TO: Chair and Members  
Public Works Committee

WARD(S) AFFECTED: WARD 5

COMMITTEE DATE: February 7, 2011

SUBJECT/REPORT NO:
Backyard Slope Failure - 2 Cherry Road, Hamilton (PW10067a) (Ward 5)  
(Outstanding Business List Item)

SUBMITTED BY:
Gerry Davis, CMA  
General Manager  
Public Works Department

PREPARED BY:
Gary Moore, P.Eng  
(905) 546-2424, Extension 2382

RECOMMENDATION

(a) That Appendix “A” to report PW10067a be received and that no further action be taken with respect to the backyard slope failure on the private property located at 2 Cherry Road, Hamilton;

(b) That Backyard Slope Failure - 2 Cherry Road be identified as completed and removed from the Public Works Committee Outstanding Business List.

EXECUTIVE SUMMARY

This report is in response to the following direction from Public Works Committee on June 14, 2010; that the City retain the services of a professional geotechnical engineer at a cost not to exceed $5,000 to investigate the slope at 2 Cherry Road and that the findings be shared with the Committee upon completion of the investigation.

Staff has engaged the services of a geotechnical consultant and has identified a number of possible solutions to stabilize the rear yard against future slope failures. The costs range from approximately $100,000 to $200,000 to repair the existing failure and stabilize the slope against future similar failures.

No additional information was discovered that would change Staff’s original opinion that the City is not liable for the damage caused by the July 26, 2009 storm on the 2 Cherry Road property.
It is recommended that no further action be taken on this matter and that it be removed from the outstanding business list.

Alternatives for Consideration - See Page 3

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<thead>
<tr>
<th>FINANCIAL / STAFFING / LEGAL IMPLICATIONS</th>
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<tbody>
<tr>
<td>Financial: N/A</td>
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<td>Staffing: N/A</td>
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<td>Legal: No evidence has been found to indicate that the City has undertaken any activity which may have withdrawn lateral support and subsequently caused subsidence and damage to the adjoining properties to the Valley. Accordingly, there is no basis for attributing any liability to the City for this incident.</td>
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<tr>
<th>HISTORICAL BACKGROUND</th>
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<td>The original report PW10067/FCS10054 is attached as Appendix “A”. This report was not received by committee and staff was directed to engage a geotechnical engineer to review the failure and identify possible remedial solutions and associated costs.</td>
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<th>POLICY IMPLICATIONS</th>
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<td>The recommendations in this report are guided by the Corporate Strategic Plan and the policy of Risk Management Services.</td>
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<td>The recommendations promote a healthy environment by appropriate planning and management of the built environment, aligning with the Public Works Strategic Plan “Innovate Now”.</td>
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<td>Risk Management Services operates under a Council approved mandate to pay claims only when an investigation indicates negligence and corresponding legal liability on the part of the City.</td>
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<th>RELEVANT CONSULTATION</th>
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<td>Legal Services and Risk Management staff have reviewed and approved the recommendations in this report.</td>
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<td>Staff consulted with the Ward Councillor and he is aware of the recommendations being made.</td>
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<tr>
<th>ANALYSIS / RATIONALE FOR RECOMMENDATION</th>
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<td>Three possible alternatives for slope stabilization were identified. These ranged from total slope stabilization with extended grading to mechanically retain soil systems. Costs ranged from approximately $100,000 to over $200,000.</td>
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Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
No further information was identified in the geotechnical report that would lead staff to change their opinion in regards to the liability of the City on the issue of costs associated with the repair and stabilization of this slope from the original report. The extent of possible costs and precedence that this would set would expose the City to additional and future claims in all areas where private residences abut slopes or edges of escarpment lands.

**ALTERNATIVES FOR CONSIDERATION**

Staff is of the opinion that the City is not liable for the slope failure to 2 Cherry Road and, therefore, should not be responsible for any remediation of the property.

Council could decide that regardless of liability, the City undertake remedial stabilization of the slope. This alternative would come at significant expense to the City, both in terms of engineering design and physical remediation. Furthermore, this alternative would set an undesirable precedent for other claims (i.e. for damages arising from this extreme weather event) against the City for actions taken where investigations have not found negligence.

A qualified geotechnical engineer was engaged to conduct an examination of the current state of the slope and identified appropriate stabilization works. The cost of implementation would depend on the nature of the actual works chosen but would likely exceed $100,000.

If Council is of a mind to stabilize the valley slope regardless of liability, a process to undertake the remediation could be initiated immediately.

It is noted that four other claims regarding valley erosion have been denied for similar reason.

It is, therefore, recommended that no further action be undertaken on this matter.

**CORPORATE STRATEGIC PLAN**


N/A

**APPENDICES / SCHEDULES**

Appendix “A” - Backyard Slope Failure-2 Cherry Road, Hamilton (PW10067/FCS10054)
**Vision:** To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

*Values: Honesty, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork*

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**Appendix “A”**

Backyard Slope Failure-2 Cherry Road, Hamilton (PW10067/FCS10054)

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**CITY OF HAMILTON**

PUBLIC WORKS DEPARTMENT  
Operations and Waste Management Division  
and  
CORPORATE SERVICES DEPARTMENT  
TREASURY SERVICES  
Risk Management Division

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<tr>
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| Chair and Members  
Public Works Committee |                           |

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<tr>
<th>COMMITTEE DATE:</th>
<th>June 14, 2010</th>
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| Backyard Slope Failure - 2 Cherry Road, Hamilton (PW10067/FCS10054) - (Ward 5)  
*Outstanding Business List Item* | Jennifer DiDomenico  
905-546-2424, Extension 5596  
John McLennan  
905-546-2424, Extension 5736 |

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<tr>
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| Gerry Davis, CMA  
General Manager  
Public Works Department | |
| Antonio D. Tollis  
Treasurer  
Corporate Services Department | |

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**RECOMMENDATION**

(a) That Report PW10067/FCS10054 be received;

(b) That no further action be taken with respect to the backyard slope failure on the private property located at 2 Cherry Road, Hamilton;

(c) That Backyard Slope Failure - 2 Cherry Road be identified as completed and removed from the Public Works Committee Outstanding Business List.
EXECUTIVE SUMMARY

This report is in response to the following direction from the Public Works Committee on January 18, 2010:

(a) That staff be directed to bring a report to the Committee with respect to the back yard slope failure at the property located at 2 Cherry Road, Hamilton;

(b) That the owners of 2 Cherry Road be granted delegation status to address the Public Works Committee when the report is presented.

Staff has undertaken further review of the state of the slope damage on the property located at 2 Cherry Road, as shown on Appendix A to Report PW10067/FCS10054, and continue to be of the opinion that the City is not liable for the damage caused by the July 26, 2009 storm on the subject property.

A decision by Council for the City to undertake remediation of the slope at 2 Cherry Road is both costly and precedent setting.

It is recommended that no further action be taken on this matter.

Alternatives for Consideration - See Page 4

FINANCIAL / STAFFING / LEGAL IMPLICATIONS

Financial: N/A
Staffing: N/A
Legal: Legal Services has provided an opinion on this file and has concluded that no evidence was uncovered to indicate that the City has undertaken any activity which may have withdrawn lateral support and subsequently caused subsidence and damage to the adjoining properties to the Valley.

HISTORICAL BACKGROUND

During the heavy rains and flooding of July 26, 2009, Mr. Vince Geloso, the property owner at 2 Cherry Road experienced a failure of his rear yard slope. The City’s adjuster, Cunningham & Lindsey, was assigned the file and conducted an assessment of the property damages claim. Between the information from the adjuster and consultation with Legal Services it was determined that the City of Hamilton was not liable for any of the damages incurred during the extreme weather event and on October 15, 2009 a letter of denial was sent to the homeowners outlining same.

At the January 18, 2010 Public Works Committee meeting, staff was directed to bring a report to the Committee with respect to the back yard slope failure at the property located at 2 Cherry Road, Hamilton.

Although it continues to be the opinion of staff that the City is not liable for the damages and the circumstances have not changed, this report is intended to respond to the direction from Council.

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POLICY IMPLICATIONS
The recommendations in this report are guided by the Corporate Strategic Plan and the policy of Risk Management Services.

The recommendations will further a healthy community by appropriate planning and management of the built environment.

Risk Management Services operates under a Council approved mandate to pay claims only when an investigation indicates negligence and corresponding legal liability on the part of the City.

RELEVANT CONSULTATION
Staff has consulted with the Ward Councillor and the property owners at 2 Cherry Road. Legal Services has also been consulted in the preparation of this report.

Cunningham & Lindsey, the City of Hamilton's claims adjuster, has provided an assessment on the property damage claim file as well.

ANALYSIS / RATIONALE FOR RECOMMENDATION
Following consultation with Legal Services, Risk Management Services (RMS) advised Mr. Geloso, by way of correspondence of October 15, 2009, that there appeared to be no negligence or legal liability on the part of the City for the erosion of his rear yard into the Red Hill Valley during the heavy rain event of July 26, 2009. The denial position was consistent with four other claims regarding valley erosion. The Geloso's claim however, is by far the most extensive in terms of damages.

Risk Management and Public Works staff recently reconvened at the Geloso property on May 19, 2010 to view what Mr. Geloso felt were misconceptions regarding the City's initial liability position. Risk Management has noted Mr. Geloso's concerns and will present them to Legal Services for further analysis.

It is noted that the role of RMS is to determine a liability position for the City relative to the presence or lack of negligence on the part of the City. As mandated by Council, RMS will deny all claims where an investigation does not find negligence.

Liability aside, the situation at the Geloso property is precarious. An approximate area of 6 feet deep by 15 feet wide of the southwest corner of the rear yard has fallen into the valley, leaving an approximate 6 foot drop at the west property line. The drop has been cordoned off by snow fence, which is not particularly secure. The yard does not appear to be stable and a garden shed rests at the precipice of the 6 foot drop.

Mr. Geloso has advised that a geologist has informally commented that the remaining section of yard appears stable, although the credentials and expertise of the geologist are unknown.
Stabilization of the valley slope would come at significant expense both in terms of engineering and physical remediation. Public Works staff would not undertake any remediation unless RMS advised that there was a liability resting clearly with the City.

**ALTERNATIVES FOR CONSIDERATION**

Risk Management Services, in consultation with the City’s claims adjuster and Legal Services staff, determined that the City is not liable for the slope failure at 2 Cherry Road and, therefore, should not be responsible for any remediation of the property.

Council could decide that regardless of liability, the City undertake remedial stabilization of the slope. This alternative would come at significant expense to the City, both in terms of engineering design and physical remediation. Furthermore, this alternative would set an undesirable precedent for other claims (i.e. for damages arising from this extreme weather event) against the City for actions taken where investigations have not found negligence.

 Undertaking the stabilization would require that the City hire a qualified geotechnical engineer to conduct a detailed examination of the current state of the slope and develop the appropriate stabilization works. The cost of implementation would depend on the nature of the actual works recommended but would not be insignificant. This approach would potentially open a door for others to make claims that would be more difficult to defend.

If Council is of a mind to stabilize the valley slope regardless of liability, a process to undertake the remediation could be initiated immediately.

It is noted that four other claims regarding valley erosion have been denied for similar reason.

It is, therefore, recommended that no further action be undertaken on this matter.

**CORPORATE STRATEGIC PLAN**


N/A

**APPENDICES / SCHEDULES**

Appendix A: Location Map of 2 Cherry Road, Hamilton

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