



# INFORMATION REPORT

<b>TO:</b>	Chair and Members Public Works Committee
<b>COMMITTEE DATE:</b>	February 27, 2017
<b>SUBJECT/REPORT NO:</b>	Update on Construction /Tree Damage Concerns on Greening Avenue (FCS17026) (City Wide) (Outstanding Item)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	John McLennan (905) 546-2424 Ext. 5736
<b>SUBMITTED BY:</b>	Rick Male Director and Corporate Controller Corporate Services Department
<b>SIGNATURE:</b>	

## **Council Direction:**

Public Works Committee at its meeting of October 31, 2016, approved the following:

“That staff be directed to review the correspondence from Ms. Julie Wright and Mr. Leonard Singh (attached as Appendix A) respecting the concerns the homeowners have with regards to out of pocket costs that they have incurred due to the damage caused by the sidewalk restoration and City tree roots and report back to the Public Works Committee on options for addressing the concerns of the homeowners”

## **Information:**

The purpose of this report is to update Council on the actions taken by staff to address this outstanding item. As a result of this report, the item representing Construction/ Tree Damage Concerns on Greening Avenue will be considered complete and removed from the Public Works outstanding business list.

---

*OUR Vision: To be the best place to raise a child and age successfully.*

*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

*OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.*

**SUBJECT: Update on Construction /Tree Damage Concerns on Greening Avenue (FCS17026) (City Wide) (Outstanding Item) - Page 2 of 3**

---

On September 6, 2016, the Risk Management Services Section received a notice of claim from Julie Wright and Leonard Singh, owners of 22 Greening Avenue in Ward 10 in the City of Hamilton. The pertinent components of the claim were as follows:

- A large municipal Sycamore tree is situated in the municipal road allowance in front of the subject property.
- The roots of the municipal tree were causing the municipal sidewalk and sections of the claimants' concrete driveway to heave.
- The roots of the municipal tree had also penetrated the claimants' storm and sanitary sewer laterals.
- Estimates to replace the driveway and sewer laterals total \$27,000.
- The claimants feel the City is responsible for the damages to their driveway and sewer laterals.

Risk Management file # 048927 was opened in response to the claim and a liability investigation was commenced. The investigation confirmed that the roots from the municipal tree had in fact caused damage to the claimants' driveway and had penetrated their storm and sanitary laterals on both sides of the property line.

When roots from a municipal tree are found adversely impacting private property, Risk Management will compensate the claimant for the damaged property. While the presence of the tree roots does not represent "negligence" on the part of the City, it is generally accepted that a court would apply a "nuisance" analysis to the situation and order the City to compensate a claimant appropriately. As such, compensation to the subject claimants for their driveway damage was in order.

Risk Management did not consider the damage, from root penetration, to the storm and sanitary laterals to be either negligence or nuisance. The reason for this position is that tree roots will not compromise a sewer lateral unless there are access points for the roots such as cracks, breaks, and separating joints. Contrary to root damage to a driveway, root damage to a sewer lateral is entirely avoidable or manageable through upgrade of an old clay lateral to PVC material or by regular maintenance by a plumbing contractor. City of Hamilton By-Law 06-026 establishes that the responsibility for the repair and maintenance of the entire length of sewer lateral, including that portion within the municipal road allowance, rests with the property owner. Had the claimants adequately maintained their sewer lateral over the years, or upgraded to PVC material, municipal tree roots would not have created a back-up situation.

Risk Management compensated the claimants the amount of \$5,406.00 for the damaged section of their driveway (521 sq. ft.) and some related landscaping. The claimants thanked the Risk Management claims representative for his efforts and signed a Full & Final Release in exchange for the settlement funds. The Risk Management file was then closed.

---

*OUR Vision: To be the best place to raise a child and age successfully.*

*OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.*

*OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.*

**SUBJECT: Update on Construction /Tree Damage Concerns on Greening Avenue  
(FCS17026) (City Wide) (Outstanding Item) - Page 3 of 3**

---

Ms. Wright and Mr. Singh also received assistance funding of \$3,446.00 towards the re-lining/replacement of their private storm and sanitary laterals through the Sewer Lateral Maintenance Program (SLMP) administered by Hamilton Water. The public sections of the laterals were relined at the City's expense, despite the fact that By-Law 06-026 establishes that the responsibility for the repair and maintenance of the entire length of sewer lateral, including that section within the municipal road allowance, rests with the property owner. The City undertakes the repair of broken laterals (public side) and assists with the remediation broken laterals (private side) through the SLMP as a gesture of good will, and in the interest of improved total sewer system integrity, rather than a requirement or interpretation of law.

Ms. Wright and Mr. Singh have received the appropriate compensation available to them through the Risk Management Services claims process and the Sewer Lateral Management Program. Any further compensation extended Ms. Wright and Mr. Singh would be at the discretion of Council in the form of a compassionate grant.

JM/dw