

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT



REPORT TO: Planning & Building Committee
MEETING DATE: May 4, 2009
REPORT NO.: SRB.09.12
SUBJECT: Memorandum of Understanding
for Private Pools
PREPARED BY: Greg Miller, Manager Building &
By-Law

A. Recommendations

THAT Council receives Staff Report SRB.09.12 to amend Section 5.2 of the Swimming Pool Fence By-Law No. 2002-8, as amended, so as to incorporate the attached Memorandum of Understanding and Indemnity for the Installation of Private Pools.

B. Background

1. A number of private pools have been installed in a Registered Plan of Subdivision or Condominium over the past couple of years and the Building and By-Law Division continue to receive applications for pool fences in these locations, in addition to other areas of the municipalities. A potential issue with respect to grading and drainage of these properties has been identified where the grading has not been certified by the Developer's Engineering consultant.
2. The Building and By-Law Division's current policy with respect to the installation of private pools and drainage is:
 - a. The owner of the proposed private pool in a Registered Plan of Subdivision or Condominium shall obtain a revised grading plan stamped by a Professional Engineer. This in turn would form the letter of certification of grading for that property as per the Town's Fill Regulation By-law.

AND

- b. Provide a \$3,000.00 grading security deposit.
3. This has raised some confusion as to where this policy would apply. It was the intent to retain a \$3,000.00 security deposit to address any concerns with respect to drainage or altering of grades but only in subdivisions that have not been assumed by the municipality or in a condominium project still under development.
4. The Memorandum of Understanding will clarify the roles of each stakeholder with respect to issues arising from the installation of private pools such that the owner will indemnify the Town of any damages and acknowledges that they are

responsible for alteration of grade which would adversely affect or cause damage to neighbouring properties.

5. The policy of collecting \$3,000.00 grading security would be discontinued and replaced by the MOU.
6. Given the above, the Building & By-Law Division is recommending that:
 - a. The Memorandum of Understanding and Indemnity for the Installation of Private Pools be signed by ALL property owners prior to the issuance of any fence permit for private pools, with the associated section of the Fence By-Law amended as required by staff, and where applicable;
 - b. A revised grading plan shall be prepared by the developer's consulting Engineer incorporating the proposed private pool into their design where the grading has not been certified or is located within an unassumed subdivision or condominium site under development, with the associated section of the Fence By-Law amended as required by staff.

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Environmental Impacts

N/A

E. Budget Impact (cc: Treasury if required)

N/A

F. Attached (Relevant documentation not personal information about an identifiable person)

- A. Memorandum of Understanding and Indemnity for the Installation of Private Pools.
- B. Draft By-Law.
- C. Lot Grading Requirements for New Private Pools.

Respectfully submitted:

Greg Miller, C.E.T.
Manager, Building & By-law/DCBO

David Finbow
Director, Planning & Building Services/CBO



MEMORANDUM OF UNDERSTANDING AND INDEMNITY FOR THE INSTALLATION OF PRIVATE POOLS

A.

For use by Principal Authority			
Application number:		Permit number (if different):	
Date received:		Roll number:	
Project information			
Owner		Unit number	Lot/con.
Building number, street name			
Municipality: The Blue Mountains	Postal code	Plan number/other description	

THIS MEMORANDUM OF UNDERSTANDING AND INDEMNITY made the ____ day of _____, 20__.

BETWEEN: _____ (hereinafter called the "Owner")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS (hereinafter called the "Town")

WHEREAS the Owner is the Owner of certain land as described above;

AND WHEREAS Swimming Pool Fence By-law No. 2002-8, as amended, requires the owner to obtain a pool fence permit prior to the installation or erection of a pool;

AND WHEREAS Alteration and Fill By-Law No. 2002-78, prohibits or regulates the placing or dumping of fill or the alteration of the grade of land, within the Town;

AND WHEREAS the property is subject to a Subdivider's Agreement or a Condominium agreement and the acceptance of the Works and the assumption of same has not commenced;

AND WHEREAS the owner of the subject lands proposes to construct a pool on the property that may affect the lot grading and drainage;

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING WITNESSETH that the owner agrees and acknowledges as follows:

1. Not to affect the existing lot grading or intended design of the drainage patterns within 1.0 metres of all property boundaries.
2. To remediate any lot grading and drainage concerns associated with the installation of the pool to the satisfaction of The Blue Mountains.
3. The undersigned owner further agrees to indemnify The Blue Mountains for any loss or damages and all such costs resulting in the alteration to the approved drainage and grading plan.
4. The undersigned owner agrees to register this notice on title for any subsequent owners; the contents of this Memorandum of Understanding and Indemnity prior to the sale transaction unless released from this obligation by The Blue Mountains.
5. The undersigned owner hereby acknowledges that in issuing any building permit or permit for a swimming pool fence, the Corporation of The Town of The Blue Mountains does not permit or approve of any changes to the elevations or grading and drainage of the property which would adversely affect or cause damage to the surrounding properties.

The owner further acknowledges where an issue with respect to drainage and/or grading arises during the construction activities associated with this acknowledgment; may be considered a civil matter and may be actionable.

SIGNATURE OF HOMEOWNER(S) _____ DATE: _____ (D/M/YYYY)

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

By-Law No. 2009 -

WHEREAS the *Municipal Act*, 2001, permits a council of a local municipality to regulate matter related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS Council of the Town of The Blue Mountains has enacted By-law No. 2002-8, as amended with respect to requiring owners of privately-owned outdoor swimming pools to erect fences and gates and for prescribing the height and description of such fences and gates;

AND WHEREAS Council of the Town of The Blue Mountains deems it expedient to amend By-law No. 2002-8;

NOW THEREFORE the Council of The Town of The Blue Mountains enacts as follows:

1. Adding a new subsection 5.2 (d) and 5.2 (e) as set out below and by re-numbering the related sections/subsections respectively.

5.2 Application – documentation to accompany – set out

All such applications shall be accompanied by the following:

- a) Except as required in subsection (b); Plans showing the location of the proposed swimming pool including all enclosing swimming pool fences, together with full details of each entrance and showing the location of all proposed swimming pool equipment such as filters, slides and heaters;
- b) A grading plan prepared by the Developer's or Owner's Consulting Engineer where the proposed swimming pool is within a Registered Plan of Subdivision or Condominium where the grading has not been certified; or where the Registered Plan of Subdivision has not been assumed and/or the maintenance period for assumption of the Works by the Town has not expired. The grading plan shall indicate the location of the proposed swimming pool, all enclosing swimming pool fences and the proposed finished grade elevations.
- c) A completed Memorandum of Understanding and Indemnity for the Installation of Private Pools signed by the property owner;
- d) The applicable fee as prescribed in Schedule 'A' of this By-Law; and
- e) An undertaking to repair damage to Town property as required by this By-Law.

This By-law shall come into force and take effect immediately upon the enactment thereof.

Enacted and passed this _____ day of May, 2009.

Ellen Anderson, Mayor

Stephen Keast, Clerk



Town of The Blue Mountains

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C.

LOT GRADING REQUIREMENTS FOR NEW PRIVATE POOLS

The installation of private pools has the potential to alter the intended design of drainage patterns within their own lot in addition to adjacent properties. There are two main by-laws concerning swimming pools and property drainage:

- *By-law 2002-78, is a by-law to prohibit or regulate the placing or dumping of fill or the alteration of the grade of land, within the Town. This includes the installation of in-ground swimming pools.*
- *By-law 2002-8, "Swimming Pool Fence By-law", requires that the existing grades or drainage patterns shall not be altered in anyway, unless approved by the Town.*

The attached is a general guideline for providing grading and drainage information with a new application for a swimming pool fence. Each specific property may require more information, please contact the Building Division for more information.

I. Registered Plan of Subdivisions or Condominiums

- A completed and signed Memorandum of Understanding and Indemnity for the Installation of Private Pools by the owner.
- A revised lot drainage plan from the developer's consulting engineer will be required in the following circumstances:
 - The lot grading has NOT been certified by the developer's consultant and reviewed by the Town.
 - Grading securities have NOT been issued as certification has not been completed OR a written complaint is on file that has not been resolved with respect to lot grading.
 - The registered plan of subdivision had not been assumed or the maintenance period has not expired or the condominium corporation had not registered.

II. Other Properties

1. A general plan showing the intended drainage after the pool has been installed (including the location, setbacks and all relevant information), subject to the Swimming Pool Fence By-law.
 2. A completed and signed Memorandum of Understanding and Indemnity for the Installation of Private Pools by the owner.
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