



100 John West Way
Aurora, Ontario
L4G 6J1
(905) 727-3123
aurora.ca

Town of Aurora

General Committee Report

No. PDS22-110

Subject: Retaining Wall at 22 Rachewood Court

Prepared by: Marco Ramunno, Director Planning and Development Services

Department: Planning and Development Services

Date: July 5, 2022

Recommendation

1. That Report No. PDS22-110 be received for information.

Executive Summary

This report is presented to General Committee for information in response to a delegation made requesting the Town of Aurora take responsibility of maintaining a retaining wall located in the rear yard of 22 Rachewood Court and abutting the rear yard of 31 Underhill Crescent. In review of this request, it is determined that the retaining wall in question had presumably been constructed without any notification or approval by the Town as it is not recorded in any registered plans, records of title, or later approvals. Further, the retaining wall in question lays over a stormwater drainage easement which does prevent the approval and construction of any infrastructure within the 3-metre easement. The retaining wall encroaches onto Town owned lands. It is the opinion of staff, that the maintenance or removal of the retaining wall as it exists between 22 Rachewood Court and 31 Underhill Crescent, is not a Town responsibility and should be resolved privately between both abutting property owners.

- In 2019, Town staff received an inquiry from the owner of 22 Rachewood Court seeking clarity on the Town's position regarding a retaining wall located on their property abutting the rear yard of 31 Underhill Crescent.
- On February 1, 2022, a delegation was presented by the owner of 31 Underhill Crescent suggesting the responsibility of maintaining the retaining wall belonged to the Town of Aurora.

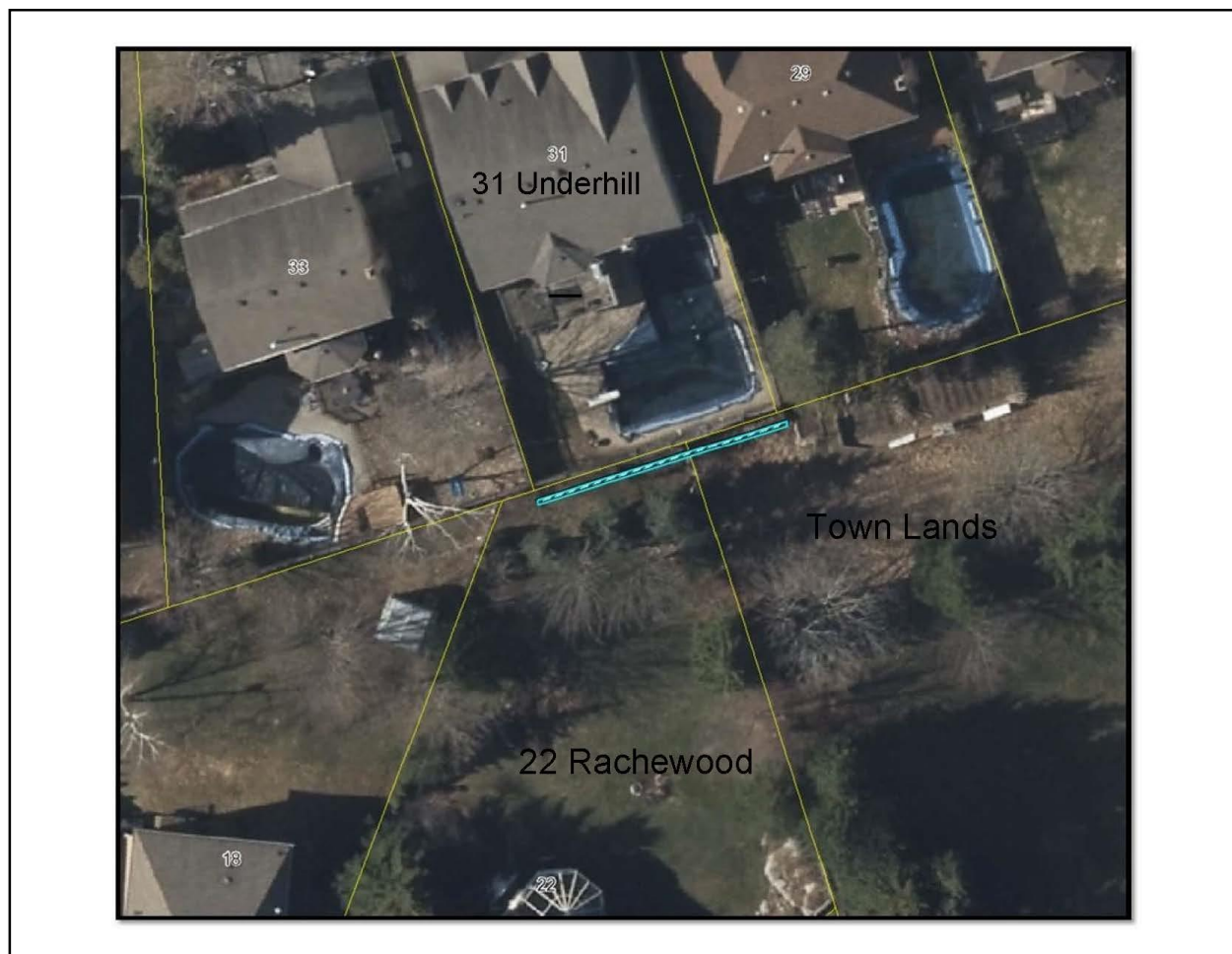
- The retaining wall is not shown on any registered plans, and there is no record of later permits or approvals.
- The retaining wall encroaches onto a perpetual stormwater easement and onto Town owned lands.
- The retaining wall appears to have been constructed solely for the purpose of supporting the pool in the rear yard of 31 Underhill Crescent and does not serve any function to the Town.
- It is the opinion of staff that the maintenance of the retaining wall between 22 Rachewood Court and 31 Underhill Crescent is not a responsibility of the Town of Aurora and should be resolved privately between both abutting property owners.

Background

In 2019, Town staff received a resident inquiry from the owner of 22 Rachewood Court seeking clarity on the Town's position regarding a retaining wall located on their property abutting the rear yard of 31 Underhill Crescent.

The retaining wall in question is located along the rear property line of 22 Rachewood Court extending approximately 20 feet into Town owned open space land and abuts the entire rear yard of 31 Underhill Crescent (the "Underhill Owner") (**Figure 1**). In his inquiry, the Rachewood Owner expressed concern over the state of disrepair of the retaining wall, and that there was question of responsibility between the owners.

Figure 1 – Image showing 31 Underhill Crescent (top) above 22 Rachewood Court with highlighted retaining wall and property boundaries



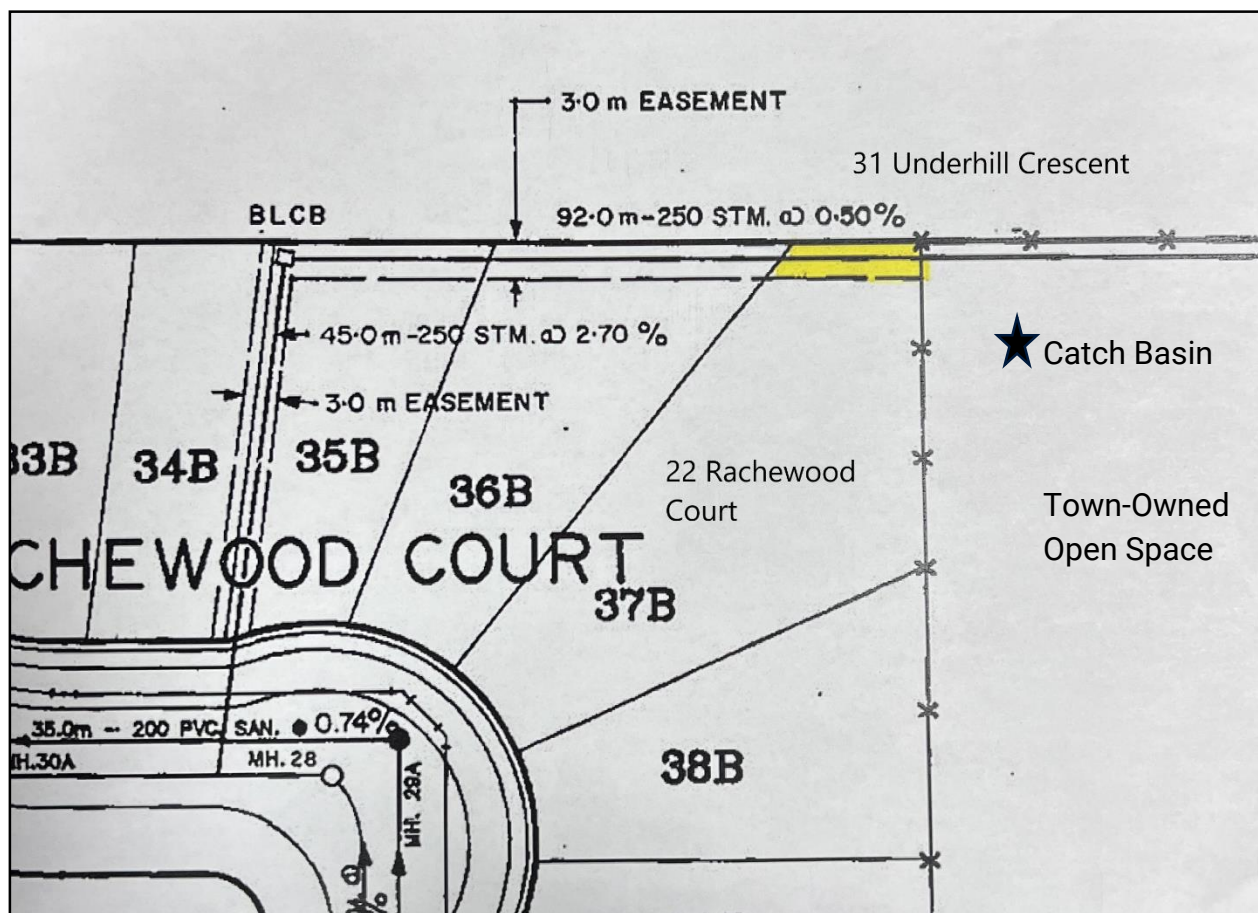
After reviewing the inquiry, staff responded to the Rachewood Owner explaining that the Town did not have any plans or documents on file that confirmed the presence of the retaining wall, and that the wall existed overtop a registered easement on title of the property, in perpetuity. Staff advised that the Town would not pursue removal of the wall unless there was interference with the flow of water, and that this was a private property matter between neighbours.

On February 1, 2022, a delegation was presented by the owner of 31 Underhill Crescent suggesting the responsibility of maintaining the retaining wall belonged to the Town of Aurora

In May 2021, staff received an inquiry from the Underhill Owner suggesting that the retaining wall was the responsibility of the Town of Aurora.

In August 2021, staff responded to the owners via email reiterating that it was the opinion of staff that the entire intent of the retaining wall was installed for the sole benefit of the original property owner of 31 Underhill Crescent. Further, it was again explained that the original grading plans for this subdivision did not indicate a retaining wall was installed, and it was not shown in any approved engineering drawings the Town has for this subdivision. Both owners were also reminded of the storm water easement which starts from the catch basin within the Town owned lands running west through the rear yard of 22 Rachewood Court. **Figure 2** shows the location of the stormwater drainage easement through the rear yard of 22 Rachewood Court.

Figure 2 – Approved plan showing drainage easement located through 22 Rachewood Court behind 31 Underhill Crescent.



The Underhill Owner elected to present a delegation to General Committee, February 1, 2022. This Information Report is in response to the delegation made (Delegation 6.1, Michael White, Resident; Re Drainage Maintenance between Underhill Crescent and Rachewood Court).

Through this delegation, the Underhill Owner referred to an ongoing dispute regarding the responsibility of maintaining the catch basin, drainage swale and retaining wall located behind his property, indicating that they are on Town property. He requested that the Town investigate the concerns and assume maintenance responsibilities. General Committee received the comments of the delegation, ratified at the February 22, 2022 meeting of Council.

Analysis

The retaining wall is not shown on any registered plans, and there is no record of later permits or approvals.

As made aware to both owners, the retaining wall is not shown on any registered grading plans, property titles, or later permits or approvals. Notwithstanding statements from Underhill Owner's delegation, there is no evidence the retaining wall was ever approved by the Town and it is likely it was constructed without staff having any knowledge. Further, the retaining wall lays directly over a storm water easement which restricts the construction of any structure within the 3 metre easement (refer to **Figure 2**). There is no wording within the easement on title which describes a requirement for a retaining wall or a requirement that states the Town is responsible for maintenance.

The retaining wall encroaches onto a perpetual stormwater easement and Town owned land.

As shown in **Figures 1 and 2**, the retaining wall encroaches onto a stormwater easement in the rear yard of 22 Rachewood. The retaining wall then continues beyond the rear yard into Town owned lands, located in close proximity to a municipal catch-basin. In January 2022, a survey was ordered by Town staff to geographically locate and measure the retaining wall for information, at which point the Rachewood Owner requested an update, and was made aware of the Underhill Owner's planned delegation in February 2022.

The retaining wall appears to have been constructed solely for the purpose of supporting the pool in the rear yard of 31 Underhill Crescent and does not serve any function to the Town.

In June 2022, staff visited onsite to assess the retaining wall. After this assessment it was determined that the retaining wall appears to have been constructed solely for the purpose of supporting the rear yard and pool at 31 Underhill Crescent, despite being located primarily on the rear parcel of 22 Rachewood Court, with a portion extending

beyond 22 Rachewood Court, encroaching approximately 20 feet into municipally owned property (refer to **Figure 1**).

Based on a visual assessment by staff, it appears the retaining wall could be entirely relocated to 31 Underhill. Given the close proximity of the pool to the property line at 31 Underhill (1.2 m) staff recommend the owners retain a structural engineer at their own cost, to determine if the retaining wall can be completely relocated to 31 Underhill. Staff recommend relocating the wall as close to the pool as possible, and remain outside of the existing easement.

It is the opinion of staff that the maintenance of the retaining wall between 22 Rachewood Court and 31 Underhill Crescent is not a responsibility of the Town of Aurora and should be resolved privately between both abutting property owners.

Given that the retaining wall was constructed without approval on private property, and lays over a drainage easement which would prevent the approval or construction of any overlaying retaining wall, staff are of the opinion this matter should be dealt with privately between both neighbours. While staff are aware the retaining wall encroaches approximately 20 feet onto Town owned land, it is determined that unless the retaining wall negatively impacts the function of the nearby catch basin, the Town would not decommission the retaining wall. Instead, it is the responsibility of the two owners to finalize the matter. Staff recommend the owners retain a structural engineer to consider moving the wall entirely to the property of 31 Underhill Crescent, and avoid encroaching onto the easement and Town owned property, at the owners sole cost.

Legal Considerations

The Town's parks by-law states that no one may encroach on Town public lands unless in accordance with the Town's encroachment policy and authorized by Council. Even though the retaining wall is an encroachment onto Town lands, as owners of the lands, the Town would likely be held liable for any personal injury claims or property damage that would occur if the retaining wall between the Town lands and 31 Underhill Crescent failed. Since the Town has no use for the retaining wall, the Town may consider removing the wall, however, this may negatively impact the Underhill property.

Financial Implications

None.

Communications Considerations

None.

Climate Change Considerations

The opinions and considerations from this report do not impact greenhouse gas emissions or impact climate change adaptation.

Alternative to the Recommendation

1. That Council provide direction.

Conclusions

In response to the delegation made to General Committee on February 1, 2022 requesting the Town of Aurora take responsibility of maintaining a retaining wall located primarily at 22 Rachewood Court, it is determined that the retaining wall in question had presumably been constructed without any notification or approval by the Town as it is not recorded in any registered plans, records of title, or later approvals. Further, the retaining wall in question lays over a stormwater drainage easement which does prevent the approval and construction of any infrastructure within the 3 metre easement. It is the opinion of staff, that the maintenance or removal of the retaining wall as it exists between 22 Rachewood Court and 31 Underhill Crescent, is not a Town responsibility and should be resolved privately between both abutting property owners. Staff recommend the owners retain a structural engineer to consider moving the wall entirely to the property of 31 Underhill Crescent to avoid encroaching onto the easement and Town owned property, at the owners cost.

Attachments

None.

Previous Reports

None.

Pre-submission Review

Agenda Management Team review on Select review date

Approvals

Approved by Marco Ramunno, Director, Planning and Development Services

Approved by Doug Nadorozny, Chief Administrative Officer