

**COMMITTEE OF THE WHOLE - DECEMBER 6, 2011**

**IMPLICATIONS OF REINSTATEMENT OF FILL BY-LAW FOR EXISTING RESIDENTIAL PROPERTIES**

**Recommendation**

The Commissioners of Legal & Administrative Services & City Solicitor and Engineering & Public Works, in consultation with the Director of Budgeting and Financial Planning, recommend that Council consider the implications of reinstatement of the Fill By-law, 189-96 as it relates to existing residential properties as part of the Budget deliberations and along with discussions regarding Program Review.

**Contribution to Sustainability**

Maintaining the function of each component of the overall drainage system contributes to the sustainability of the City.

**Economic Impact**

Reinstatement of the application of the City's Fill By-law to existing residential properties would require a minimum of 3.5 FTE's for Development Engineering, and .5 FTE for Enforcement Services, with an estimated budget impact of \$500,000 as outlined in the table below:

<b>Additional Resources</b>	<b>Estimated Budget Impact</b>
2 – Lot Grading Inspectors	\$150,000
1 – Lot Grading Supervisor	\$100,000
0.5 FTE - Engineering Clerical/Administration support	\$ 35,000
0.5 FTE – By-law Enforcement	\$ 35,000
Equipment and Training for 4 FTE	\$ 20,000
Allowance for services of an Ontario Land Surveyor	\$ 50,000
Fuel and vehicle maintenance	\$ 15,000
Revenue Offset from Permit Fees (100 permits X \$300 each)	-\$ 30,000
<b>Total Annual Operating Cost</b>	<b>\$375,000</b>
3 – Vehicles for Lot Grading Inspectors (one time Capital cost)	\$110,000
Replacement Contribution as per Policy for new vehicles	\$ 15,000
<b>Estimated Total Budget Impact</b>	<b>\$500,000</b>

The above resource requirement is based on processing about 300 grading/drainage complaints per year. Additional resources may be required depending on the volume of lot grading complaints. Other costs may be incurred related to space accommodation, furniture and equipment.

Based on staff's review, revenue recovery would be insignificant, and would not offset the costs of the program; accordingly, the cost of implementing this service will be primarily funded from Taxation. The program does not enhance safety or have a relationship to Vaughan Vision 2020/Strategic Plan. The reinstatement of the Fill By-law to residential properties is a new service and is not a service currently offered by the City.

## **Communications Plan**

If there is a decision to reinstate the By-law as it relates to existing residential properties, a communication plan would be necessary to inform the appropriate staff of the new service and related permit and complaint process. In addition, the communication plan would include a public education component using social media (e.g. web site, pamphlets, etc)

## **Purpose**

This report provides information about the implications of reinstating Fill By-law, 189-96, as it relates to existing residential properties.

## **Background - Analysis and Options**

On June 14, 2011, the Committee of the Whole requested a report regarding the implications of reinstating the Fill By-law 189-96 as it relates to existing residential properties. Staff was asked to outline staffing costs, as well as possible cost recovery through the imposition of fines, and any possible alternatives to reinstatement which might be considered. Staff was asked to report back in time for the 2012 Budget deliberations.

Municipalities have the authority under s.142 of the Municipal Act to prohibit and regulate the placement of fill and grade alterations (placing of fill, removal of topsoil, etc).

Prior to 1996, Vaughan did not have a fill control by-law in place. Fill By-law 189-96 was enacted, which necessitates the implementation of a fill permit application process, including municipal staff evaluation of proposed grading alterations (review of drawings and plans) in the context of approved grades established through earlier plan of subdivision and/or site plans, and consideration of impacts, physical and legal.

### **Minor landscaping was exempt**

By-law 189-96 exempted soil placed for purposes of landscaping, flower beds or vegetable gardens, so long as elevations within 60 cm. (2 ft) of property lines and drainage swales were not changed.

Despite exemption for landscaping, by 2004 the City was experiencing significant numbers of residential complaints relating to disputes between neighbouring property owners. It was reported at that time that 1,000 complaints were received annually.

As property owners can also pursue a civil remedy for nuisance caused by water running from an adjacent property, the City was also being named as a Defendant in civil proceedings (by neighbours suing each other). The City was obligated to defend such actions.

### **Since 2004 existing residential properties are exempt**

In 2004, following a lengthy review, Council determined that the Fill By-law should be amended to remove the application of the By-law requirements from any land, lot or property with an occupied residence. By-law 44-2004 effectively exempted existing residential properties from the application of the Fill By-law.

## **Impacts of Implementation**

Section 142 of the *Municipal Act* permits the municipality to enact a by-law that regulates the placement of fill on a property. Accordingly, reinstating the applicability of Fill By-law, 189-96 will not affect existing residential properties as the By-law provision can not be retroactive. It will not

be enforced with respect to any fill and grading alterations that occurred prior to the date of reinstatement.

Reinstating this provision of the Fill By-law would necessitate the implementation of a fill permit application process. An application for a fill permit, along with grading or site alteration plans, would be required to be submitted to Engineering staff for review, comment and approval. Proposed grading and site alteration plans must be considered with reference to the approved grades established by the plan of subdivision and/or site plan. A letter of credit or other security is typically required prior to the issuance of the permit, to ensure compliance with the proposed grading plan. A site inspection and acceptance of the work would need to take place before the security is released.

Staff has drafted a lot grading/drainage complaint resolution process chart with timelines, and budget implications should Council direct reinstatement of this aspect of the By-law. A copy of this process chart is included as Attachment No.1 to this report. In order to properly investigate this type of complaint, staff will be required to visit the site initially to confirm that there is an issue. From that point staff with technical expertise would be required to survey the property to determine how the grade has been altered and by how much. This is required should the matter proceed to court. Once Notices have been issued and expired another inspection is required to determine remediation or not, and prepare documentation for court. This process, due to the expected huge influx of complaints would take approximately 4-6 months to complete. This time frame will be longer if the remediation is ordered during the winter months when there is frost in the ground. It is apparent from this process chart that the resolution of a lot grading complaint is labour intensive and may be time consuming.

Fill Permit Process: Development Engineering would need to be adequately resourced with staff that possess the appropriate technical skills and experience to review drawings and plans, and conduct grading inspections in response to complaints. In addition, unless the complainants have already obtained a survey, there will be a need to retain external land surveyors to determine precise location and measurements of points, elevations, lines, areas, and contours for the purpose of survey evidence. The fill permit application process would need to be reinstated, with requisite staff to review and process applications.

Non-compliance: Staff would become involved in attempts to require property owners to bring their properties into compliance, and grading/fill inspectors will be required to act as witnesses in prosecution proceedings. There may be an unrealistic expectation about the City's ability to achieve compliance. As well, there is a risk that minor contraventions (which may have no significant negative property impact) may be used to draw the City into neighbour disputes.

Civil litigation: As was experienced prior to 2004, the City may be named as a Defendant in civil actions between neighbours, and be obligated to allocate resources to defend.

Potential Cost-Recovery through Fines: Based on the experience of the City and York Region through the prosecution of POA charges, fines may be expected to be in the range of \$500 for a first offence. In light of staff effort involved, it is clear there would be no reasonable prospect of cost-recovery through fine revenue. In a similar vein, costs imposed on the fill permit application would be prohibitive if they were geared to cost-recover to administer the program.

#### Experience of Other Municipalities

Most neighbouring municipalities have fill by-laws that regulate grade alterations on residential lots, however, the number of permits/complaints processed per year, and therefore the degree of enforcement varies. Currently, Vaughan residents are reliant on civil remedies to address grading and drainage issues/disputes between neighbouring property owners.

### Alternatives to reinstating the By-law

As an alternative to the reinstatement of the Fill By-law as it relates to existing residential properties, staff could supply the affected properties owners with copies of the approved grading control drawings for information purposes. However, providing general grading advice may draw the City into a subsequent legal dispute between the property owners. The affected property owners could still pursue a civil remedy in the event the grading/drainage problem is not resolved amicably between neighbours.

### Relationship to Vaughan Vision 2020/Strategic Plan

There is no linkage between the Vaughan Vision 20/20 Strategic Plan and the reinstatement of the Fill By-law, 189-96 as it relates to existing residential properties.

### Regional Implications

There are no Regional implications associated with this report.

### Conclusion

Most neighbouring municipalities have fill by-laws that regulates grade alterations on residential properties. Many Vaughan residents expect that the municipality is the first avenue of appeal on lot grading/drainage issues. However, reinstating Fill By-law 189-96, as it relates to existing residential properties, will require additional staff resources and result in a budget impact of approximately \$500,000, with significant funding from Taxation. In addition, the Fill by-law will not be retroactive and will not have any effect on fill and lot grading alterations that occurred prior to the date of reinstatement. Accordingly, it is recommended that Council consider the implications of reinstatement of the Fill By-law, 189-96 as it relates to existing residential properties as part of the Budget deliberations and along with discussions regarding Program Review.

### Attachments

Attachment No. 1– Lot Grading/Drainage Complaint Process Chart

### Report prepared by:

Tony Thompson, Director Enforcement Services  
Andrew Pearce, Director Development/Transportation Engineering

Respectfully submitted,

Janice Atwood-Petkovski  
Commissioner of Legal & Administrative Services  
and City Solicitor

Paul Jankowski  
Commissioner of Engineering & Public Works

**ATTACHMENT No. 1**

**Lot Grading/Drainage Complaint Resolution Process – Residential Properties**

**Timeframe**

