization and tree planting (due to what they characterize as unappealing and nuisance vegetation, wild animals, pest infestation); and
- the perception that prior tree planting on the north side of the creek led to most trees dying and the area becoming unkempt.

However, it's important to note that the tree planting on the north side has been successful and continues to thrive, demonstrating the positive impact of such initiatives.

The joint tree planting program, outlined in the letter to residents (Attachment 3), focuses on planting native shrubs and seedlings. The program's goal is to create a sustainable, biodiverse ecosystem that supports pollinators, improves air quality, and reduces erosion to enhance stormwater management. Specifically, the root systems of shrubs and trees stabilize soils to resist erosion, help cool the area, and mitigate rising water temperatures that can promote algae growth. The program includes planting at a high density afforestation to mimic natural forest succession. The close proximity of the trees limits the opportunities for mowing/maintaining the area between them, which does not align with the option proposed by the residents to allow residents to continue maintaining County land. Planting caliper-sized landscape trees (6'-8' tall) at a lower density would allow for grass cutting between the trees, however, this is outside of the scope of the Trees For All Program funding and would increase the County's tree cost from \$7.32/tree to \$390/tree.

Naturalizing areas typically attract wildlife by providing food, shelter, and breeding grounds, aligning with expectations in a rural environment. The residents have proposed the planting of woolly creeping thyme and clover to maintain visual appeal and reduce risks to children and pets. This is not a viable option as woolly creeping thyme is a non-native ornamental ground cover requiring significant investments in site preparation, planting, weeding, watering to become established and ongoing maintenance to prevent weed/natural vegetation encroachment. As for clover, staff are exploring options to use clover as a cover crop on afforestation sites that start as bare soil or a plowed field. This is not a recommended option for this area due to the cost and the lack of efficiency to remove an existing groundcover and replace it with a monoculture new cover, as this would require the tilling or herbicide to kill the diverse grass cover and the bare soil would be susceptible to weed infiltration after the clover is planted. Staff recommend utilizing the established grass cover on the site and enhance it with the tree planting.

These spaces often host a diverse range of plants and animals, including birds and dragonflies, which play a role in controlling pests. It is not expected that there will be an increase in the presence of foxes, coyotes or rodents due to this initiative as the afforestation area does not provide a connection to other forests, thereby providing mitigation of these species into the afforestation area. The afforestation area does not have enough interior habitat space for these species to find shelter and develop an established

population. The risk of an increase in mosquitos, potentially carrying West Nile disease, is low as there are no ponds and the flowing water in the creek is not a suitable habitat for mosquitos. The increase of species such as birds, dragonflies and damselflies, which feed on mosquitos, should mitigate most of the mosquitos that may breed during the summer when there is some standing water in the creek channel as it dries out. Staff have not observed any ticks within the afforestation area during several site visits over 2024. Within Southwestern Ontario, there is always a risk of ticks in long grass and forested areas. Residents can reduce their risk of picking up a tick by staying within the maintained lawn of private property, wearing appropriate clothing and performing tick checks after walking through the afforestation area. The risk of noxious weeds establishing in the afforestation area is low due to the existing grass cover. Any noxious weeds that start to grow will be controlled through the County's Invasive Species and Noxious Weed program.

Staff acknowledge the current use of this location, where residents have used County property for personal purposes and regularly maintained the area through activities such as grass cutting, has been unauthorized use of public lands. Conversely, the proposed Council-approved tree planting program is a recognized approach to creating long-term sustainability and ecological health for the property. While the area may no longer be manicured, naturalized spaces foster a stronger connection to nature and enhance the rural landscape.

Use of Land for Recreational Purposes

Residents have indicated that they purchased their respective lots under the assumption that the County-owned land adjacent to Kramer Court was parkland. Planning & Development Division staff have confirmed that these lands are designated for stormwater management as part of the subdivision agreement with the developer, not parkland. Since no parkland was allocated, the County received cash-in-lieu of parkland dedication in accordance with the Planning Act.

The proposed usage plan from the residents, which includes signing waivers of liability and maintaining a five foot buffer from the creek, deviates from established practices. Allowing such usage introduces inspection and maintenance requirements to ensure safety and compliance and sets a precedent across the County with respect to other completed developments.

Encroachment Review

Historically, the County has not permitted encroachments onto municipal property in order to minimize liability exposure; to ensure unauthorized uses do not interfere with operational needs; and to avoid creating obligations for property maintenance beyond standard practices or legislated requirements. Additionally, the current approach mitigates the risk of a "cloud on title" and other complications if the County decides to divest the property. When encroachments are identified, staff assess potential risks and recommend appropriate actions. Staff also conduct an analysis to assess the encroachment's impact on operational needs, financial implications, intended land use and associated risks.

- Operational Needs - This primary function of the stormwater block is to mitigate flooding by capturing and temporarily storing stormwater, minimizing soil erosion, protecting nearby infrastructure, and removing pollutants and sediments before they reach waterways or groundwater. County practice supports allowing these areas to naturalize, either naturally or through planned strategies, such as the proposed tree planting program.
- Financial Impacts - Once established, stormwater management areas typically require minimal fiscal resources. Maintenance is generally limited to inspections as needed, to ensure proper function and removal of identified blockages.
- Risks – Allowing encroachments in a stormwater block is not recommended. Encroachments such as stockpiled concrete blocks, rocks, gardens that alter grades, and installed drainage pipes can disrupt the design of effective flow of water, increase flooding and erosion risks, and compromise the natural filtration process. Additionally, there is no certainty that future land

owners will remain willing to maintain the property which could lead to a variety of uses and conditions, further complicating its state. From a legal perspective, when property is purchased, the onus is on the purchaser of land to understand the boundaries of the property being purchased.

- **Environmental Stewardship** – Stormwater blocks play a critical role in supporting local ecosystems by fostering biodiversity and creating habitats for wildlife. Naturalizing these areas aligns with County practices to prioritize sustainability and resilience against climate change. Encroachments, such as gardens or altered grades, can disrupt native vegetation and reduce the ecological benefits these areas provide, including improved air quality and carbon sequestration. Upon the completion of a calculated tree planting program, ensuring these spaces remain undisturbed protects the long-term health of the environment and upholds the County’s commitment to sustainable land use practices.

Based on the issues raised, staff are seeking direction from Council on how to move forward with these lands. Three options are being presented for Council’s consideration, with staff recommending Option 1.

Option 1: Proceed with Tree Planting and Naturalization and All Unauthorized Encroachments Be Removed (Recommended Option)

The Empire Corners property, specifically the area behind Kramer Court, has been approved by Council for a tree planting initiative as outlined in staff report FPC-01-2024 Trees for All Program. As a designated stormwater block, this area plays an important role in mitigating flooding by capturing and temporarily storing stormwater, minimizing soil erosion, protecting nearby infrastructure, and removing pollutants and sediments before they reach waterways or groundwater. The County’s approach supports allowing such areas to naturalize, either naturally or through planned strategies, and to maximize their benefits.

Although current encroachments are minimal, addressing them now is important to maintain the stormwater block’s function and purpose. Without action, there is a risk that additional encroachments may occur, which could compromise the area’s effectiveness. To ensure its long-term success, any encroachments will need to be removed by May 1, 2025.

While the naturalization process will enhance the area, residents will still be able to enjoy the space as long as activities comply with posted guidelines. These include avoiding littering, camping, hunting or disturbing wildlife, operating motorized vehicles, building fires, mowing or removing vegetation, and dumping garden waste. Enforcing lack of compliance with this posted signage falls under the Parks & Facilities By-law 1534-15, subject to Council supporting the removal of the encroachments. The residents suggested signing waivers absolving the County of liability for injuries; however, as this is an accepted County practice, no liability waivers are required as this is a typical risk exposure to the County.

By addressing encroachments and moving forward with the tree planting project, this initiative sets the stage for long-term environmental and community benefits. Over time, the naturalized space will enhance flood mitigation, improve water quality, and support local biodiversity, representing a meaningful investment in the County’s future.

Staff recommend proceeding with this option to address encroachments and implement the Council-approved tree planting initiative as outlined. This approach supports the County’s objectives and promotes the long-term success and sustainability of the stormwater block.

Option 2: Proceed with Option 1 Plus Construct a Fence

All elements of Option 1 would be enacted, with the addition of erecting a fence to delineate the planting parcel from the neighboring lands. This option was proposed by a number of residents; however, it is

not recommended due to the initial capital costs for fence construction and ongoing maintenance expenses. Furthermore, the lands are designated for stormwater management, and the installation of a fence may impact water flow, with the potential of hindering the intended use of the stormwater block, and causing debris to accumulate within the fenced area. This debris could obstruct stormwater runoff and potentially compromise the structural integrity of the fence. While a fence may address concerns about wildlife entering neighboring properties, it introduces complications that conflict with the land's intended purpose. Additionally, the standard fence that the County would potentially install, may not be as aesthetically pleasing as some property owners would expect.

Option 3: Remain Status Quo

Option 3 involves allowing the encroachment to continue and abandoning the tree planting program in this area. Firstly, this is not a recommended course of action due to the County's historical practice of prohibiting encroachments. Altering this approach could set a negative precedent, particularly if it impacts the stormwater block. It puts an additional burden onto taxpayers by increasing risk and liability to the County, requiring routine inspections from staff, etc. It would likely put additional requirements onto the property owners as well, since administration fees and annual insurance would be a standard requirement for encroachment agreements.

Secondly, this option would undermine the Forestry Program's goal of expanding the County's forest canopy, as the parcel in question is one of the few suitable sites for reforestation in partnership with the NPCA. Abandoning the project could also discourage future reforestation efforts, especially if neighbouring residents oppose similar initiatives. Given the limited opportunities for large-scale reforestation within the County, it is essential to maximize every available parcel to achieve long-term environmental benefits.

Recommendation

In conclusion, while three options have been presented, staff recommend Option 1 as it aligns with the County's historical processes, ensures the stormwater block functions as intended, and allows the Council-approved tree planting and naturalization programs to continue. The stormwater block area was never designated as parkland. The onus is on the property purchaser and/or their lawyer to know what the abutting property is designated as, and its purpose. Staff believe it is in the County's best interest to proceed with the approved naturalization and Council-approved Tree Planting Program to support long-term environmental goals.

FINANCIAL/LEGAL IMPLICATIONS:

If Option 1 is selected, the costs related to the removal of all encroachments will be the responsibility of the resident who is encroaching. The financial impact of the tree planting program was approved in January 2024 in staff report FPC-01-2024 Trees for All Program.

If Option 2 is selected, the change in scope will result in additional operating and capital costs. These costs will need to be assessed, and if adequate funding is not available, a subsequent report will be brought forward to address the financial implications.

If Option 3 is selected, the funds originally allocated through the FPC-01-2024 Trees for All Program can be reallocated to alternative afforestation locations to ensure the investment in the program is not lost. While there will be no financial loss, the environmental and ecological benefits of this area will be compromised, as trees play a vital role in maintaining these ecosystems.

Legally allowing encroachments onto County property may expose the municipality to liability risks, especially if these encroachments disrupt the intended use of the stormwater block or cause harm to nearby properties. Any failure to address encroachments could also lead to complications if the property is sold or otherwise transferred in the future, potentially creating a "cloud on title" that could complicate

property transactions. Additionally, if the proposed naturalization and tree planting program is not managed properly, it could trigger disputes over land use and maintenance responsibilities. To mitigate these risks, it is essential to ensure compliance with municipal practices, enforce property boundaries and communicate clearly with residents about the intended use of County lands.

STAKEHOLDER IMPACTS:

If Option 1 is selected, the Facilities, Parks, Cemeteries & Forestry Operations Division will address the requirement to remove encroachments and continue with the tree planting and naturalization program within the stormwater block. Any noncompliance issues regarding use of the stormwater block will be addressed through enforcement by Building & Municipal Enforcement Services.

If Option 2 is selected, all activities as noted above will be enacted along with the works associated with the installation of a fence.

If Option 3 is selected, Forestry Operations would consider alternate planting locations, but would need further direction from the Council regarding acceptable reforestation practices on County-owned lands to prevent setbacks in future planting initiatives. If this option is selected, it is strongly recommended that the County address the ongoing encroachment issues regardless of the tree program, for reasons outlined in this report. Allowing an encroachment to knowingly continue without a formal agreement lends itself to risk associated with adverse possession claims in the future, which would have an overall negative impact on the wider tax base.

REPORT IMPACTS:

Agreement: No

By-law: No

Budget Amendment: No

Policy: No

REFERENCES:

1. [FPC-01-2024 Trees for All Program](#)

ATTACHMENTS:

1. Stormwater Block Location List
2. Natural Area Signage
3. Resident Letter