



ADRO INVESTIGATION REPORT

Complainant:	Mr. and Mrs. Complainant
Complaint Reference Number:	MUN-13233-0321
Complaint Commenced:	March 30, 2021
Date Assigned to Investigator:	August 31, 2021
Date All Required Information Received:	January 20, 2022
Report Date:	May 4, 2022
Investigator:	Ben Drory

Terms of Reference

This report has been prepared pursuant to the ADR Chambers Ombuds Office (ADRO) Terms of Reference, which describe the scope of ADRO's mandate, its process upon receiving Complaints, and the authority and responsibilities of an ADRO Investigator. Defined terms used below have the same meaning as in the Terms of Reference.

Complaint – History of Proceedings

Mr. and Mrs. Complainant (Complainant “The Complainants” collectively) are residents of the City of Burlington (the “City”), and sought a building permit to undertake a project in their backyard. They ran into issues with the City, and escalated the matter to ADRO via a Complaint Submission Form dated March 28, 2021:

The City has asked us to create a Stormwater Brief for evaluation of a building permit for a small addition on our residence. There is information and assumptions to be confirmed by the City before a Civil Engineer starts the work. The City is unresponsive and ignoring all communication. An Engineer can't start work on the Stormwater Brief without this outstanding information from the City. Everything is halted on our permit application without answers.

...

Many voicemails left with City staff. None were returned. ... Many emails sent with questions for City staff. Emails were either not responded to, or answers were not provided. ... Spoke with Ward Councillor several times. She communicated with staff several times and encouraged them to provide answers. These requests were ignored. She has now suggested we go through this process since we are not getting the necessary support.

1. Our preferred solution is to remove the need for this Stormwater Brief and have our permit approved. The neighbourhood flooding is acknowledged by the City to exist and be longstanding. Based on the size of our addition, the amount of water we are diverting from absorption into the ground is a fraction of the flooding that comes from surrounding properties. Accounting for the increase in water from our addition is like diverting a bucket of water from a river. What the City is asking for is costly in money and time, and the flooding in our neighbourhood will remain. We also don't [see how] our permit application contravenes any Burlington by-law or Ontario Building Code (OBC) law.

2. Alternatively the City can provide answers to the questions we have asked and commit to providing timely, and collaborative responses moving forward. The City is not meeting OBC communication requirements for residential building permits.

ADRO Investigation

Both parties provided evidence of many email exchanges they had with each other. Given their significant volume, I make no attempt to restate the entirety of those exchanges – in fact, the volume became part of the issue itself. However, I will print some highlights and summarize others that were germane.

The conversation began in earnest on March 6, 2020; the City's Intermediate Technician (Site Development, Capital Works) emailed a consultant for the Complainants) and a consultant for the City:

Good afternoon Mrs. Complainant,

To follow up on our conversation this afternoon our records indicated your property has a rear yard drainage problem. ... Based on our conversation and your grading plan your rear yard is a low point for the neighbourhood instead of the City rear yard catch basin on 2355 First St.

I've left a voice mail with City Consultant to discuss possible solutions for designing a drainage swale to convey the ponding water to the rear yard catch basin. If the existing site constraints prohibit this method it may be possible to connect an area drain to the City catch basin in front of your driveway. Once City Consultant and I have discussed the situation I'll follow up with you.

The Complainants' consultant followed up on March 13, 2020:

Good afternoon Intermediate Technician. I have been in talks with City Consultant and my client regarding this project and we are going to do some field work and propose a plan to rectify the grading issues in the rear of the property. ...

... [I]s it possible to have the grading permit approved for the construction so that we can get going with the building permit application and separate this grading issue in the rear

yard as a separate application or issue. ... I think this is a reasonable request in part as the rear drainage issues are being caused by numerous neighbours in the surrounding neighbourhood that have put pools in, changed grades, new development, etc and it is having an adverse effect on my client and causing them delays and costs.

Intermediate Technician replied on March 17, 2020:

I've followed up ... and we're not able to issue the permit without a working plan for rectifying the rear yardage ponding. We appreciate the delays it will cause; however, it is important that we do not add more storm drainage from the addition without a working solution. ...

Mr. Complainant replied on March 19, 2020, stating that if the goal was to prevent ponding then they were going to fail. He said that before moving forward with additional surveying and proposals, he wanted a clear understanding of what the City expected from them and how they were going to help, since the City allowed all surrounding properties to build up their lots, and there were multiple surrounding properties impacted by the problem. He identified the following history, from his perspective:

A small creek used to run at the back of all properties between Pepper/Delaware and Pepper/First. It ran from Bruce to Beaver and ended in a storm drain. Over the years properties built up their lot and someone on Beaver completely cut off the creek to build a pool. The result is the water had nowhere to drain.

When the house on 2355 First Street was built the city put in a catch basin to help avoid ponding. Since we've moved in we have regraded and put in a French drain. The result is the water flows quite easily (when the path to the catch basin is cleared of debris). However, since we are one of the lowest points on the block all water still flows through our yard and we get severe flooding during heavy rainfalls, big melts, or rainfalls when the ground is still frozen. We have been complaining to the city about the flooding for years.

A catch basin and then a pump up to Pepper makes no sense, you are literally pumping water back uphill.

Intermediate Technician replied on March 23, 2020:

... With your proposed rear yard addition the City is looking for a grading solution to reinstate the intended drainage path through the rear yards or another suitable solution.

The rear yard catch basin installed through the development at 2355 First St is only able to fully function if the adjacent properties are graded accordingly. ... City Consultant's revised grading plan is an attempt to create a proper swale directing drainage to the catch basin. ...

He also added the following the next day (March 24, 2020):

... Until we receive this plan I'm unable to properly comment. The revised plan is necessary to facilitate the review and/or possible approval of the grading certificate as Site Engineering Coordinator will not permit the certificates approval without a functional grading plan that addresses the existing grading deficiencies.

A few months later, the Complainants met with City officials (Intermediate Technician and Site Engineering Coordinator) on July 29, 2020, and emailed them later that evening identifying their frustrations with the City's position. Mr. Complainant said the City didn't provide clear direction or recommendations, and their reasoning was only because of "City Council direction". He wrote that one of the City's offers was that the Complainants could simply adjust their renovation plans to no longer have an addition – and the flooding would remain in perpetuity, and no future work could ever be done on the property without the City agreeing that flooding was addressed. Mr. Complainant said they were left bewildered and without any direction.

Intermediate Technician replied on July 31, 2020, stating that Site Engineering believed any additional hardscape on the property would further exacerbate the existing drainage concerns, which the revised plans didn't fully address – they needed to promote drainage towards the rear yard catch basin on 2355 First St. He wrote that neither party had sufficient information to identify a solution guaranteed to work, but the City doesn't state how properties may develop, aside from policies and guidelines to direct safe construction. He said that with the current information, there were two solutions that each carried risks, and the Complainants had to determine how to best proceed. Both solutions required the creation of a Stormwater Management Brief, stamped and certified by a Professional Engineer.

Mr. Complainant wrote back on August 2, 2020, saying he thought everyone could agree a catch basin wasn't possible, that they couldn't complete any activity on the next-door property, and the current situation was undesirable for the City, so the only option left was regrading and adding a "drainage pit". He asked Intermediate Technician to confirm the steps expected from them, to which Intermediate Technician replied with on August 4. The parties corresponded lightly in September 2020.

Things became worse beginning in October 2020. Mr. Complainant wrote on October 18, 2020:

Hope you are well and had a good Thanksgiving. I've spent some time following up with my neighbours and want to revisit a couple of items we previously discussed.

...

Neighbours also further explained the historical poor water drainage in this neighbourhood. A neighbour now living on Beaver has pointed out that flooding existed in the 1950's before our property was developed. The longtime resident at 2351 First Street has memories of flooding existing on her property in the 1970's and 1980's so bad that her children were able to paddle a dinghy in their back yard. The residents at 2345 First Street have flooding on their property since they moved there in the 1990's.

My point to the above paragraphs is to again emphasize this is a problem not exclusive to our property. It's a problem that's existed for decades, and as we've already figured out, the overland distance is too far. I'm disappointed this long-time, multi-property, poor planning issue has been thrust on us as part of this permit application. Where has the City been when we've made multiple complaints since we moved in 2014? Now is the appropriate time and way for the City to act? This is infuriating for us.

In response to your last email:

- ...
- *We absolutely will not contact another City employee directly with regards to our concerns that any remediation on our property will be insufficient, or that cost will be born by us to identify that remediation is impossible. Please follow up within the appropriate departments to determine what shall be the City's response to these two potential scenarios. While speaking with them you should also ask what the City will do if it is decided we will not move forward with this permit application. ...*

Intermediate Technician replied on October 22, 2020 that no recent development had been permitted in the neighbourhood without a Professional Engineer's design to ensure any existing deficiencies weren't exacerbated. He said infill development typically requires engineering work, and for private development the cost is the applicant's responsibility; the City would provide information it had, but the applicants' hired professionals had to identify the viability of any proposal. He said there is no guarantee that every property can develop, and when the City lacks the necessary information, it is the applicant's responsibility to prove it one way or the other.

Mr. Complainant replied on November 8, 2020 that Intermediate Technician's response was completely unacceptable, and reiterated that the problem had existed unchecked by the City for decades – to which he attached a grainy picture of a flooded backyard from decades earlier. Mr. Complainant cc'd his local councillor (Ward Councillor) on his email, identifying that the City was refusing to help with the flooding on his property or allow any further development on it, and was refusing to collaborate with him, their architect, or other City departments, ostensibly per a City Council direction.

On November 18, 2020, the City set up an appointment for Intermediate Technician and the City's Customer Experience Manager (Business Development) to attend at the Complainants' property on November 20, so that they could answer their questions and provide any needed clarifications. Mr. Complainant replied that he needed the following questions answered:

1. *What specific and quantifiable by-laws are being violated by our permit application?*
2. *What is the City doing to provide the drainage plans of the 12 surrounding properties? Without these we cannot engage a professional engineer.*
3. *What will the City do if a professional engineer determines an onsite solution is impossible? How will we be compensated by the City for our engineering costs?*

4. *What will the City do if we abandon our permit application? The neighbourhood flooding will remain and it's been identified by the City that the flooding is unacceptable.*

Intermediate Technician replied that afternoon:

1. *Site Engineering has never claimed that the application is violating our bylaws. It has been previously indicated that Bylaw 52-2018 requires development be conducted in a professional and safe manner. This is further mandated by our Stormwater Management Design Guidelines.*
2. *Site Engineering provided the supporting City documents Sept 24 2020 and advised that they are both old and poor quality. Therefore, a private engineer is required to accurately determine the quantity of base flow reaching 322 Pepper Dr. which is the neighbourhood low point.*
3. *Should a private engineer determine the proposal is not feasible or you believe the solution to be cost prohibitive then the current proposal is unable to proceed. Unfortunately, the risk is assumed by the parties proposing new development and Site Engineering is not liable for any compensation.*
4. *Site Engineering may only speak to the scope of our review. Any future neighbourhood development will continue to be held to the same standards.*

After a variety of correspondence between the parties on November 18 and 19, the City cancelled the November 20 appointment. Internal correspondence established that staff felt the discussion had identified Mr. Complainant's real needs, and they didn't think a site meeting would be useful for him – his questions about the process had been answered multiple times, but he simply refused to accept the answers provided.

Customer Experience Manager advised Mr. Complainant of the cancellation on November 19:

Last Friday based on our discussion I suggested a site meeting to better inform you on issues that were understood to be missing process details. You have since elaborated with the email below on a number of specific matters which was further reviewed by Capital Works staff. They advise of the following:

“Capital Work staff have provided you with our full positions pertaining to process matters and requirements. This is also supported by senior staff. A site visit would be useful if we were still reviewing site characteristics but that is not the case. Therefore, tomorrow's scheduled meeting is no longer necessary. We now look forward to your decision on how you will proceed with the required site work.”

Additional technical questions relating to the grading and drainage site work should continue to be directed to Adam and Ang.

After further questioning from Mr. Complainant, the City's Manager of Development & Stormwater Engineering (Capital Works Department) wrote to Mr. Complainant on November 24, 2020:

The following text ... provides Site Engineering's position, in answer to your 5 questions. This has been our consistent position and we continue to maintain it. It remains the applicant and your engineering consultant's responsibility to provide the solution in a submission package.

1. *Will the City rethink the need for an analysis of the overland surface water from all 12 surrounding properties?*
 - a. *The current drainage area is to be determined by the applicant's Professional Engineer.*
2. *Will the City provide the missing drainage plans they should for these properties?*
 - a. *Applicable documentation has been provided by the City, multiple times*
3. *Will the City instead provide an estimated quantity of surface water?*
 - a. *To be determined by the applicant's Professional Engineer*
4. *How will the City respond to a Professional Engineer's analysis that states no solution on our property is possible?*
 - a. *Refer to previous correspondence provided November 11, 2020*
5. *How will the City respond to flooding after any remediation? Asking us to "get your neighbours to clear debris", as has been done in the past, will not be a sufficient answer for us if we are doing this analysis and subsequent work.*
 - a. *The applicant will need to follow up with the Development Agreement Administration Technologist, who provided the historical comments.*
6. *Does the City want to rethink the current path we are on? Our proposed 23.5 sq.m. addition is an area with no flooding, can't reasonably be considered to make the flooding worse than what we already showed (it's already bad enough), can't reasonably be considered more of a contributor than 180m of overland water travel, and is a proposed change we are willingly making.*
 - a. *Capital Works staff have provided the applicant with our full position pertaining to process matters and requirements. No additional correspondence will be entertained until a Professional Engineer has provided a solution to review. If you or your consultant have technical questions relating to grading and drainage and the future submission, please contact Site Engineering Coordinator or Intermediate Technician from Site Engineering.*

Mr. Complainant replied that he still needed support from the City, to which Manager of Development & Stormwater Engineering replied:

I'm in agreement with the previous responses provided to you by the Site Engineering staff. As the applicant, you are responsible to provide the engineering design & details required to address the submission requirements. These requirements have been explained to you

on several occasions. Correspondence from the Site Engineering staff has been provided in a consistent manner.

With respect to the specific items listed in your email below, I offer the following responses:

- 1. If your civil engineering consultant is unsure of the submission requirements, we welcome a direct discussion with your consultant.
 - a. The preparation of a storm drainage area plan is the responsibility of the applicant. The previously submitted plan was not accurate. The upstream drainage area must be accurately identified.*
 - b. The city will not provide updated drainage area plans. This is the responsibility of the applicant, to be addressed by your civil engineering consultant.*
 - c. The city will also not provide an estimated quantity of surface water. This is the responsibility of the applicant, to be addressed by your civil engineering consultant.**
- 2. It is the applicant and your civil engineering consultant's responsibility to determine a solution. The city will not provide you with a solution.*
- 3. The design requirements have been provided by Site Engineering. The maintenance of the proposed works will be your responsibility. The maintenance of your neighbours' properties will be their responsibility.*
- 4. Capital Works staff have provided you with our full position pertaining to process matters and requirements. Your application is being dealt with in a consistent manner to other applications of a similar nature.*

As mentioned above, we strongly suggest a direct discussion with your civil engineering consultant to discuss the design requirements.

On December 14, 2020, Manager of Development & Stormwater Engineering replied further that Site Engineering felt the Complainants' engineer hadn't considered all options, and that numerous other applications had dealt with this type of stormwater issue, so he didn't understand why their engineer felt there was no solution – and asked for a discussion with the engineer to understand why that was their position. He reiterated to please have the Complainants' engineer contact their staff to arrange a meeting. Mr. Complainant replied that if the City had questions or discussion items for their civil engineer, then to please send the questions through themselves (i.e., the Complainants) so that they could pass them along.

Mr. Complainant emailed Manager of Development & Stormwater Engineering again on January 18 and February 7, 2021, following which Manager of Development & Stormwater Engineering replied on February 12, 2021:

I received your voicemail this afternoon and provide the following response:

- 1. We are aware that you have recently retained a professional engineer to assist with the stormwater design.*
- 2. Intermediate Technician had a meeting with him this week to discuss the Site Engineering comments that have previously been provided.*

3. *Your engineer confirmed to Intermediate Technician that he will explore design options to deal with these requirements.*
4. *You have received multiple responses regarding your outstanding requests. Our answers have not changed.*
5. *You will be cc'd on any emails related to your property and the application process.*

...

Mr. Complainant replied that afternoon:

This Engineer is not contracted and we did not grant the City permission to discuss our property with third parties. We will let the City know when a Civil Engineer has been hired. Regardless, it is requested all communication is sent via us.

We do not believe we received any of the following. Please feel free to forward these answers again if we have missed them.

1. *Confirmation our drainage plan only needs to ensure surrounding properties are not impacted by the additional storm water from our home addition.*
2. *The Engineering plan created for the catch basin on 2355 First.*
3. *The requested drawings from previous surrounding developments. **OR** a reason why the City cannot provide these items.*
4. *Any feedback or follow up on the support previously offered by the City via Development Inspector.*
5. *Feedback from you if the Provincial flood prevention program is applicable for the existing flooding.*
6. *Any feedback from the City what they plan to do for remaining flooding once this discussion is complete.*

We are also disappointed to be completely ignored. No response is not acceptable, nor collaborative. The City is not meeting its obligation to support it's residents. Please let me know if we need to have a call or onsite meeting to discuss the above items. We do not want another month delay from the City being unresponsive.

Ward Councillor reached out to City staff that afternoon. Staff replied that there were no outstanding responses for them to provide about the matter, as Mr. Complainant had recently retained a professional engineer to provide design options to address the stormwater design requirements, and they were awaiting the submission of revised design that met their standards, which they understood to be in the works.

Mr. Complainant wrote to all relevant individuals at the City again on March 1, 2021:

Providing a response without care, thought or review is the opposite suggestion I left for you in my voicemail. We are obviously not on the same page since we believe we are blocked from moving forward with getting the requested Stormwater Brief. We have not found a Civil Engineer that will agree to be liable for the current neighbourhood conditions when creating a plan for this addition.

I apologize if I've missed something, so please forward the emails previously sent that identify the responses to my email from January 18 and the subsequently resent email on February 12. ...

...

Also, in speaking with the Engineer you had a side conversation without us, he's under the belief from your conversation that the Stormwater brief only needs to encompass the water from the addition, but sized to a 100 year storm. He believes that the results from a ground bore hole may result in an infiltration pit being impossible/rejected by the City regardless of what the Stormwater Brief says. So here are two additional items the City needs to please confirm:

- 1. Stormwater Brief/Drainage Plan needs to include an infiltration pit sized enough handle the volume of water our addition would create during a 100-year storm.*
- 2. Bore hole analysis is needed before the Stormwater Brief for analysis by the City to determine the feasibility of an infiltration pit.*

Ward Councillor reached out to staff again later that day, who replied that they had conveyed the design requirements to Mr. Complainant on several occasions, following their standard application processes, but Mr. Complainant didn't agree with the requirements and refused to hire a stormwater engineer to deal with the technical design requirements. They asserted that the way forward was for Mr. Complainant to hire a stormwater engineer to address the design requirements, and to date only one engineering firm had contacted them – who didn't indicate that it would impossible, only that it might be cost-prohibitive – which City staff said they had been cautioning themselves from the beginning.

Mr. Complainant sent the City a final email prior to escalating the matter to our office, on March 28, 2021:

We still have not seen any acknowledgement or answers to the questions we've submitted since January 18 (and some of them have been outstanding for more than a year now).

...

When can we expect a response? Our permit application discussion has been ongoing for more than a year now. ...

Outstanding questions:

- 1. Confirmation our drainage plan only needs to ensure surrounding properties are not impacted by the additional storm water from our home addition*
- 2. The Engineering plan created for the catch basin in 2355 First*

3. *The requested drawings from previous surrounding developments. **OR** a reason why the City cannot provide these items.*
4. *Any feedback or follow up on the support previously offered by the City via Development Inspector.*
5. *Feedback from you if the Provincial flood prevention program is applicable for the existing flooding.*
6. *Any feedback from the City what they plan to do for remaining flooding once this discussion is complete.*
7. *Stormwater Brief/Drainage Plan needs to include an infiltration pit sized enough handle the volume of water our addition would create during a 100-year storm.*
8. *Bore hole analysis will be provided to the City, and soil conditions confirmed as suitable, before the Stormwater Brief is created and submitted.*
9. *Only one borehole is needed.*
10. *Borehole location in the yard is to be determined by the Civil Engineer.*
11. *Borehole shall be used to confirm that surrounding soil has percolation rate of 15 mm/hr*
12. *Percolation rate confirmation will be done onsite. Lab test is not preferred.*
13. *Borehole will confirm no bedrock 1m below gallery level*
14. *Length of time borehole is monitored is to be determined by the Civil Engineer.*
15. *City will not require site inspection services of construction works.*
16. *City will not require certification of construction works.*

Internal City correspondence on April 27, 2021 identified that until Mr. Complainant hired a stormwater engineer and provided the required information, Site Engineering would not continue to engage with him. City staff opined that the issue wasn't the City's reluctance to provide sufficient details to proceed, but rather the Complainants' refusal to provide the requested documentation. City staff felt the Complainants were continually taking details out of context, and seemingly attempting to wear staff down to elicit a contradictory response in their favour. Intermediate Technician noted that he had received 221 emails respecting the Complainants' application as of that date, and participated in nine meetings, which was impacting his ability to provide timely reviews for other applications that had submitted all of the necessary documentation.

During ADRO's intake stage, the City advised in August 2021 that a City engineer had met with the Complainants and come up with a solution, but the City hadn't heard anything since. ADRO reached out to the Complainants, and Mr. Complainant identified on August 26, 2021 that the City finally attended for an on-site visit a few weeks earlier, but the Complainants had attempted to get help from five local geotechnical engineering firms, and none of them were available or capable of doing the work. He said they would continue to try to find others, but the requested work from the City continued to be an impediment towards the permit approval. Upon receipt of this information (i.e., Mr. Complainant's assertion that the matter wasn't resolved), this instant investigation was commenced.

Review of the City's files revealed that in summer 2021, the City's Director - Engineering Services opined that he, Manager of Development & Stormwater Engineering, and Intermediate Technician

had met with the Complainants on-site and reached an agreement on June 16, 2021 respecting what would be required to get the permit approved. Emails between the City and the Complainants corroborated that they had met on-site on June 16, 2021 at 11:30 am.

I spoke with Mr. Complainant in November 2021. He described that they were trying to get a building permit to add a small addition onto their home, about a couple of hundred square feet. He said during their initial submission in February 2020, the City highlighted that there had been flooding complaints in the past – which irritated him and Mrs. Complainant, because they had been the ones that raised the issues – and the City said they needed to resolve the flooding, and incorporate it as part of a Stormwater Brief and drainage plan, to get approval for the permit. He said there was lots of discussion about how the issue could be resolved, and why it existed and for how long. He added that they also asked the City many questions seeking information to help them get an engineer to get the information the City wanted, but the City ignored them for 7-8 months. He said they also had lots of discussions with Ward Councillor, after which the City curiously started responding.

Mr. Complainant said he and Mrs. Complainant have lived in the house in question since July 2014 – it was a family home that Mrs. Complainant’s grandfather built in 1957, so they were only its second owner, and it had been the family the entire time – so they knew the property’s and neighbourhood’s history. He said the purpose of the addition was to create more living space – the home was older, and needed renovations, updating, and modernizing. Mr. Complainant confirmed the permit hadn’t been provided yet, and the addition hadn’t been built. He said that as a consequence, a bathroom has been out of commission the entire time, and some of the single-pane windows are rotting because of the Styrofoam insulation – so it has impacted their quality of life. He added that there has been a lot of inflation over the last two years, so construction costs in 2022 will be significantly higher than they would have been in 2020. However, Mr. Complainant confirmed that he expected to receive permission now.

Mr. Complainant recalled that he had lots of discussion with the City about whether the Stormwater Brief was necessary. He said the City was basically punishing them for having previously reported the flooding issues and being the last property on the block to do construction – the City let all of the other properties on the block build up, but now the City wanted them to solve all the flooding problems. He added the City set up meetings to come on-site, but then cancelled, and when he was trying to get an engineer to create the Stormwater Brief, the engineer asked a lot of questions, but the City ignored them or didn’t answer them. Mr. Complainant said the City didn’t end up needing to speak directly with their engineer. He said he and Mrs. Complainant tried multiple times to contact an engineer – they spoke with five different engineering firms, but they all replied that they weren’t getting involved, there was a laundry list of challenges, and the City wasn’t responding, so the engineers they had other things more worth their time.

Mr. Complainant confirmed that an on-site meeting finally happened on June 16, 2021 – the City spent 15 minutes looking around the property, and finally came up with a solution that would work – i.e., diverting a downspout to drain towards the front of the yard instead of the rear of the yard. Mr. Complainant said the City was onboard with that, and were agreeing with everything they were discussing, so there was mutual understanding. He said the final administrative work now was to submit digital copies of the plans, which the City basically said they were going to approve

– so he will have the building permit, but it wasn't practical to start during the winter. Mr. Complainant thought it was reasonable to think construction could start in spring 2022, but because of all the waiting they didn't have a contractor in place – so things could possibly even be delayed to 2023, he didn't know. He said he wasn't willing to waste contractors' time and drag them through delays until they get the permit.

Mr. Complainant said his specific complaint was resolved now, because the City responded, but he doubted that the City had put anything in place so that the same thing wouldn't happen to him or anybody else again. He said the flooding problem definitely wasn't gone, so whether his issue was 'resolved' really depended on the definition. He said the City flat-out ignored him for months, and he had to start calling City executives asking who to speak to, which he didn't think was right. He said Ward Councillor even told him she had never looked at any file more than this, and Ward Councillor sent the City several emails that were also ignored. Mr. Complainant reiterated that even though his situation is resolved now, this situation shouldn't happen to anybody else.

I spoke with Manager of Development & Stormwater Engineering and Director - Engineering Services in January 2022. Manager of Development & Stormwater Engineering advised that the grading and drainage permit was issued to the Complainants on November 30, 2021, and the zoning clearances were issued on December 10, 2021 – so the permit wasn't an ongoing issue, although construction hadn't started yet.

Manager of Development & Stormwater Engineering said the City approaches applications in a standard way, and provides consistent comments to all applications. He said there was a drainage problem in this area that needed to be looked at and assessed, to confirm that the Complainants' application wasn't going to make the situation worse. He said the central issue was the Complainants were questioning why the City required the whole process – continually questioning and arguing with them about the City's process, which the City kept replying was a standard process they ask for on any application – i.e., that they needed to see what the impacts on drainage would be.

Manager of Development & Stormwater Engineering opined that the correspondence between the Complainants and the City was excessive. He said that in 2020-21, a typical draining clearance certificate averaged 60-70 days to permitting. He acknowledged that this case was a little more complex, but the City would've expected perhaps a three-month process, but it had now gone on for two years. He said multiple staff became involved – when the Complainants weren't satisfied with what technical staff were saying, they went to the supervisor, and when they weren't happy with his answers they went to him and then Director - Engineering Services, and then to Ward Councillor and the Mayor's Office. He felt it was a constant battle of the Complainants not getting the answers they wanted, but being unwilling to deal with the design requirements the City was explaining to them. He said their technical person alone had almost 300 emails back and forth on the matter, and then there was also the manager, coordinator, and director involved – really a huge amount of staff time spent on trying to deal with the issue.

Director - Engineering Services agreed that the City follows a standard process, based on the Grading and Drainage Clearance Certificate By-Law (City of Burlington By-Law 52-2018).¹ He

¹ <https://www.burlington.ca/en/Modules/Bylaws/Bylaw/Download/6b3e0294-6c45-4c89-bed9-9705698d993b>

said their technicians had to ensure that the Complainants' development application didn't make the drainage situation worse than what was presently existing, and they shared with them why they were seeking that information.

With respect to why the Stormwater Brief was necessary, Manager of Development & Stormwater Engineering said that in the Complainants' area, the neighbourhood houses have drainage that goes to the backyard property lines, and then through a number of different properties (one of which is the Complainants') to an adjacent property where there's a drain. He said that this is an older area, and over the years the trees have grown and drainage swales have been changed, so sometimes the drainage doesn't convey as well as originally because the trees have grown larger. He said that the Complainants' neighbour had a large mature tree that was basically blocking the drainage, resulting in the Complainants' backyard being a ponding area until it had depth to pass the big tree – which the City identified as a concern, and the Complainants knew about it because they reached out to the City asking about it a few years earlier. He said that if the Complainants were putting an addition on their house, a patio with a roof on it, that would add impervious area to the lot and increase run-off to the backyard and exacerbate the ponding problem – so they told the Complainants they had to work out the stormwater drainage situation on their property, and ensure that their proposed design either improved the situation, or at least didn't make it any worse.

Director - Engineering Services said the City requires a Stormwater Brief whenever a proposed development can potentially impact drainage on neighbouring property. He acknowledged the Complainants' property was problematic and in an older area, so there were existing constraints that had already been flagged with the City in previous years. He said the Stormwater Brief's purpose is to ensure a homeowner doesn't negatively impact their own property and neighbours' by pushing water somewhere else, and they couldn't issue the drainage clearance without knowing the additional impact on neighbouring property. He acknowledged the Complainants' Stormwater Brief might be more complicated.

Director - Engineering Services didn't feel the Complainants were unfairly targeted for having raised the flooding issue in the past. He said the City has a good mapping of the area, and a Stormwater Brief would always be required regardless of where a property was – only the amount of detail needed would change. He said that any engineer on the Complainants' behalf would have raised the same issues during the process, and felt the fact the Complainants already knew about the problem might have made things easier for them, as they could advise their consultant accordingly.

Manager of Development & Stormwater Engineering recalled that the City repeatedly asked the Complainants to sit down and have a meeting with them and their engineers, but they kept saying the engineers were saying it was impossible – although they wouldn't say who the engineer was. He said the Complainants eventually hired an engineer, who contacted City staff to go over the design requirements, but when the engineer reached back out to the Complainants, they got upset that the City spoke with the engineer without them – which surprised the City, as they wouldn't have reached out to an engineer on their own, the engineer had to contact them on the Complainants' behalf. Manager of Development & Stormwater Engineering said that eventually the Complainants didn't hire that engineer, they hired someone else instead, and he dealt with the stormwater requirements.

I asked Manager of Development & Stormwater Engineering and Director - Engineering Services if the City had any proactive responsibility to address flooding issues in the City. Director - Engineering Services said the City always tries to improve issues where they can, but they can't really go into private properties to address issues; what they can do is ensure issues don't get worse when development proposals come along. He said problems are more prominent in older areas – for example, people plant trees and place sheds over time. He said the City's role during the permitting process is to ensure there are no negative impacts downstream. He said the City had looked at a drainage assessment program in the past, to study the impact on older private houses, but it didn't get uptake from residents who would have had to do some work – so the City just tries to deal with private property issues as development applications come in, to ensure there are no negative impacts elsewhere.

Manager of Development & Stormwater Engineering agreed that the City can't proactively change drainage on private property – owners themselves have to do that. He said Council approved a residential drainage assistance program about 10 years ago, wherein staff had analyzed several areas of the city – but residents who needed to pay weren't all willing to get together to move forward, so that was the City's last attempt at trying to do work on private property. Director - Engineering Services added that one of the main reasons for the drainage by-law is to ensure people don't start privately changing the grades on their property, so that they don't shift their problems to other properties down the road. He said that was implemented in the last 10 years or so.

Director - Engineering Services said he was present at the June 16, 2021 meeting at the Complainants' property – he said he realized the Complainants' frustration with the Stormwater Brief, and observed the front of their house all drained to the back where they had the problems, so they collectively thought it could be offset with water running to the front of the lot rather than to back, by re-routing eavestroughs from the back to the front. He said the City couldn't fix the legacy ponding problem, but any addition was going to make the problem worse, and the problem could be addressed by moving water from the back to the front.

Manager of Development & Stormwater Engineering said the Complainants now have the clearance certificate and zoning clearance, which are needed before the Building Department could issue a building permit, based on conformity to their building regulations. He said the next step is for the Complainants to get the building permit, but they have everything needed now from the zoning and site engineering groups. Director - Engineering Services agreed that the City considers the matter resolved now – the Complainants met the criteria for the permits, so Engineering Services believes the roadblock was removed.

ADRO Analysis

The primary dispute between the parties fortunately seems resolved as of December 2021. I commend the parties for resolving the matter on their own, and hopefully the future structure is satisfactory.

This investigation is now simply a legacy inquiry into whether the City was entitled to require the Stormwater Brief as it did, and whether it followed its own processes acceptably. I am satisfied

that the answer to both questions is yes. The City provided reasonable explanations about why a Stormwater Brief was necessary as part of its standard process – which it requires of all individuals who seek the kind of permit the Complainants sought. A City by-law prohibits new development from creating new flooding issues for neighbours, or exacerbating existing issues. I accept that the Complainants' property would have had a more difficult time getting a drainage clearance than average, given the long-standing ponding issue in their backyard. However, this does not mean they were unfairly targeted by the City – it was simply a reflection of their property's realities.

The correspondence between the parties over time was voluminous, and neither side enjoyed it. I simply conclude that the City's messages were restrained and professional, and they made multiple attempts to explain why they were taking their positions. I do not accept the Complainants' assertions that the City failed to respond – they did, many times. Their City made their opinion clear several times that their position was not going to change, and they believed it was the Complainants' responsibility to address it. All private property owners are constrained over what they can do on their private property, by municipal by-laws. The by-law in this case sets out a process for when a property owner pursues an enhancement for their sole benefit, but which could detrimentally affect neighbours if left unregulated. The Complainants did not have an unrestricted right to undertake the addition they wanted without the City's permission – which required engaging the City's standard process.

Conclusion and Recommendation

I am satisfied that the City followed its processes and procedures acceptably. There is no basis for a recommendation against the City, and the issue between the parties is predominantly moot now anyway.

Following the issuance of the Draft Report in this matter, Mr. Complainant wrote that there were many documented scenarios of the City ignoring them and Ward Councillor, and that the City changed what they were requiring from them several times, which impacted their ability to hire an engineer to perform what was needed. He said the issue was resolved with a 15-minute visit that could have occurred 14 months earlier, and he found it hard to believe that ADRO couldn't identify an improvement for this situation to be avoided by another resident.

Respectfully submitted,

Ben Drory
ADRO Investigator