

Date: April 27, 2021

To: Chair and Members of General Committee

From: Geoff Wright, P.Eng, MBA, Commissioner of
Transportation and Works

Originator's files:
MG.23.REP

Meeting date:
May 12, 2021

Subject

Easement Acquisition During Development Approval Process & Request for Removal of Easement on 1510 Pinetree Crescent (Ward 1)

Recommendations

1. That the Corporate Report dated April 27, 2021 from the Commissioner of Transportation & Works regarding "Easement Acquisition During Development Approval Process & Request for Removal of Easement on 1510 Pinetree Crescent," be received for information; and
2. That, pursuant to a deputation from the resident at 1510 Pinetree Crescent, the easement acquired through the Site Plan Approval process at 1510 Pinetree Crescent remain as-is in order to continue the City's ability to access infrastructure for maintenance purposes and protect natural assets.

Executive Summary

- The ability to secure an easement or dedication related to drainage and conservation, through the development approval process, is established in the *Planning Act*.
- The acquisition of easements through the development approval process provides the municipality an opportunity to secure lands for maintenance of infrastructure and conservation of natural assets, and the rationale behind the requirement is further substantiated in Sections 6 (Value the Environment) and 19 (Implementation) of the City's Official Plan.
- Easements do not enable or oblige the City to undertake private works on behalf of property owners. But rather, enable the City to access the watercourse to undertake rehabilitative works on its infrastructure that serve to protect property and infrastructure adjacent to the watercourse. These works may include projects for erosion control, flood mitigation and storm drainage improvements.

- The easement in question on 1510 Pinetree Crescent was established through Site Plan Approval file SP 04/074 in 2004. This type of easement exists on many properties around the City, including approximately 20 similar easements that have been acquired by the City along the Credit River, between Lakeshore Road and the Queen Elizabeth Way, through the development approval process over the last twenty years alone.
- In the vicinity of 1510 Pinetree Crescent, a future capital project has been flagged on the Credit River to provide erosion protection to the eastern bank of the river south of the Queen Elizabeth Way. In the most recent Council approved Capital Plan (2021-2030) the Environmental Assessment phase is scheduled for 2024 and will be immediately followed by the Design phase. The Construction phase is scheduled for 2026. These timelines are subject to change as part of watercourse evaluations and Capital programming.
- In regards to 1510 Pinetree Crescent, the easement should remain as-is on the basis that: (1) the easement was obtained in a manner consistent with a standard approach utilized through the development approval process; (2) the scope of the easement is necessary for its stated purpose; and, (3) future project work relating to bank stabilization along the Credit River may require use of the easement.

Background

This report will describe the process and rationale for the City's acquisition of easements related to drainage and conservation through the development approval process. On February 24, 2021 General Committee received a deputation from Margaret Dunn, regarding the request for "Removal of the City's Easement," on her property at 1510 Pinetree Crescent. Council subsequently approved resolution GC-0085-2021 that staff respond to the request through a report back to General Committee. Although this report is prompted by the deputation, the question echoes a broader inquiry that has arisen many times in recent years.

The easement in question on 1510 Pinetree Crescent was established through Site Plan Approval file SP 04/074 in 2004. During the Site Plan approval process the greatest natural hazard on the property was delineated, which considers the floodplain, top-of-bank, stable slope or erosion setback. The principle is that a hazard limit was established and the easement conveyed prior to Site Plan Approval in favour of the City of Mississauga for the following purposes: "*namely to operate, maintain, improve, inspect, alter, channelize and repair an open natural watercourse known as the Credit River*".

This type of easement exists on many properties around the City, as secured through various development approval processes that will be described later. At 1510 Pinetree Crescent specifically, the concerns raised to Council were that:

1. The request for an easement is not a standard condition;
2. The scope of the easement is not necessary for its stated purpose; and,
3. The scope of the easement is excessive.

As such, this report will speak to the broader inquiry beyond the subject property, while also addressing the specific points above relating to the easement removal at 1510 Pinetree Crescent. This report will respond to the above points respectively by speaking to:

1. The standard process for acquisition of easements of this nature through the development approval process;
2. The intended use of these easements; and,
3. Examples that support use of these easements

Comments

STANDARD PROCESS FOR EASEMENT ACQUISITION

The ability to secure an easement or dedication, through the development approval process, is established in the *Planning Act*. An easement or dedication may be requested by the Municipality for conservation and maintenance purposes through Draft Plans of Subdivision and Applications for Consent. In addition, an easement may be requested through Site Plan Applications.

The establishment of the greatest natural hazard requires delineation on the property. This is undertaken primarily for maintenance purposes but also for conservation of natural assets. Consideration of these natural hazards includes:

- A site walk with Conservation Authority staff to stake a visually identifiable “top-of-bank,” which is the point at which the flatter developable land is separated from steeper valley land. Often, the top-of-bank is the greatest hazard, however there are some instances where another hazard may govern to establish the easement limit.
- Reflecting the limit of the floodplain on the proposed development plan, based on latest information from the Conservation Authority.
- Indicating the top of stable slope line based on pertinent soils investigation.
- Showing any erosion setback based on technical findings related to the watercourse.

Once the hazards are established and documented on the proposed development plan, the greatest limit is used to set the easement. The rationale for securing such an easement is further substantiated in the City’s Official Plan under Section 6 – Value the Environment and Section 19 - Implementation.

There are multiple sections (e.g. 6.11, 6.3.1, 6.3.24, 6.3.38) that identify that Mississauga will protect, enhance, restore and expand the Natural Heritage System. These sections speak to placing those areas identified for protection, enhancement, restoration and expansion in public ownership, where feasible. Consideration is given to public acquisition of these areas through the development approval process or through the City’s land securement process.

In Section 19.18 Greenlands, the following sections also speak to the acquisition of natural hazard lands:

*“19.18.1 As a condition of development approval, **natural hazard lands** may be placed in public ownership for their long term protection.*

*19.18.2 Greenlands is determined on a site by site basis and is defined by natural hazards associated with **watercourse** corridors and Lake Ontario, and the limits of identified natural areas. The limits of the Greenlands are determined in consultation with the City and appropriate conservation authority and through studies, where required, completed by the proponent to the satisfaction of the City and the appropriate conservation authority.”*

As evidence of the City’s application of this practice, it is noted that between Lakeshore Road and the Queen Elizabeth Way, there are approximately 20 similar easements that have been acquired by the City along the Credit River through development processes over the last twenty years alone. In some limited instances, there may be cases when the property owners are voluntarily granting easements for rehabilitation of the Credit River banks.

In regard to 1510 Pinetree Crescent, some confusion arose as to why an easement was not requested for a building renovation on a neighbouring property. It has since been clarified that although the adjacent property is subject to Site Plan Control, the renovation was considered to be minor in nature, and not defined as development under the *Planning Act*. As a result, it was processed as a Site Plan Express application. In addition, the property in question applied for a Building Permit. Following on the above commentary, easement acquisition cannot be requested through the Site Plan Express or Building Permit processes.

INTENDED USE OF THE EASEMENT

The terms of each easement are registered on title along with the easement description and accompanying reference plan that illustrates the limits. For the type of easements being discussed in this report, the terms generally speak to the ability for the City to be able to maintain its infrastructure. With respect to 1510 Pinetree Crescent, as stated earlier, the easement is for the following purposes: *“namely to operate, maintain, improve, inspect, alter, channelize and repair an open natural watercourse known as the Credit River”*.

These easements do not enable or oblige the City to undertake private works on behalf of property owners. But rather, enable the City to access the watercourse to deal with stormwater-related issues. To that end, there are often prohibitions to the landowner that the easement lands should be kept clear of structures (e.g. garage, shed) while soft landscaping is generally permissible. In instances where the City requires access to the easement, notice is typically given to the landowner for purposes of coordination.

EXAMPLES THAT SUPPORT USE OF THE EASEMENT

The easements along watercourses allow the City the opportunity to undertake rehabilitative works on its infrastructure that serve to protect property and infrastructure adjacent to the

watercourse. These works may include projects for erosion control, flood mitigation and storm drainage improvements.

The City's watercourse infrastructure is assessed on a regular basis through the Watercourse Monitoring Program, and issues that are identified may be programmed for appropriate works in the City's forecast. It is important to note that the projects in the City's forecast are re-evaluated annually, may be re-prioritized accordingly and are all subject to Council approval. **Table 1** below lists some of the projects that have been recently completed. Note that all the listed projects involve lands on which the City has an easement in its favour.

Table 1: Recently completed watercourse projects (selected):

Watercourse Name	Project Location
Cooksville Creek	Willa Road to Orano Avenue (Ward 1)
Little Etobicoke Creek	5226 Timberlea Boulevard (Ward 5)
Applewood Creek	1582 Myron Drive (Ward 1)
Kenolie Creek	1376 Mineola Road West (Ward 1)
Mullet Creek	2030 Montcrest Court (Ward 11)
Cooksville Creek	Q.E.W. to Elaine Trail (Ward 1)

In the vicinity of 1510 Pinetree Crescent, a future capital project has been flagged on the Credit River to provide erosion protection to the eastern bank of the Credit River south of the Queen Elizabeth Way. In the most recent Council approved Capital Plan (2021-2030) the Environmental Assessment phase is scheduled for 2024 and will be immediately followed by the Design phase. The Construction phase is scheduled for 2026. As previously noted, these timelines are subject to change as part of watercourse evaluations and Capital programming.

CONCLUSION

Based on the foregoing commentary, in regards to 1510 Pinetree Crescent, the easement should remain as-is on the basis that:

1. The easement was obtained in a manner consistent with a standard approach utilized through the development approval process;
2. The scope of the easement is necessary for its stated purpose; and,
3. Future project work relating to bank stabilization along the Credit River may require use of the easement.

Strategic Plan

Acquisition of easements for the purposes of maintaining infrastructure, as described herein, falls within the *Connect* Strategic Pillar under its strategic goal to *Build and Maintain Infrastructure*. Additionally, the conservation of natural assets falls within the *Green* Strategic Pillar under its strategic goal to *Conserve, Enhance and Connect Natural Environments*.

Financial Impact

There are no financial impacts resulting from the recommendations in this report.

Conclusion

The acquisition of easements through the development approval process provides the municipality an opportunity to secure lands for maintenance of infrastructure and conservation of natural assets. In order to uphold these initiatives, the easement on 1510 Pinetree Crescent should remain as-is.

Attachments

Appendix 1: Deputation of February 24, 2021 by Margaret Dunn, Resident, regarding the request for "Removal of the City's Easement"



Geoff Wright, P.Eng, MBA, Commissioner of Transportation and Works

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