

## Drainage and Lot Grading Regulations MN19-10

<b>Date</b>	January 20, 2021
<b>To</b>	Operations and Community Services Committee
<b>From</b>	City Planning & Community Development
<b>Service Area</b>	Planning & Development Services
<b>Item No.</b>	OCS21-4

### RECOMMENDATION

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The Executive Committee recommends that City Council:

1. Approve Option 2: Enhanced Status Quo.
2. Remove items MN19-10 and MN20-15 from the Public Works and Infrastructure Committee outstanding items list.
3. Instruct the City Solicitor to prepare the bylaw required to give effect to the recommendations, to be brought forward to the meeting of City Council following approval of the recommendations by Council.
4. Approve these recommendations at its meeting on January 27, 2021.

### ISSUE

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This report has been prepared to summarize information collected as a result of item MN19-10 that was considered by City Council on August 26, 2019 and MN20-15 that was considered by City Council on August 26, 2020. Item MN19-10 indicates that some property owners are not adhering to grade levels, which results in drainage problems for adjacent or downstream property owners.

The motion related to item MN19-10 directed Administration to prepare a report with the intent of:

1. Provision of regulatory options for drainage and lot grading, including enforcement

options, costs and implementations; and

2. Consultation for best practices and processes to be undertaken with Regina & Region Home Builders' Association (RRHBA) and other municipalities such as Saskatoon, Calgary and Edmonton.

The motion related item MN20-15 directed Administration:

1. Prepare a report as outlined in MN19-10 for the Public Works and Infrastructure Committee by no later than December 2, 2020; and
2. Include any associated costs and implications for the implementation of such a regulation as part of the 2021 budget considerations.

The attached Appendix A: Current State and Analysis provides further details and background information related to the various challenges of drainage in Regina.

## **IMPACTS**

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### Financial Impact

There are minimal financial impacts to the recommended Option 2 Enhanced Status Quo. The work resulting from this recommendation can be added to existing business plans and completed as part of business improvements.

### Policy/Strategic Impact

The adoption of the recommendations aligns best with delivering reliable service. The proposed recommendations would remove unenforceable provisions from *The Building Bylaw*, provide a new bylaw for drainage, provide the development community clarity for the infill lot grading process and provide the public with information and transparency on lot grading in Regina.

The amendments reduce the ambiguity of the regulation of lot grading and support the reliability of service.

As a City, we will develop, understand and improve upon our processes that will support sustainable growth within our community.

### Risk/Legal

Sections 2.8 and 2.9 of *The Building Bylaw* appear to regulate lot elevations for new and existing buildings. However, these provisions are not enforceable because they are outside the provincial legislative regime that authorizes *The Building Bylaw* which is *The Uniform Building and Accessibility Standards Act*. The Government of Saskatchewan (Province) has therefore declined to approve the provisions, which results in the provisions being unenforceable. The transfer of these sections to a new bylaw will allow the City of Regina (City) to enforce these regulations. This enforceability is required for the development

permit process. It is also beneficial for protecting City assets in cases where drainage issues may lead to damage or unacceptable risk to the asset or City property.

All other legal considerations are discussed in the attached Current State and Analysis document.

## **OTHER OPTIONS**

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Administration is recommending Option 2: Enhanced Status Quo. There are two alternatives:

### Option 1: Maintain the Status Quo

This option would be to maintain our existing practices in all areas of lot grading in the city. There would be no bylaw changes, no changes to the process, no changes to enforcement practices and no additional resources.

### Option 3: Enforcement of Existing Lot Grades with two new positions and Enhance Status Quo

This option includes the recommendations from Option 2 and the full enforcement of the drainage bylaw provisions with two new positions and a supporting program. If this option is pursued, it will effectively restart the enforcement program that the City had before 2007. This will require a budget for the two full-time equivalent positions to conduct the enforcement work. The service would provide enforcement of new and existing lot grading within the city of Regina. The services provided would be the investigation of lot drainage complaints, homeowner education, onsite lot elevation troubleshooting, issuance of orders to comply, and fines. The total estimated cost range of the program would be from \$267,610 to \$366,170 annually.

Further costing information on these options can be found in the attached Appendix A: Current State and Analysis.

## **COMMUNICATIONS**

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On April 21, 2020, the City met with the Regina & Region Home Builders' Association (RRHBA). The meeting intended to log known issues with lot elevation and seek creative solutions for compliance with the bylaw(s).

RRHBA members indicated no specific concerns regarding the process for assignment of grades during new greenfield development. Members of the association voiced concerns about the lack of a consistent process for determining infill lot elevations. This concern is expected since older areas of Regina may not have established design elevations during subdivision. This issue was incorporated in the review to address the inconsistency and provide a more cohesive requirement for lot grading. It was determined that these concerns

should be noted and that the process be refined to ensure as much consistency as possible.

Another outcome was the decision to include Winnipeg's drainage practices in the research and review for best practices, as only Edmonton, Calgary, and Saskatoon were part of the research. The review and addition intended to round out the City of Regina's knowledge base of best practices as applied by neighbouring provinces.

In addition to the engagement session with RRHBA, member companies of the Saskatchewan Land Surveyors Association operating in Regina were canvassed regarding lot grading in Regina. Responses were received from six of nine companies.

Recommendations within this report were provided to stakeholders in advance. Stakeholders and other interested parties will receive a copy of the report and notification of the meeting.

## **DISCUSSION**

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The attached Appendix A: Current State and Analysis was prepared with City staff, records, bylaws, standard operating procedures and other related archived reports. The sections on best practices were completed with information found readily available on the website of the respective Cities (Saskatoon, Edmonton, Calgary and Winnipeg) and telephone interviews and supplementary information provided by respective staff.

Lot drainage is any aspect of grading, constructed elements, or landscaping that directs stormwater runoff on a lot (resulting from rain, hail, or snow) to flow overland from the property. Good lot drainage directs stormwater runoff away from and off permanent structures (homes and garages) to public roadways, landscaped areas, or drainage swales where runoff can ultimately find its way into the municipal stormwater drainage system. Before 1974, lot grade controls were not required by the City. Rather, owners and homebuilders were (and now are) responsible for setting their own lot grading controls on the front, side, and rear of the property. The City conducted enforcement of lot grading on lots constructed after 1974 until funding was removed in the 2007 Budget approval.

The regulations applicable to lot grading are currently written in *The Building Bylaw*. However, those provisions are not enforceable because the Province has declined to approve them, which is mandatory for enforcement. The City applies and regulates these sections during the permitting process by reviewing the rear lot grade certificate. The builder/owner is responsible for obtaining a stamped certificate that demonstrates a property's compliance with the pre-determined grade elevations.

In Regina, individual lots are created through the subdivision process governed by *The Planning and Development Act, 2007* (P&D Act). During the greenfield development approval process, the City of Regina requires that rear lot elevation plans be designed and submitted to the City for review and approval. During the construction of a new home,

approved rear lot elevations are assessed to ensure that positive grading is achieved when the development project is constructed. The City must review a rear lot elevation certificate to achieve the unit's final occupancy through the building permit process. There are current challenges with the process for new home construction on infill lots, as rear lot elevation plans may not exist. Property owners are responsible for providing the City with a rear lot elevation certificate. The City reviews this certificate for compliance. Where infill lot grades cannot be practically achieved, or a rear lot elevation plan does not exist, the City derives grades to promote positive drainage. Challenges exist within this process when an established rear lot grade plan exists but has not been historically followed.

Regina's relatively flat topography and clay soil types cause existing neighbourhoods' established lot grades to deteriorate over time. Property owner modifications that do not require a development permit and natural lot grade degradation eventually lead to issues. These issues are typically found along common property lines between neighbouring properties. While there can be any number of property specific factors causing a lot grading issue, most issues are caused by three typical scenarios:

1. The natural process of ground movement in Regina that results in a degradation of positive lot drainage.
2. Utility company maintenance work conducted in easements.
3. Property owner altering the existing lot grades with landscaping.

In general, the number of lot grading drainage issues brought to the City of Regina's attention, whether by direct contact with staff or by calls to Service Regina, is relatively small. Based on data received from Service Regina, an average of 26 per year.

When issues arise between property owners, the City provides technical information and advice concerning lot grading. Staff work with residents to determine and establish the original design grades to support the issue's resolution. In terms of enforcing the content of *The Building Bylaw 2003-7*, property owners are advised that the City does not have a program for the ongoing enforcement of existing lot grading. If one property owner has allegedly caused issues for another, the City does not involve itself with these matters. The program that addressed conflicts such as this was discontinued in 2007 due to a lack of funding for the supporting costs of legal and surveying. Property owners are advised that the matter, in legal terms, is a civil matter between neighbours.

Based on the results from research regarding existing conditions, industry engagement and best practices of other Western Canadian cities, the City of Regina should consider improvements to its lot grading policies. The following options were considered:

#### Option 1: Maintain the Status Quo

This option would be to maintain our existing practices in all areas of lot grading in the City. There would be no bylaw changes, no changes to the process, no changes to enforcement practices and no additional resources.

This option is not recommended, as it does not address the issue at hand. There are solutions to potential issues that are identified in the attached Current State and Analysis.

Option 2: Enhanced Status Quo (Recommended)

This option does not include any changes to enforcement practices; however, it is the amalgamation of the many business improvements that the Current State and Analysis document explored. This option would result in the bylaw issues being resolved, process improvements for infill lot grading, and community knowledge development.

Creating this new bylaw will allow the City to conduct enforcement in situations where there is a risk to a City asset due to lot grading issues. It would be difficult to enforce lot grading issues that impact City-owned assets in the current state unless these assets were located on a registered easement. The new bylaw provisions would also support and align with any development permit-related grading activity and provide the consistency requested by stakeholders. This option is presented as the low-cost option as it would not require any budget approval for new resources. Resources in the City Solicitor’s Office, Water, Waste & Environment Department and Planning & Development Services Departments would still be required to conduct existing enforcement of the new bylaw. This is the recommended option. The table provided below summarizes the actions of this option.

<b>Action</b>	<b>Issue</b>	<b>Impacts</b>	<b>Outcome</b>
Create a new lot grading bylaw that would include these provisions from the Building Bylaw	Building Bylaw drainage provisions are not enforceable.	Creation of a project that would require resources to enforce	Legally binding drainage provisions
Create material for Regina.ca. Provide transparent process information for the establishment of lot grades	Regina lacks available public information and educational tools.	Creation of a Project that would require resources to deliver	Public information. Transparency.
Create lot grading guidelines for Regina	Regina lacks available public guidelines for lot grading.	Creation of a project that would require resources to deliver	Public information. Transparency.
Create a process for the establishment of infill lot grades. Publish the process on Regina.ca.	Inconsistent process for the establishment of residential infill lot grades	Requires a process review and resources to deliver	Process creation. Transparency.
Review the process for the creation of lot grades and explore the costs of title registration	Inconsistent lot grading records	Requires a process review and resources to deliver	Improved lot grading records

### Option 3: Enforcement of Existing Lot Grades with two new positions and Enhance Status Quo

This option includes the recommendations from Option 2 and the full enforcement of the drainage bylaw provisions with two new positions and a supporting program. If this option is pursued, it will effectively restart the enforcement program that the City had before 2007. This will require a budget for the two full-time equivalent positions to conduct the enforcement work. The service would provide enforcement of new and existing lot grading within the city of Regina. The services provided would be the investigation of lot drainage complaints, homeowner education, onsite lot elevation troubleshooting, issuance of orders to comply, and fines. The total estimated cost range of the program would be from \$267,610 to \$366,170 annually.

The option provides for dedicated new resources for the regulation of lot grading that would require budget approval. Due to these costs, this option is not recommended.

### **DECISION HISTORY**

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On July 29, 2019, Council supported the motion MN19-10, which directs the Administration to prepare a report for the Public Works and Infrastructure Committee by Q2 of 2020, that includes the following:

1. Regulatory options for drainage and lot grading, including enforcement options, costs, and implications; and
2. Consultation for best practices and processes be undertaken with Regina & Region Home Builders' Association (RRHBA) and other municipalities such as Saskatoon, Calgary and Edmonton.

This report was deferred to Public Works and Infrastructure Committee to Q1 of 2021 due to the operational impacts and revised priorities resulting from COVID-19.

On August 26, 2020, Council supported the motion MN20-15, which directs the Administration to:

1. Prepare a report as outlined in MN19-10 for the Public Works and Infrastructure Committee by no later than December 2, 2020; and

2. Include any associated costs and implications for implementing such regulation as part of the 2021 budget considerations.

Respectfully submitted,



Dustin McCall, Manager, City Projects 1/13/2021

Respectfully submitted,



Diana Hawryluk, Executive Director, City Planning & Community Dev. 1/13/2021

Prepared by: Dustin McCall, Manager, City Projects

**ATTACHMENTS**

Appendix A - Lot Grading and Drainage Current State and Analysis