CITY OF HAMILTON

PUBLIC WORKS DEPARTMENT
Operations and Waste Management Division

and

CORPORATE SERVICES DEPARTMENT
TREASURY SERVICES
Risk Management Division

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<th>TO:</th>
<th>Chair and Members Public Works Committee</th>
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<td>WARD(S) AFFECTED:</td>
<td>WARD 5</td>
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<td>COMMITTEE DATE:</td>
<td>June 14, 2010</td>
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<td>SUBJECT/REPORT NO:</td>
<td>Backyard Slope Failure - 2 Cherry Road, Hamilton (PW10067/FCS10054) - (Ward 5) (Outstanding Business List Item)</td>
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<td>SUBMITTED BY:</td>
<td>Gerry Davis, CMA General Manager Public Works Department Antonio D. Tollis Treasurer Corporate Services Department</td>
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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and has concluded that no evidence was uncovered to indicate that the City has undertaken any activity which may have withdrawn lateral support and subsequently caused subsidence and damage to the adjoining properties to the Valley.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.
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 year 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