



Subject: *Motion C24(89) and C24(161): Lot Grading and Drainage Unserviced Areas*
To: CAO for Planning Advisory Committee, September 17, 2024
Date Prepared: September 10, 2024
Related Motions: P24(19), C24(89), P24(29), and C24(161)
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Approved by: John Woodford, Director of Planning and Development

Summary

At their March 2024 meeting, Council passed the following motion regarding lot grading and drainage in un-serviced areas of East Hants.

Motion C24(89) Council authorize staff to prepare a report for Committee regarding instituting a lot grading plan for un-services areas including both subdivisions and single lots.

Staff provided background information and options for Planning Advisory Committee to consider regarding lot grading and drainage in un-serviced areas of the Municipality during the May 2024 PAC meeting. PAC recommended to Council not to proceed with amendments to Bylaw P-1200, Lot Grading and Drainage but during the May Council meeting, Council decided to direct staff to do additional research and passed the following motion:

Motion C24(161) Moved that staff prepare another report on lot grading issues in the unserviced areas including a jurisdictional scan of neighbouring or like-sized municipalities to review their policies.

Staff have completed a jurisdictional scan. There are no municipalities in Nova Scotia that require a lot grading and drainage plan for an unserviced lot. There are rural municipal units in other provinces that do require lot grading plans for unserviced properties; however, the regulations vary greatly. In all situations, a lot grading plan, prepared by a professional, is required to be submitted. There is always a cost to the property owner if a lot grading and drainage plan is required.

Financial Impact Statement

There is no immediate fiscal impact to the Municipality for the adoption of this report.

Recommendation

That PAC selects one of the options discussed, and authorize staff to consult with the public about amending the Lot Grading and Drainage Bylaw if option 2 to 5 is selected.

Options

- 1. Planning Advisory Committee recommends that Council:**
 - *make no changes to Bylaw P-1200, Lot Grading and Drainage.*
- 2. Planning Advisory Committee recommends that Council:**
 - *proceed with amending Bylaw P-1200, Lot Grading and Drainage to require the submission of a lot grading and drainage plan for all lots up to a maximum of 1 hectare (2.5 acres), where no Municipal services are provided; and*

- *authorize staff to consult with the public on the proposed change.*
3. *Planning Advisory Committee recommends that Council:*
 - *Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require the submission of a lot grading and drainage plan for all lots up to a maximum of 1 hectare (2.5 acres), where no Municipal services are provided and on larger lots where the proposed structure is to be located within 30 m of a property line or condo unit boundary; and*
 - *authorize staff to consult with the public on the proposed change.*
 4. *Planning Advisory Committee recommends that Council:*
 - *Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require the submission of a lot grading and drainage plan for all unserviced lots where the proposed structure is to be located within 30 m of a property line or condo unit boundary; and*
 - *authorize staff to consult with the public on the proposed change.*
 5. *Planning Advisory Committee recommends that Council:*
 - *Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require a lot grading and drainage plan for all properties in East Hants, no matter the size of the property or location of the structure on the lot; and*
 - *authorize staff to consult with the public on the proposed change.*

Background

At their March 2024 Council meeting, Council passed a motion directing staff to write a report regarding extending Bylaw P-1200, Lot Grading and Drainage to property in the un-serviced areas of East Hants and provide options for Council's consideration.

The purpose of the Lot Grading and Drainage Bylaw is to manage the drainage of water on individual lots, so as not to have a negative impact on the subject property or adjoining lands. The Bylaw was adopted in 2006 and is only applicable to lands located in the GMAs, except Mount Uniacke which has on-site wastewater services.

Bylaw P-1200, Lot Grading and Drainage

In East Hants the Lot Grading and Drainage Bylaw applies to all lots for which a building permit is required and which are to be connected to a wastewater system, except in the following situations:

- a) Renovation of an existing building within the original footprint.
- b) For an accessory structure, which is single storey and 55 m² or less.
- c) Or if the development of the site is being regulated by a development agreement which may have alternative requirements.

The Lot Grading and Drainage Bylaw does not apply to lands with on-site services.

East Hants Municipal Standards

Where a lot grading and drainage plan is required in East Hants, the plans must conform with the Municipal standards. Section 6.0 Lot Grading, of the Municipal standards states that the objective of lot grading is to provide for the safe and effective drainage of stormwater while minimizing damage to buildings and property and mitigating effects on adjacent properties and Municipal service systems.

Halifax Regional Municipality

Halifax Regional Municipality has Bylaw L-400, Respecting Lot Grading. The Bylaw applies to the development of all residential lots located within an area where a sanitary sewage system is provided. Halifax, has another grading bylaw, Bylaw G-200, A Bylaw Respecting Grade Alteration, that applies to commercial and industrial lots.

In 2016, Halifax Council adopted a version of the Lot Grading Bylaw that included residential properties in unserviced areas of the Municipality. However, the Bylaw was extremely unpopular and in September of 2016, Council passed a motion for staff to prepare a report to exclude those areas outside the serviceable boundary from the bylaw. The reason for the change was that Bylaw L-400 was creating negative repercussions and financial hardship for small developments in the rural regions of Halifax.

Halifax may revisit Bylaw L-400, Respecting Lot Grading for unserviced areas in the future because of difficulties with developers clear-cutting lots in as-of-right developments, which results in drainage and grading issues for surrounding property owners.

Jurisdictional Scan

As per Council motion C24(161), staff have completed a jurisdictional scan of other municipalities that require lot grading and drainage plans for lots with on-site services. Staff were unable to find any Nova Scotia municipalities where this was a requirement. However, there are some Municipal units across Canada where there is a requirement for a lot grading and drainage plan for lots with on-site services. The regulations vary greatly.

Jurisdiction	Regulations
City of Summerside, PEI	Requires lot grading and drainage plans for all lots. There is no ability to waive the requirement.
Township of Severn, Ontario	Requires lot grading plans for every new building and it doesn't matter how the lot is serviced. There is no ability to waive the requirement based on the size of the lot or setbacks from the property line.
Township of Oro-Medonte, Ontario	Lot grading and drainage applies to Single Detached, Semi-Detached & Townhouse Dwellings, Detached Accessory Buildings and additions to Existing Buildings. Does not apply to lots greater than 0.20 hectares. A lot grading and drainage plan may also be required where the Chief Building Official / Development Engineer identifies that one is required.
Haldimand County, Ontario	Rural lots are required to have lot grading plans that show proposed locations for building envelopes, private sewage disposal system envelopes (plus alternate bed location) and private water supply systems. The regulations are applicable to all lots with less than 25 m of road frontage.
City of Kawartha Lakes, Ontario	Lot grading and drainage applies to all lots within the Municipality. The only way the requirement is waived is if the structure being constructed is 5 times more than the minimum setback distance. As an example, for a large agricultural property.
Township of Tiny, Ontario	<p>The regulations state that the Chief Building Official "may" request a lot grading and drainage plan for lots with onsite services. The decision to request a lot grading plan is made in consultation with the Sewer System Inspector and Director of Public Works.</p> <p>In addition, the Chief Building Official, in consultation with the Director of Public Works or designate, may waive some or all of the requirements for a Lot Grading Plan, due to lot size, location, characteristics, or the nature of the proposed construction.</p>

The lot grading regulations for all of the municipalities reviewed vary greatly and it is hard to draw a direct comparison between what is included in each set of regulations and who is responsible for overseeing the regulations. Staff reviewed whether a lot grading and drainage plan was required for lots with on-site services or if it could be waived in certain circumstances. In all municipalities reviewed, there was a cost to the property owner to have a lot grading plan prepared by a professional.

Discussion

Staff have outlined when a lot grading and drainage plan is required under Bylaw P-1200, Lot Grading and Drainage. During their March 2024 Planning Advisory Committee meeting, the Committee expressed interest in extending the Bylaw to other areas of the Municipality. Some of the reasons for not amending the Bylaw is that there are many large lots, especially agricultural properties, where the construction of new buildings would not impact neighbouring property owners. In some rural situations, the property is very large and any development occurring on the land may not have any impact on surrounding land owners.

Another issue to consider is staff resources required to administer the Bylaw. In Halifax, a lot grading plan is required as part of the building permit process the same as it is in East Hants. The difference is that in Halifax the Bylaw L-400 Respecting Lot Grading is managed by the Development Engineers. In East Hants, it is currently the Development Officer and Building Officials who ensure a property owner complies with Bylaw P-1200.

Below is a simple snapshot of the process:

- Lot Grading and Drainage Plan submitted with the building permit application.
- Building Official confirms submission and plan that has been prepared by a professional.
- Prior to issuing an occupancy permit a Building Official will confirm that a Lot Grading Certificate has been received.
- If a Lot Grading Certificate cannot be prepared the property owner has to submit a Deficiency Report describing the uncompleted construction requirements of the Lot Grading Plan. Additionally, the property owner has to submit a security deposit in the amount of the estimated cost identified in the Deficiency Report, or a minimum of \$5,000, whichever is greater.
- The property owner has 6 months to complete the work. If, after 6-months they have not contacted the Municipality, a Building Official or Development Officer will contact the builder.

Although the purpose of Bylaw P-1200, Lot Grading and Drainage is to manage the drainage of water on individual lots, so as not to have a negative impact on the subject property or adjoining lands, the Municipality does not approve the plans and does not take on the responsibility for the proper grading design. Therefore, when issues occur between property owners it is still considered a civil issue, and the costs are borne by the property owners. In regards to our Municipal Engineers accepting plans the Municipal standards state the following:

The acceptance by East Hants of the design of proposed Municipal services systems does not relieve the Design Engineer of the responsibility for proper design, nor does it imply that East Hants has checked the design for compliance with this document. The Design Engineer retains full responsibility and liability for their work as a Professional Engineer. Where East Hants has accepted a design which does not comply with these standards and where the Design Engineer has not brought variations from this document to the attention of the Municipal Engineer, the provisions of this document still apply.

In Halifax the process is very similar, the Engineers accept the grading plans and may only review the plans if there are known issues in the area. Also, during the construction phase, if there are issues between neighbouring property owners, Engineers in Halifax will manage and mitigate issues and may issue a stop work order. After construction, if issues arise it becomes a civil issue between property owners.

COSTS OF LOT GRADING AND DRAINAGE PLANS

The cost of a lot grading and drainage plan for a small lot in a Growth Management Area is approximately \$3,500. If the Bylaw is extended to lots outside of the serviced areas it is expected that the cost for completing a lot grading and drainage plan would increase. Lots in the un-serviced area are much larger than lots in the corridor. Larger lots require more work which increases the costs of the plan. In some cases, costs may increase to up to \$6,000 depending on the work that has to be completed.

CITIZEN ENGAGEMENT

A public information meeting is not required for amendments to Municipal Bylaws that fall under Part VII of the Municipal Government Act. However, if Council decides to move forward with amending Bylaw P-1200, Lot Grading and Drainage, staff can also discuss the proposed changes with the public members who attend the public information meeting for the proposed stormwater management changes to the Subdivision Bylaw.

STRATEGIC ALIGNMENT

Amendments to Bylaw P-1200, Lot Grading and Drainage, aligns with Council Strategic goal to build strong communities by “Ensure[ing] the East Hants official community plan is effective in managing changes in the community, reducing land use conflict and protecting both natural resources and community character.”

LEGISLATIVE AUTHORITY

The Municipality has Legislative Authority to make bylaws, for municipal purposes, respecting (b) the safety and protection of property under Part 7 of the Municipal Government Act.

FINANCIAL CONSIDERATIONS

There is no immediate fiscal impact on the Municipality for the adoption of this report.

Alternatives

There are five alternatives for Council to consider:

1. Make no changes to Bylaw P-1200, Lot Grading and Drainage.
2. Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require the submission of a lot grading and drainage plan for all lots up to a maximum of 1 hectare (2.5 acres), where no Municipal services are provided.
3. Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require the submission of a lot grading and drainage plan for all lots up to a maximum of 1 hectare (2.5 acres), where no Municipal services are provided and on larger lots where the proposed structure is to be located within 30 m of a property line or condo unit boundary.
4. Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require the submission of a lot grading and drainage plan for all unserviced lots where the proposed structure is to be located within 30 m of a property line or condo unit boundary.
5. Proceed with amending Bylaw P-1200, Lot Grading and Drainage to require a lot grading and drainage plan for all properties in East Hants, no matter the size of the property or location of the structure on the lot.

Attachments

Appendix A - Bylaw P-1200, Lot Grading and Drainage Bylaw