As a follow-up to the Economic Development and Planning Committee meeting that took place on September 22, 2009 and associated minutes 09-018, the purpose of this report is to update the Committee with all of the issues surrounding Mr. Roche’s flooding problem.

Background:
The Newell Court Development located in the former Town of Flamborough was approved as part of Block 126 – Rockview Summit, Registered Plan 62M-775. It was subsequently approved as Waterdown Mills Phase 2, 62M-811 in 1997. Over the next two (2) years (1997-1999) Newell Court and the associated townhouse units 1 to 7, 9 to17, 2 to 6 and 8 to16 were completed.

Overview of Investigation of Site Alteration:
This matter was brought to the City’s attention when Mr. Michael Roche (MR) of 3 Newell Court contacted the City on June 4, 2008. He indicated that the owner of 7 Newell Court had raised his grades by approximately 10" and this alteration was causing drainage problems. MR indicated that he would contact the Building Inspector to set up an inspection date and time.

Not until October 27, 2008 did MR contact the Building Inspector with additional information and to set up the inspection date and time. Over the next two (2) weeks the Building Inspector met MR and the owner of 7 Newell Court to determine if a violation of the City of Hamilton Site Alteration By-law had occurred and if so was enforceable.

On November 18, 2008 the Building Inspector and the Coordinator Building Inspections attended 7 Newell Court to gather specific information required to make a determination pertaining to the alteration of grades and the location of the play structure. The evidence
that was collected indicated that there was no violation pertaining to the Site Alteration By-law 03-126 and MR was advised of these findings.

The following findings were gathered and used to form the noted decision above:

- Findings and measurements based on grades as were found indicate that the alterations at 7 Newell Court have not triggered the need for a permit to be issued as per the City of Hamilton Site Alteration By-law 03-126. The owner had not raised the grades more that the permissible 0.2 meters within 3 meters of the property lines as noted in Section 3.3 of the By-law.
- The owner of 7 Newell Court had also indicated that he placed heat tracing wires within the installed three (3) pieces of weeping tile to ensure continued flow and minimal chance of freezing (photographs were provided).
- These properties are located adjacent to Highway 5 East and do experience above average snow drifts as the Highway is an open thoroughfare with snow clearing equipment adding to the snow accumulation.
- In addition to the added snow loads there is also the issue of the shadowing effect on the backyards which impedes the spring thaw cycle. This shadowing effect is due to the height of the buildings and the proximity of the fences.
- No other concerns with respect to drainage/flooding as a result of modifications at 7 Newell Court have been voiced.
- The adjoining neighbors (5 and 9 Newell Court) had submitted letters to the Building Services Division indicating that the alterations that took place at 7 Newell Court had not created any further issues on their properties. The adjoining neighbors who are in the position to experience the greatest repercussions (if any) are indicating that they have never experienced any damages of any sort.

A meeting between the Manager of Building Inspections, Coordinator Building Inspections and MR took place on January 22, 2009 at the Building Services Division offices. The Building Services Division did not disagree that there is some evidence that some changes may have been made to the finished grade at a neighbouring property, but the Building Inspector who attended the property was unable to determine when the changes occurred or the magnitude of the changes to pursue the matter.

Therefore, in this case, adequate and reliable evidence was never collected and the matter would need to be resolved neighbour to neighbour. If amicable solutions were not achievable, then civil action would be the next available course of action.

It was determined by the Manager of Building Inspections that there was no further reason to have staff re-attend the property to deal with the matter.

Conclusions:
Based on the above noted findings there is no clear evidence that the site work that took place at 7 Newell Court in the spring/summer of 2008 is the underlying reason that flooding occurs at 1 to 7 Newell Court.

Since 2004, the City has been subject to increasingly frequent and severe storms that have resulted in severe overland flows and overloading of the City collection systems.
These townhouse blocks on Newell Court are located adjacent to Highway 5 East and do experience above average snow drifts as the Highway is an open thoroughfare with snow clearing equipment adding to the snow accumulation with the snowdrifts they create. In addition to the added snow loads there is also the issue of the shadowing effect on the backyard which impedes the spring thaw cycle. This shadowing effect is due to the height of the buildings and the proximity of the fences. This is evident from the pictures submitted to the Building Services Division.

The City has no legislative authority to mandate owners to rectify property alterations to conform to their approved grading plans. The City does have the authority to enforce the Site Alteration By-law if sufficient evidence is available to staff.

Since the City has no legal authority to ask any owner to reinstate the approved grading for the particular lot and specifically any swale, these matters are considered civil matters and the responsibility lies on the respective home owners to come to an agreeable solution or they have the option to proceed to Civil Court.

_____________________
Tim McCabe
General Manager
Planning and Economic Development Department

JS:NA:fd
Appendix "A"

Subject Property

1, 3, 5 and 7 Newell Court

Ward 15 Key Map

N.T.S.