



CITY OF HAMILTON

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
Growth Management Division
Parking and By-law Services Division

TO: Chair and Members Planning Committee	WARD(S) AFFECTED: CITY WIDE
COMMITTEE DATE: April 30, 2013	
SUBJECT/REPORT NO: Enforcement of Blocked Swales (PED13084) (City Wide) (Outstanding Business List Item)	
SUBMITTED BY: Tim McCabe General Manager Planning and Economic Development Department	PREPARED BY: Marty Hazell (905) 546-2424 Ext. 4588 Tony Sergi (905) 546-2424 Ext. 2274
SIGNATURE:	

RECOMMENDATIONS

- (a) That in accordance with the February 13, 2013 City Council directive to undertake a two year pilot program to enforce the Property Standards By-law to restore swales where there is an easily identifiable obstruction:
 - (i) That the Terms of Reference for the pilot program, as detailed in Appendix “A” to Report PED13084, be approved;
 - (ii) That one temporary Drainage Enforcement Officer (1 FTE), estimated at \$95,000 annually, and one vehicle and equipment, with a one time \$40,000 Capital cost, be funded from the Parking Reserve (Account No. 108021);
 - (iii) That any proceeds from associated fees and charges be directed back to the Parking Reserve (Account No. 108021) to offset the cost;

- (iv) That the Property Standards By-law No. 10-221 be amended to facilitate enforcement of blocked swales where there is an easily identifiable obstruction, and that the draft by-law, attached as Appendix "B" to Report PED13084, prepared in a form satisfactory to the City Solicitor, be enacted;
- (v) That staff be directed to report back to the Planning Committee prior to the conclusion of the pilot program, detailing key performance measures including:
 - (1) Success rates in dealing with complaints about blocked swales and achieving compliance where there are easily identifiable obstructions;
 - (2) Number of complaints received about blocked swales which were deemed to be of a more complex nature (i.e. no easily identifiable obstruction);
 - (3) Cost recovery from enforcement fines and through Court actions;
 - (4) Number of complaints driven by neighbor disputes such that mediation was appropriate;
- (b) That a temporary student (1/3 FTE), estimated at \$14,000 annually, be funded from the Development Fee Stabilization Reserve (Account No. 110086) to assist in scanning paper copies of previously approved grading plans;
- (c) That the item titled Enforcement of Blocked Swales be removed from the Planning Committee's Outstanding Business List.

EXECUTIVE SUMMARY

City Council, on February 13, 2013 approved a recommendation of the Planning Committee to undertake a two year pilot program to enforce the Property Standards By-law to restore swales where there is an easily identifiable obstruction. This Report responds to the direction for staff to report back with a Terms of Reference including key performance measures and expectations before initiating the pilot program.

Alternatives for Consideration - N/A

FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)

Financial/Staffing: The funding for one temporary Drainage Enforcement Officer estimated at \$95,000 annually and one vehicle and equipment at a \$40,000 one time Capital cost associated with the recommended two year pilot project. The costs can be

financed through the Parking Reserve (108021), which has an estimated 2013 balance of \$3.8 M.

In addition, funding for a temporary student (1/3 FTE) estimated at \$14,000 annually can be funded from the Development Fee Stabilization Reserve (Account No. 110086) to assist in scanning paper copies of previously approved grading plans; Growth Management staff will monitor and report back on staff resource implications as it relates to the approvals of alternative solutions/revised grading submissions should the option, as identified in Appendix "A" to Report PED13084, become common practice.

Legal: N/A

HISTORICAL BACKGROUND (Chronology of events)

Planning Committee, on February 5, 2013, approved the following motion by Councillor Lloyd Ferguson:

"Enforcement of blocked swales

Whereas there is an on-going problem in residential areas with standing water resulting from obstructed swales;

And whereas the resolution of this problem has most often been left to property owners;

Therefore, be it resolved that:

- a) Staff be directed to undertake a 2 year pilot program, commencing in the Spring of 2013, to enforce the Property Standards By-law to restore swales where there is an easily identifiable obstruction that prevents draining as per the originally approved grading plans, including:
 - ensuring that appropriate wording is included in the Property Standards By-law;
 - hiring a temporary grading enforcement officer to be funded from the Parking Reserve;
- b) Staff be directed to report back with terms of reference including key performance measures and expectations before initiating the pilot;
- c) Staff be directed to report back at the earliest opportunity on addressing more complex situations related to obstructed swales on properties where there is no previously approved drainage and grading plans, multiple owners are involved and/or extensive work is required."

SUBJECT: Enforcement of Blocked Swales (PED13084) (City Wide) - Page 4 of 7

The above motion was approved by City Council on February 13, 2013, as part of Planning Committee Report 13-002.

POLICY IMPLICATIONS/LEGISLATED REQUIREMENTS

Long standing practice has been to recommend civil action to address complaints about blocked swales between residential properties.

RELEVANT CONSULTATION

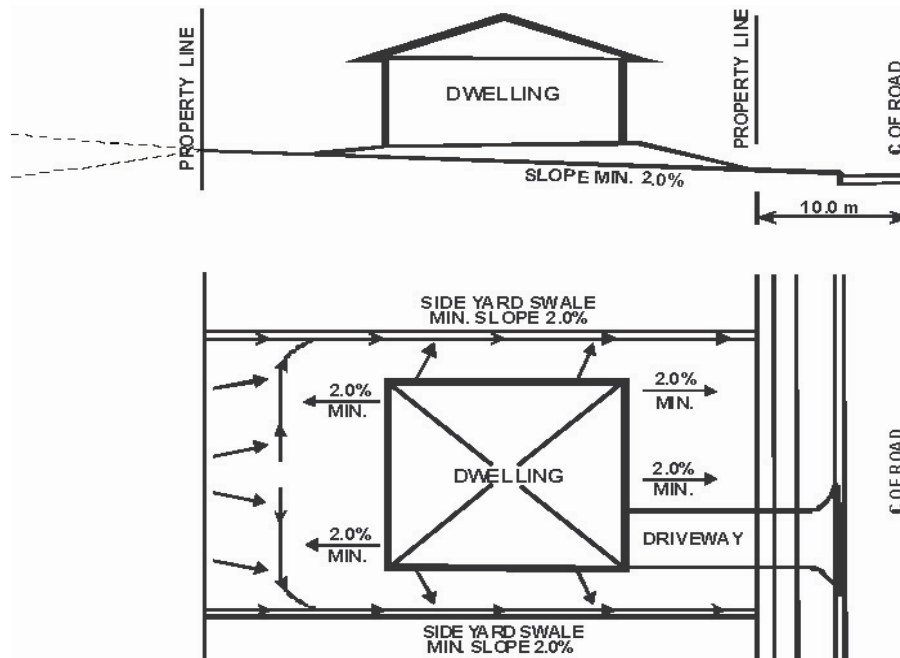
Legal Services and Finance were consulted in the preparation of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

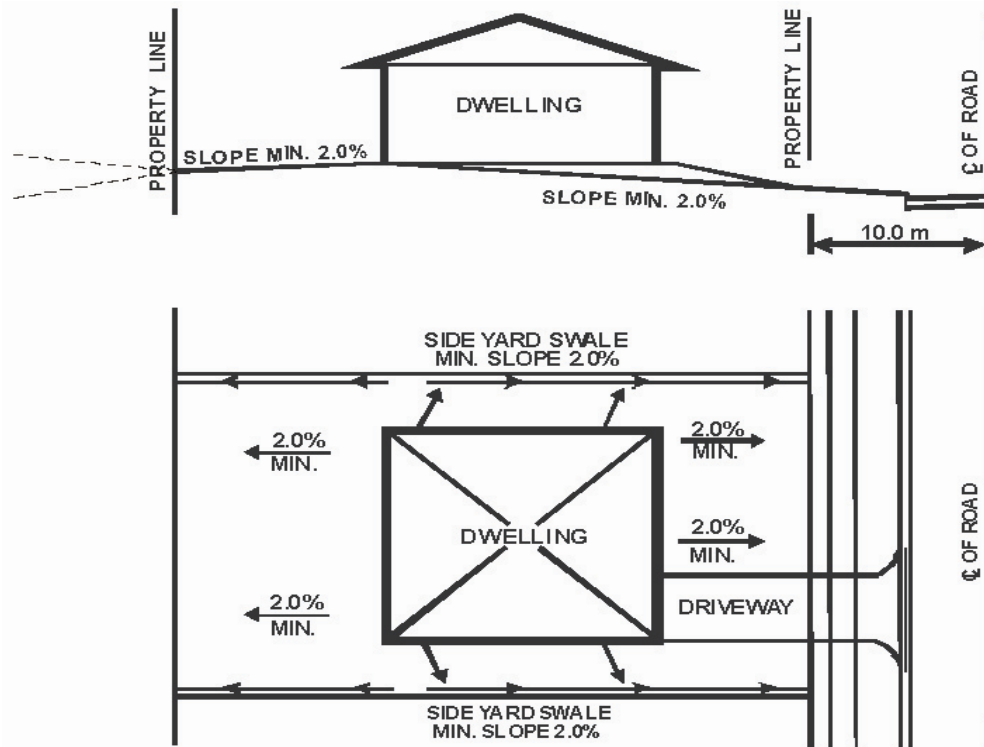
(include Performance Measurement/Benchmarking Data, if applicable)

Swales are shallow grassed drainage channels with gently sloping sides which collect and direct storm water away from a building's foundation walls and towards a suitable storm water outlet such as the street or a catch basin. Swales are generally located along property lines separating abutting lots, as illustrated on the following page. Swales should never be filled in or blocked in any way as this can cause storm water to collect and pond on a property and could result in flooding during intense rain storms.

ONE-WAY DRAINAGE:



SPLIT DRAINAGE:



Complaints are regularly received from the public with respect to standing water resulting from obstructed swales. The long standing practice has most often been left to property owners through civil remedies or other means. However, the Property Standards By-law does contain provisions which deal with storm water and which can be improved to deal specifically with swales.

Many of the complaints related to obstructed swales are complex and can involve properties where there are no previously approved drainage and grading plans, or can involve multiple property owners and extensive work to correct the problem. However, some obstructions are easy to identify and correct. Therefore, staff support adding appropriate wording to the Property Standards By-law to facilitate enforcement where the obstruction is readily apparent. It should be noted however, that property owners continue to have the option of pursuing civil remedies, and some situations may clearly be related to a neighbour dispute where mediation would be beneficial.

The following are examples of situations recently investigated by staff where the swales were found to be blocked by easily identifiable obstructions and which would be subject to enforcement under the recommended pilot program:

- a property owner constructed a concrete patio over his entire rear yard obstructing a rear yard swale that conveyed drainage from eight lots to a catch basin; and,
- a property owner constructed a pool/patio/shed combination obstructing a rear yard swale that conveyed drainage from five lots to a catch basin.

Other situations commonly reported, but which would not be within the scope of the program pilot, include where flooding occurs in older neighborhoods where no grading plan exists and where drainage patterns are disrupted by settlement, tree growth or, more commonly, where several homeowners have modified their properties over a long period of time by installing fences, sheds, pools, gardens, retaining walls, etc. This type of complaint should be referred to the Residential Drainage Assistance Program (RDAP) or the Municipal Law Enforcement Mediation Program where deemed appropriate.

Attached as Appendix “A” to Report PED13084 is a recommended Terms of Reference for the pilot program to enforce the Property Standards By-law to restore swales where there is an easily identifiable obstruction.

Finally, during the Planning Committee discussion, staff was directed to review creating electronic copies of existing paper copies of grading plans to create efficiencies and ease of access for future use. Currently, the Building Services Division has paper copies of approved grading plans dating back to the early 1980s. Post amalgamation, the practice was to store an electronic copy of the complete engineering submission which included the approved grading plan. Staff is recommending utilizing students to scan and catalogue paper copies of previously approved grading plans and link the electronic copy to our Development Status Database.

ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

N/A

ALIGNMENT TO THE 2012 – 2015 STRATEGIC PLAN:

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

- 2.3 Enhance customer service satisfaction.

APPENDICES / SCHEDULES

Appendix “A” to Report PED13084 - Terms of Reference for a pilot program of enforcing the Property Standards By-law 10-221 to restore swales where there is an easily identifiable obstruction that prevents draining.

Appendix “B” to Report PED13084 – Draft By-law to amend By-law No. 10-221, a By-law to Prescribe Standards for the Maintenance and Occupancy of Property.

MH/dt

TERMS OF REFERENCE

For a pilot program of enforcing the Property Standards By-law 10-221 to restore swales where there is an easily identifiable obstruction that prevents draining:

1.0 Background:

City Council, on February 13, 2013 approved a two year pilot program, to commence in the Spring of 2013, to enforce the Property Standards By-law to restore swales where there is an easily identifiable obstruction that prevents draining as per the originally approved grading plans.

2.0 Objectives:

To assess the effectiveness of enforcement and resources required in responding to complaints about obstructed swales where there is an easily identifiable obstruction that prevents draining as per the originally approved grading plans.

3.0 Implementation Timetable:

To commence in the Spring of 2013 and end in the Spring of 2015.

4.0 Scope of Work:

Reporting to the Superintendent of Municipal Law Enforcement, the Drainage Enforcement Officer will investigate and enforce, on a reactive basis only, complaints of standing water resulting from obstructed swales.

5.0 General Enforcement Practice:

The following is intended to provide a general overview of enforcement practices related to the enforcement of blocked swales where there is an easily identifiable obstruction, and is in no way intended to eliminate any discretion on the part of an investigating Officer or to dictate enforcement process where other remedies might be prudent or necessary:

- complaint received by Municipal Law Enforcement; logged and assigned to Drainage Enforcement Officer case load;
- preliminary investigation undertaken by Drainage Enforcement Officer to determine if complaint is related to a property:
 - o in a development with approved grading plan, or;

- is not in a subdivision that is under construction (if this is the case, grading issues will be referred to the Growth Management Division);
- Drainage Enforcement Officer visits site to determine type of infraction and either:
 - commences enforcement by issuing an Order to remove a simple obstruction to restore functionality to a swale, or;
 - refers the complaint to the Residential Drainage Assistance Program (RDAP) (i.e. where no grading plan exists and drainage patterns are disrupted by settlement, tree growth or, more commonly, by fences, sheds, pools, gardens, retaining walls etc.), or;
 - offers mediation to the affected parties;
- Homeowner must comply within allotted time to restore to previously approved condition or to retain a professional engineer to recommend alternative solutions and then to implement such a solution;
- Homeowner required to submit revised plans for approval plus review fee to Growth Management Division (GM);
- Growth Management Division will approve or deny alternative and notify homeowner of decision;
- Work is completed within the allotted time or, should the homeowner fail to comply, the City may:
 - undertake the work and place costs on the property tax roll;
 - issue a Provincial Offense Notice (PON) or Part I charge or Part III summons, or;
 - register the order on title;
- File closed (compliance is achieved).

6.0 Reporting and Evaluation:

Staff will report to the Planning Committee with an interim assessment of the pilot program after one year, and with a final report before the conclusion of the pilot program. The reports will include information about and an evaluation of the pilot program including:

- success rates in dealing with complaints about blocked swales and achieving compliance where there are easily identifiable obstructions;
- number of complaints received about blocked swales which were deemed to be of a more complex nature (i.e. no easily identifiable obstruction);
- cost recovery from fines and other charges;
- number of complaints driven by neighbour disputes such that mediation was appropriate;
- the following enforcement effectiveness measures:
 - o rate of compliance with the Property Standards By-law (i.e. obstruction removed) upon notice to property owner/occupant (i.e. no by-law charges);
 - o rate of compliance with the Property Standards By-law (i.e. obstruction removed) through by-law charges and/or using City contractors to do the work;
 - o number and disposition of appeals to the Property Standards Committee;
- assessment of the extent to which the pilot program is meeting the need for which it was intended and recommendations for continuing to respond to complaints about obstructed swales where there is an easily identifiable obstruction that prevents draining as per the originally approved grading plans.

7.0 Financing:

All costs associated with the pilot are to be funded from the Parking Reserve (Account No. 108021), with any proceeds from associated fees and charges being directed back to the Parking Reserve (Account No. 108021) to offset the actual gross cost.

Authority: Item (#), Committee (name)
Report (staff report number)
CM: Date

Bill No.

CITY OF HAMILTON

BY-LAW NO. _____

**To Amend By-law No. 10-221, a By-law to Prescribe Standards for the
Maintenance and Occupancy of Property**

WHEREAS Council of the City of Hamilton enacted a by-law to prescribe standards for the maintenance and occupancy of property being City of Hamilton By-law No. 10-221;

AND WHEREAS this By-law provides for the amendment of the subsections 18(1) and 21(1) of City of Hamilton By-law No. 10-221;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Subsection 18(1) of By-law No. 10-221 is deleted and replaced by the following new subsection 18(1):

18(1) Where drainage, grading, landscaping, parking areas, walkways, steps, hedges, trees, fences, curbs, or similar changes to a property have been required by the City as a condition of development or redevelopment approval or, in the case of drainage or grading by an approved grading plan, such works shall be repaired or maintained so as to ensure continuous compliance with the City development or redevelopment approval requirements or the approved grading plan.

2. Subsection 21(1) of By-law No. 10-221 is deleted and replaced by the following new subsection 21(1):

21(1) Storm water, including storm water discharged from a roof, shall be drained so as to prevent recurrent standing water, erosion or other damage on the property or on an adjoining property.

3. This By-law comes into force on the day it is passed.

PASSED this day of , 20 .

R. Bratina Mayor	R. Caterini City Clerk