

FILL BY-LAW AMENDMENTS - OCCUPIED RESIDENTIAL LOTS OR PROPERTIES

Recommendation

The Commissioner of Legal and Administrative Services, in consultation with the Director of Building Standards, recommends:

- 1 That a By-law be enacted by Council to amend By-law Number 189-96, as amended (the "Fill By-law"), to remove the application of the By-law or any of its requirements to any land, lot or property with an occupied residence, in a form substantially similar to the draft by-law attached to this report (Attachment 1); and

2. That direction be provided by Council on the manner and extent of notice to be provided to the public of Council's intention to consider these amendments to the Fill By-law.

Purpose

The purpose of this report is to consider a proposal to amend the Fill By-law, By-law Number 189-96, to remove its application and requirements to all lands, lots or property with an occupied residence or a residence that is capable of lawful occupation situate on the property. It is the opinion of the Commissioner of Legal and Administrative Services that a municipality should not engage in regulating the placement of fill for mature residential subdivisions when it is essentially a matter between two neighbours and a nuisance caused by one property owner causing the escape of surface water from one property to another. A civil remedy exists for the affected owner and the City's involvement only complicates the issue.

Background - Analysis and Options

Complaints related to the improper placement of fill and grade alterations on lots with occupied residences in the City of Vaughan have escalated over the years. At present there are some 1,000 complaints being received annually from residential property owners. A number of prosecutions have been undertaken since By-law 189-96 (the "Fill By-law") was enacted. In addition the City has been named as a defendant in civil proceedings commenced by neighbours claiming damages as a result of improper fill placement or grade alterations.

Amendments to the "Fill By-law" are being considered in an effort to clarify the City's position related to placement of fill involving occupied residential properties. The intention is to exempt from the Fill By-law the improper placement of fill or grade alteration for lots or properties with an occupied residence. The proposal would not affect the by-law's ongoing application to lands within an unassumed plan of subdivision. The City receives a letter of credit to guarantee that appropriate grading will be in place prior to assumption of a subdivision.

The City is authorized under section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, as it was under its predecessor, section 223.1 of the *Municipal Act*, R.S.O. 1990, c.M.45, to enact by-laws related to fill placement and site alteration, including authority to enact by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil or the alteration of the grade of land, to provide for a system of permits, to require the restoration of the original grade of land, etc. The By-law will remain in force in relation to vacant sites under development. The Commissioner of Engineering and Public Works has advised that he wishes to retain this control.

The proposed amendments are viewed as necessary since it is very costly and time-consuming to pursue these types of complaints, particularly in cases involving a dispute to a prosecution and possible civil claims for damages commenced by a neighbouring owner alleging losses or injury.

There are often substantial difficulties involved in establishing proof of recent filling activities that have resulted in grade alteration, caused damage or harm due to run-off, improper drainage, flooding and other associated problems. As time passes the pre-existing fill and grade conditions and the extent of changes that can be attributed to the current owner's fill placement, become more difficult to determine and enforce. Because filling complaints may involve complaints by both adjoining property owners, the City is in a position where it may not satisfactorily be able to attribute the improper activity to one party or the other. In such circumstances establishing proof of an offence will be difficult.

Furthermore, the City itself has been added as a party to claims commenced by property owners alleging damages and losses to their properties as a result of improper filling and alterations to grade by neighbouring property owners.

By regulating the improper placement of fill and grade alterations, and by providing for a system of permits for fill placement/removal, the City is required to take all appropriate steps to enforce the provisions of its Fill By-law, including service of offence notices and obtaining orders for restoration of the site, etc. Where loss or injury may be sustained by a neighbouring property owner, the fact that the City has made a policy decision to regulate filling the City will then have to exercise all reasonable efforts to enforce the fill regulations. By virtue of the fact that the City has decided to regulate filling, it is more likely the City will be exposed to liability by being added to any claim for damages related to a residential lot or property arising from improper filling by an adjacent owner.

In addition to these concerns, the City of Vaughan has encountered difficulties in administration of the Fill By-law, since it involves both Building Standards and By-law Enforcement officials. It has remained cloudy which staff have primary responsibility for ensuring the requirements of the By-law are complied with by residents of Vaughan.

Since the proper approved grading of lands is established through the original subdivision and site plan approval process, individual property owners are in a position to compare filling and grading activities of neighbouring owners from time to time with the originally approved grading plan. In the event of losses or injury arising out of filling activities by a neighbouring property owner, the affected or complainant property owner will not be left without a remedy, but will continue to have civil remedies available to it through the courts.

The *Municipal Act, 2001* has prescribed no specific notice requirements for the enactment of fill placement or site alteration by-laws. In addition, specific notice requirements for informing the public are not included in By-law Number 394-2002, the City's Notice By-law, which establishes the form, manner and timing for public notice for all those matters where public notice is required by a provision of the *Municipal Act, 2001*. Since residential homeowners may have an interest in the proposed amendments to the Fill By-law, it would be appropriate if two or three weeks public notice of the meeting to consider the proposed amendments was published in the local newspaper(s) and by posting on the City's website. Staff will await Council's direction on the form, nature and timing of notice to be provided.

Relationship to Vaughan Vision 2007

This proposal to exempt the improper placement of fill or grade alteration involving lots or properties containing an occupied non-multi-residential dwelling or residence will assist in the development of effective service delivery, by removing services that cannot be provided in a cost-

effective manner and expose the City to unwarranted potential liability and by permitting the City to focus its resources on more difficult and potentially dangerous conditions or activities.

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

For the reasons noted above, the Fill By-law should be amended to exempt the improper placement of fill or grade alteration on lots or properties with an occupied residence. The proposed amendment will not affect the by-law's ongoing application to lands within an unassumed plan of subdivision.

Attachments

1. Draft By-law

Report prepared by:

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Respectfully submitted,

Robert J. Swayze
Commissioner of Legal and Administrative Services

THE CITY OF VAUGHAN

DRAFT

BY-LAW

BY-LAW NUMBER XX-XXX

A By-law to amend By-law 189-96 to prohibit or regulate the placing or dumping of fill in areas of the City of Vaughan, as amended.

WHEREAS the section 142 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes municipal corporations to pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil or the alteration of the grade of land;

AND WHEREAS the Council of The Corporation of the City of Vaughan enacted By-law Number 189-96 being a by-law to prohibit and regulate the placing or dumping of fill in areas of the City of Vaughan on the 8th day of July, 1996;

AND WHEREAS the Council of The Corporation of the City of Vaughan deems it expedient to amend By-law 189-96, a By-law to prohibit and regulate the placing or dumping of fill, to exempt certain classes of lands;

NOW THEREFORE the Council of The Corporation of the City of Vaughan enacts as follows:

1. Section 1 is amended by adding subsection (7a) as follows:
"(7a) "lot" means a parcel of land fronting on a street separate in ownership from any abutting land to the extent that a consent contemplated by section 50 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, would not be required for its conveyance."
2. Subsection 2(2) is amended as follows:
(a) by deleting clause (f) and replacing it with the following:
"(f) fill is being placed on any lot containing one or more occupied residential dwellings."
3. The provisions of this By-law shall come into force and be in effect upon final passage hereof.

READ a FIRST, SECOND and THIRD time and finally passed this day of , 2004.

Michael Di Biase, Mayor

J. D. Leach, City Clerk