

City of Mississauga Corporate Report



<p>Date: June 23, 2020</p> <p>To: Mayor and Members of Council</p> <p>From: Geoff Wright, P.Eng, MBA, Commissioner of Transportation and Works</p>	<p>Originator's files:</p> <hr/> <p>Meeting date: July 8, 2020</p>
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Subject

Review of the Merits of a Grading and Drainage By-Law for the City of Mississauga

Recommendations

1. That Council endorse the recommended improvements outlined in the report from the Commissioner of Transportation and Works, dated June 23, 2020 entitled "Review of the Merits of a Grading and Drainage By-Law for the City of Mississauga" to strengthen existing processes, permits/approvals, guidance and by-laws related to grading and drainage.
2. That the Road Occupancy, Lot Grading and Municipal Services Protection Deposits By-law 251-2012, as amended, be repealed.
3. That a by-law be enacted to establish a new Lot Grading and Municipal Services Protection By-law to reinstate the relevant provisions of the repealed by-law in a manner that more clearly defines existing requirements related to lot grading and municipal services protection, including the tools provided to staff to administer and enforce the by-law, subject to any minor modifications.
4. That a by-law be enacted to amend section 9 of By-law 0025-2015 (to appoint City Employees and Municipal Law Enforcement Officers for the purposes of enforcing Municipal By-laws) to identify the persons who are employed by the City's Transportation and Works Department for the purpose of enforcing the new Lot Grading and Municipal Services Protection By-law.

Report Highlights

- Staff from the Transportation and Works Department (Infrastructure Planning and Engineering Services) undertook a thorough review of the City's current practices and processes in relation to managing lot grading on private property, as well as extensive consultation on best-practices with several other municipalities in Ontario and across Canada.

- The findings of the review and consultation indicate that in order to address the root cause of issues related to grading and drainage on private property, improvements to the existing processes, permits/approvals, guidance and by-laws that the City already has in place will be of more benefit than establishing a new by-law and permit system to regulate any/all grading and drainage works on private property.
- In conjunction with a separate Corporate Report, entitled “Road Occupancy Permit By-law” the existing Road Occupancy Permit, Lot Grading and Municipal Services Protection Deposit By-law 251-2012, as amended, is to be repealed and in part be replaced with a new Lot Grading and Municipal Services Protection By-law. This new by-law has been developed to reinstate the relevant components of the repealed by-law in a manner that more clearly defines existing requirements related to lot grading and municipal services protection, including the tools provided to staff to administer and enforce the by-law.
- Increased public awareness and communication have been found to be effective tools in other municipalities to assist with proactively informing residents about existing City processes, policies, guidance and by-laws, as well as to communicate to residents their own role in preventing grading and drainage issues on their property and neighbouring properties when undertaking private property improvement works. A grading and drainage issues education and awareness campaign should be considered for Mississauga.

Background

On March 20, 2019 a resident made a deputation at General Committee regarding neighbourhood grading concerns. As a result of the deputation, staff were directed to carry out a review of the merits of a comprehensive grading and drainage by-law and report back to General Committee (GC-0117-2019).

The City has a number of existing by-laws that deal with the regulation of works on private property and that include some provisions related to grading and drainage, as follows:

- *Road Occupancy Permit, Lot Grading and Municipal Services Protection Deposit By-Law 251-2012, as amended.* This by-law predominantly deals with the process to collect deposits related to lot grading and municipal services protection as a result of activities undertaken as part of existing development processes.
- *Erosion and Sediment Control By-Law 512-91, as amended.* This by-law (and the associated permit) deals predominantly with the requirement to install and maintain erosion and sediment control measures prior to undertaking land-disturbing activities for sites that are greater than 1 hectare and/or adjacent to a waterbody.
- *Property Standards By-Law 654-98, as amended.* This by-law includes provisions to require the continuous maintenance of landscaping works (including walkways, parking areas, steps, etc.) required as a condition of development as well as requirements for downspout discharge to be appropriately directed and contained within a property.
- *Zoning By-Law 0225-2007, as amended.* This by-law regulates the use of land and future development and implements the objectives and policies of the Official Plan.

Starting with the existing by-laws, and to further evaluate if a new by-law is required, staff defined the scope of the review as follows:

- Review existing processes, permits/approvals, guidance and by-laws related to grading and drainage on private property,
- Review existing development application and building permit application processes related to the City's grading and drainage review and approval,
- Review Low Impact Development (LID) and/or other stormwater best management practices on private property included as part of development or through other initiatives, including the process to ensure that maintenance requirements are provided,
- Review the current process to collect, inspect and release lot grading deposits,
- Review the scope of the Erosion and Sediment Control Permit process regarding grading review of temporary works and reinstatement inspection requirements,
- Consult with other Divisions on other initiatives that could capture improvements on existing processes or by-law amendments related to this review (i.e. Property Standards By-law, Zoning By-law),
- Consult with Legal Services regarding the City's authority and liability,
- Conduct a best practices consultation with other upper and lower tier municipalities in Ontario and across Canada, regarding their existing processes, permits/approvals, guidance and by-laws that relate to site alteration and/or grading and drainage works on private property,
- Evaluate data collected from 311 in regards to complaints received related to grading and drainage issues on private property, and
- Consult with Ward Councillors to gather information related to the nature of grading and drainage issues/complaints that they receive.

Comments

As part of the preliminary review, staff identified and engaged with the key Divisions that could be impacted by the introduction of a new by-law and permit system, and established Working and Steering Committees to guide the review process.

Existing Processes, Permits/Approvals, Guidance, By-Laws, and Cross-Departmental Consultation

Before giving any consideration to the creation of a new by-law and/or permit system, the Project Lead engaged with numerous staff across the corporation to further understand existing processes, permits/approval, guidance and by-laws that could relate to the review of grading or drainage modifications on private property.

A number of observations were made as a result of this review and extensive staff consultation, which are summarized in Appendices 1 and 2. The key findings are as follows:

- The existing Road Occupancy Permit, Lot Grading and Municipal Services Protection Deposit By-Law does not include adequate provisions related to the existing review,

approval and inspection requirements associated with lot grading in order to provide clear direction to residents;

- There is limited information available on the City's website to inform the general public about what they should know prior to performing grading works on private property to avoid negative impacts on their properties or adjacent properties; and
- Other available guidance documents, such as Transportation and Works' Development Requirements Manual, do not contain sufficient information related to existing grading and drainage practices and requirements, and what is available is not written in plain language.

Ward Councillor Consultation

Staff met with a number of Councillors who offered to participate in the consultation by providing input on common complaints received from residents related to the scope of this project. The recurring complaints received are summarized as follows:

- Existing drainage features being buried or poorly maintained such as swales and catch basins;
- Location of sump pump discharge;
- Reduced setbacks caused by works approved through minor variances;
- Hard surface landscaping such as concrete or permeable pavers installed without proper drainage features and close to the property limits; and
- Backyard grades (soft scape) being raised and causing drainage concerns on adjacent properties.

Best Practices Research

City staff conducted a best practices consultation with other upper and lower tier municipalities in Ontario and across Canada to understand the mechanisms they have in place to deal with grading and drainage matters on private property. A summary of the information collected is presented in Appendix 3.

With the information gathered from each municipality, it was commonly reported that even with a comprehensive by-law and permit system to regulate any alteration of grades on residential property it does not prevent works from being performed outside the permit process. As such, complaints received for grading and drainage issues for which no permit was obtained may still be considered a private matter as there are often no original drawings (i.e. certified drawings showing the original condition of the site prior to any alteration) in order to enforce the by-law.

One other commonality observed through the municipal benchmarking was a reliance on more robust public education and information availability.

Data Collection from 311

To better understand some of the historical issues/complaints that the City has received related to grading and drainage modifications on private property, staff gathered information from 311. Staff focused on the service requests that are directed to Development Construction as that

group is responsible for the inspections associated with the collection and release of lot grading security deposits for site plan applications and building permits.

Staff reviewed and analyzed the past four4 years of Service Requests that dealt with grading and drainage concerns. It was determined that the information collected as part of the Service Requests was not detailed enough to determine which Service Requests were related to grading work undertaken as part of a City-approved permit versus work undertaken with no permit approvals. As a result, the information from 311 could not be used as a deciding factor in the overall recommendations.

Options

Based on all of the information gathered through the review and consultation, the following options were considered:

- **Option 1: Do Nothing.**
This option involves maintaining the status quo with respect to the City's current processes and available information related to lot grading and drainage.
- **Option 2: Create a Comprehensive Grading & Drainage By-Law** (i.e. a Site Alteration By-law) and associated permit.
This option involves the creation of a new by-law and permit system, which could allow the City to regulate any site alteration works on private property that could result in a change to the existing grades and/or drainage conditions, regardless of the scope of the works, and including such things as gardens. It could require homeowners to apply for a permit before undertaking any works within the limits of their property that involves the import, movement or removal of any soil above a set threshold. It would require additional technical and enforcement staff to administer, oversee and enforce the by-law.
- **Option 3: Improve Existing Processes, Permits/Approvals, Guidance and By-Laws**
This option involves enhancing the City's current processes and available information related to lot grading and drainage.

An analysis of the pros and cons of each option can be found in Appendix 4.

In summary, the findings of the review and consultation indicate that the City's existing tools and processes are appropriate, but that they should be improved to provide more tools for staff and more information to the public about undertaking works on private property and the potential impacts that they could cause (Option 3).

Recommended Improvements in Support of Option 3

<i>Improvement name</i>	<i>Explanation</i>
New Lot Grading and Municipal Services Protection By-Law	To reinstate and improve upon the relevant lot grading and municipal services protection components of the repealed Road Occupancy Permit, Lot Grading and Municipal Services Protection Deposits By-Law, in a manner that more clearly defines existing requirements. An overview of the improvements made to the by-law is provided in Appendix 5.
Appointment By-law Amendment (0025-2015)	<p>To amend the Appointment By-Law to ensure the following positions are named as Municipal Law Enforcement Officers to enforce the new Lot Grading and Municipal Services Protection By-Law:</p> <ul style="list-style-type: none"> • Commissioner, Transportation and Works • Director, Infrastructure Planning & Engineering Services • Director, Works Operations and Maintenance • Manager, Development Engineering and Construction • Manager, Technical Services • Supervisor, Development Construction • Supervisor, Maintenance Standards and Permits • Supervisor, Surveys and Inspections • Assistant Supervisor, Surveys and Inspections • Development Construction Technologist • Senior Inspector • Inspector
Increase Public Awareness and Education Tools	To increase web content including FAQs and guidance documents to educate the public, developers and consultants about site alteration based on grading and drainage best practices, including things like sump pump discharge and landscape modifications (such as hardscaping) in side yards and backyards
Amendment to Zoning By-Law	To specify a minimum 0.90 m interior side yard setback to any hard surface (i.e. concrete, asphalt, unit pavers, etc.) to allow for a minimum 150 mm depth and a maximum 3 horizontal to 1 vertical side slope cut-off swale (as set out in the Development Requirements Manual) to ensure the drainage of the lot is conveyed to the appropriate place of disposal without negatively impacting neighbouring properties
Other Opportunities for Process Improvements	<ul style="list-style-type: none"> • Review and update review processes related to Committee of Adjustment severance applications, as well as some minor variance applications that may have an impact on grading and drainage, including the ability to request certified grading and drainage plans • Review and update the Development Requirements Manual • Include additional warning clauses in development-related agreements associated with drainage features • Review and update the grading review process associated with the issuance of Erosion and Sediment Control Permits • Review the option to collect lot grading deposits through applications that do not typically have other conditions of approval (i.e. SPAX).

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| | <ul style="list-style-type: none">• Consider some minor revisions to the Property Standards By-Law to better define drainage features and the need to maintain them to protect building structures and avoid impacts on abutting properties |
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Strategic Plan

The recommendations arising from this review advances the *Belong Pillar* and the goal to *Deliver the Right Services*.

Financial Impact

There are no financial impacts to the City arising from the adoption of the recommendations contained within this report.

Conclusion

Staff from the Transportation and Works Department undertook a thorough review of the City's current practices and processes in relation to managing lot grading on private property, as well as extensive consultation on best-practices with several other municipalities in Ontario and across Canada.

The findings of the review and consultation indicate that improvements to the existing processes, permits/approvals, guidance and by-laws that the City already has in place will be of more immediate benefit rather than establishing a new by-law and permit system to regulate any/all grading and drainage works on private property as a new by-law/permit would not address the root cause(s) of grading and drainage issues caused by works performed on private property without required permits.

A new Lot Grading and Municipal Services Protection By-law has been developed to reinstate the relevant components of the repealed by-law in a manner that more clearly defines existing requirements related to lot grading and municipal services protection, including the tools provided to staff to administer and enforce the by-law. In addition, amendments to the Appointment By-law are also required to facilitate the introduction of the Lot Grading and Municipal Services Protection By-Law.

Increased public awareness and communication tools are recommended to assist with proactively informing residents about existing City processes, policies, guidance and by-laws, as well as to educate residents about their own role in preventing and/or improving grading and drainage issues on their property.

Attachments

Appendix 1: City of Mississauga existing By-Laws - Summary of Findings

Appendix 2: City of Mississauga Existing Processes and Guidance – Summary of Findings

Appendix 3: Municipal Benchmarking – Summary of Findings

Appendix 4: Options Analysis – ‘Pros’ and ‘Cons’

Appendix 5: New Lot Grading and Municipal Services Protection By-Law – Summary of Changes



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

Prepared by: Cynthia Urdaneta, P.Eng, Project Lead – IPES, Transportation and Works