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ONTARIO

# ‘You want to fine them \$10,000 a day?’ The City of Burlington fought this family’s natural garden — and then razed it anyway

The Barnes family lovingly maintained a yard of goldenrod, coneflower, wood poppy, purple asters and milkweed — that was until the City of Burlington sent crews to level what they called “weeds.”

By **Jennifer Pagliaro** The Star Jennifer Pagliaro Crime Reporter  
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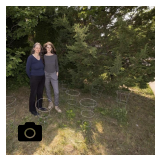
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## ONTARIO

Two images of the same garden: Left, a photo taken by Julia Barnes showing the naturalized front-yard garden in bloom. Right, the same yard in a photo the City of Burlington said is proof the garden violates weed by-laws.



The daisy-like, spindly purple blooms of the arrow-leaved asters in the Barnes family's lovingly-cultivated front garden won't flower this fall.

Earlier this month, a city crew arrived unannounced with weed whackers, leaving flattened native grasses and plants in their wake.

The sudden razing of what the Barnes and their lawyer say is a purposeful, naturalized garden, restored and planted to help bees and butterflies — nature's pollinators — and increase biodiversity in their corner of Burlington was, according to the city, violating several bylaws.

The goldenrod, coneflower, wood poppy, along with other native species, the city said, were not in compliance with a rule to maintain all vegetation under 20 centimetres, among other infractions the homeowners dispute. As a penalty, the city had threatened an astonishing \$10,000 a day fine until the yard was remedied to their standards — a notice the city also sent to the Barnes' mortgage company.

“Giving butterflies a safe haven, you want to fine them \$10,000 a day?” said top environmental lawyer David Donnelly. “It’s perverse.”

Instead, a city crew arrived one June morning with landscaping equipment and went to work, leaving sections of the front yard levelled as well as parts of the backyard. Karen Barnes and her daughter Julia said they were left feeling “violated.”

“There’s a lot of grief because we know these plants and they’re like our friends and our family in a way, so you like have a relationship with them and to just see them massacred in front of us,” said Julia Barnes, her eyes welling up with tears.

“It’s kind of humiliating too, because this is our public-facing expression of our beliefs and people who are just coming by, they’re not going to know the city did this. They’re going to think it’s a decision we made and that’s not the expression that we want to have to the world.

“We want to show that you can work with nature and have a positive, supportive relationship.”

The city, for its part, says that despite allowances for naturalized areas in the city’s bylaw, the Barnes yard “did not meet the definition” and that the city has the authority to enforce its bylaws on private property.

The municipal war over naturalized gardens and a focus on conformity is not unique to Burlington — though Donnelly called the threatened fine unprecedented. Donnelly also represented landscape ecologist Nina-Marie Lister and her husband Jeremy Guth in 2020 when the City of Toronto said the front-yard meadow of their sprawling Wychwood-area home needed to be cut back. The couple had spent \$5,000 annually to maintain the garden.

As with both of those cases, these types of bylaw issues are usually complaints driven — a neighbour who, maybe seeing the yard as an eyesore or unable to differentiate between weeds and pollinator species, complains about what they think is a lack of maintenance.

According to Burlington’s own lot-maintenance bylaw, a naturalized area is defined as “an area or vegetation deliberately planted or cultivated with one or more species of wild flowers, shrubs, annuals, perennials, ornamental grasses, or combination or them, that is monitored and maintained by a person.”

Such areas, the bylaw sets out, are excluded from the rule to maintain lots at 20 centimetres or less — many native species naturally grow much taller, like the goldenrod stalks still standing in the Barnes’ front yard.

Just after a city crew had gone to work on their front yard, the Barnes walked a reporter from the front door, through twisted branches and leafy foliage overhead. It look like a private version of “The Secret Garden” on a typical, detached suburban property south of Dundas Street and Walkers Line.

Standing in the driveway, they explain the horror of hearing workers arrive with landscaping equipment and the noise of motors.

Karen Barnes, who has a master's degree in ecology from McMaster University, said one of the crew members told her: “We're just cutting the grass.” But to her and her daughter, it was destruction of a habitat that has brought them both joy since 2015 when they first allowed native plants to return — what's experts call “passive restoration” — and evolved into maintaining the naturalized space.

“Purple asters came, milkweed came and the bylaw at the time allowed for all this,” she said, describing how the plants led to visits from endangered monarch butterflies and other species.

After the city first notified Barnes her yard was not in compliance back in October, she spoke with Donnelly, who in turn spoke with the city's lawyer. Donnelly said he provided the case law allowing such spaces and, as requested, an expert report on the property's naturalized area.

In her report dated November 2022, Lorraine Johnson — a self-described “cultivation activist,” author and consultant on natural gardens — details how upon inspecting the Barnes' garden she found no noxious weeds as defined by the Ontario law as well as observed new beds of top soil Barnes said she purchased and seeded with new native species and other attempts to maintain the garden, such as stringing up plants to prevent them from bending over onto walkways and neighbouring properties.

“I evaluated the vegetation community/communities, and determined that, based on the plants present, the landscape consists of a deliberately planted or cultivated naturalized area,” she wrote.

Despite this, Johnson said the city's supervisor of bylaws, Mike Donnelly (no relation), who was present for the inspection, said he believed the yard was “unkempt” and “referred repeatedly to the ‘weeds’ present” though he could not clarify what plants he considered to be “weeds,” noting that he is “not a weed expert.”

After providing the report, Donnelly said they didn't hear back from the city and thought the were in the clear.

Then, on May 26, the city issued the Barnes a notice of non-compliance with several bylaws, including the 20-centimetre rule, with just 11 days to meet the city's deadline to rectify the alleged problems.



In an emailed response to the Star's questions, Kerry Davren, the city's manager of bylaw enforcement, said the order issued to the Barnes said that the city may carry out the work at the homeowner's expense if it was not complied with, as allowed by the city's bylaws.

They said bylaw officers are "appointed as weed inspectors in accordance with the Weed Control Act" which requires certification and training on plant identification and sent a photo of the property before "the weeds were trimmed."

They did not respond to a question about whether it's common practice to contact a homeowner's mortgage company.

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The case law, which Donnelly provided to the City of Burlington back in the fall, includes a 1990s Toronto case in which bylaws were successfully challenged on the basis they infringed the Charter right to freedom of expression. Donnelly explained these rulings set out that as long as a naturalized garden is a "conscientious" or purposeful expression of your beliefs, it is permitted under Canadian law.

Experts say some bylaws are being updated to change outdated standards for yards but it isn't always reflected on the ground.

Lister, who along with her husband fought their own battle in Toronto, said her research lab at Toronto Metropolitan University has spent the last three years helping people naturalize their gardens and challenge bylaws that are unconstitutional, developing resources for homeowners on their website.

"People have a very strong attachment to the gardens on the one hand and needing to do the smallest thing they can do right outside their doorstep," she said in an interview. "So why are cities punishing people who are suffering climate grief and anxiety trying to do the smallest best thing they can."

She also noted that cities themselves are allowing the same types of species to grow on their property — Barnes sent a reporter pictures of several examples near city parks and roadside green spaces — setting what she calls a hypocritical standard for homeowners.

Donnelly said they plan to challenge the City of Burlington's application of the bylaw in court as unconstitutional and that it's unclear what fines or costs the Barnes currently face.

There is some hope for homeowners wanting to do the same in their yards, with recent successes challenging municipalities in court.

Donnelly recently represented a Smiths Falls couple whose yard became the subject of a council report in 2021, according to a CBC report. The couple took their fight all the way to Superior Court before the town backed down and the order was dropped.

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