



Session Three – Environmental Protection of Public Property

To protect the River Valley and Ravine System from urban development that may compromise its integrity and long term stability.

Draft City Policy: Development Setbacks from River Valley/Ravine Crests

A. Introduction

B. Primer on Environmental Protection of Public Property

- Components – slope and public upland setback
- River Valley public policy – historical context; basic intent and mechanism(s) for acquisition; river valley trails and facilities (Capital City Recreation Parks system)
- 1985 North Saskatchewan River Valley Area Redevelopment Plan and Top of Bank Roadway Policy – see Session One handout
- Managing environment hazard risk so as to protect public property on or adjacent to the slope
 1. use of restrictive covenants – geotechnical recommendations – additional development setbacks, back yard water restrictions, City's indemnification
 2. other subdivision requirements (i.e. fencing)
 3. Parks bylaw – Unauthorized Use of Parkland

C. Issues

- Question – Is the bigger problem in the back yard or outside of it?
- Problems with restrictive covenants:
 1. prior problems - too many development setback lines; poor language; inappropriate recommendations (i.e. type of sewer pipes)
 2. City's liability – indemnification clause limitation
 3. homeowner's expectations – a pig in a poke
 4. does not prevent encroachments unto public parkland (85% river valley upland areas)
- Encroachments on public parkland – past and ongoing experience; general conclusions

Roundtable Discussion and Questions

D. Finding Solutions

- Basic approaches



FOR THE NORTH SASKATCHEWAN RIVER VALLEY AND RAVINE SYSTEM

1. improvements to restrictive covenants as a risk management tool – legal instrument; education; enforcement
 2. Unauthorized Use of Public Parkland Bylaw – greater enforcement
 3. avoidance - no backing on TOB development or limit its application, especially in higher environmental hazard risk slope situations
 4. private sector solutions – contribute to education/information programs; establish reserve fund for landslide events
- exercise #5 – views of basic approaches

Roundtable Discussion and Questions

E. Next Meeting – date, assignments, description/overview

Further Readings

1. Edmonton Planning and Development Department, **Discussion Paper: Development Setbacks from River Valley/Ravine Crests**, March 2002, Chapter 3.
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Handouts Follow

1. Example of a Typical TOB Restrictive Covenant between the City of Edmonton and a Private Developer
2. Managing Environmental Hazard Risk associated with Urban Development and Slope Instability



FOR THE NORTH SASKATCHEWAN RIVER VALLEY AND RAVINE SYSTEM

THIS RESTRICTIVE COVENANT made effective this 27th day of June, 1997.

BETWEEN:

CARMA DEVELOPERS LTD.
(hereinafter referred to as "the Grantor")

- and -

THE CITY OF EDMONTON
(hereinafter referred to as "the Grantee")

TWIN BROOKS - STAGE 29

RESTRICTIVE COVENANT

WHEREAS:

- A The Grantor is the owner of the "Servient Lands";
- B The Grantee is the owner of the "Dominant Lands";
- C The Dominant Lands are located below the top of the Bank of the Valley of the Blackmud Creek and in order to protect the Dominant Lands it is desirable that the development of the Servient Lands not cause any detrimental changes to the ground water regime or geometry of the slope of the Blackmud Creek Valley.
- D It is beneficial to the Dominant Lands that the Servient Lands not be used in a manner detrimental to the stability of the Dominant Lands; and
- E The Grantor covenants with the Grantee to restrict development of the Servient Lands and to impose such restrictions against and burden the Servient Lands and to benefit the Dominant Lands.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual benefits of the Covenants herein contained, the Grantor hereby annexes to its Lands herein described, the following conditions and covenants, restrictive in nature, as burdens to run with the Servient Lands for the benefit of the Dominant Lands.

- 1 The Grantor is the registered owner of.

Plan 972 2228

Block 27

Lots 51 to 56 inclusive

Block 38

Lots 18 to 34 inclusive

Block 39

Lots 1 to 9 inclusive

Excepting Thereout All Mines and Minerals

(hereinafter referred to as the "Servient Lands").

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FOR THE NORTH SASKATCHEWAN RIVER VALLEY AND RAVINE SYSTEM

2. The Grantee is the registered owner of:

Plan 972- 2228

Block 38

Lot 36 E.R.

Excepting Thereout All Mines and Minerals

(hereinafter referred to as the "Dominant Lands").

3. There shall not be any form of development on, under or over the Servient Lands contrary to the provisions hereof.
4. The Plan annexed hereto as Schedule A which shows the lots and block affected hereby (and identifies the "Top of Bank Line" and the "Development Line") is incorporated herein.
5. There shall be no development within that portion of the servient lands follows:

Plan 972 2228

Block 38

Lots 21 to 34 inclusive

All those portions shown on a Plan of Survey for Development Setback registered in the Land Titles Office as Plan 972 2230

Excepting thereout all mines and minerals.

For the purposes of this section Development means the carrying out of an on or excavation of the Servient Lands or any changes or alterations to any constructed on or in the Servient Lands. Development does not include the construction of cantilevered structures that do not require pile supports or the construction of wooden decks, or paved patios provided that such construction does not require supports or the excavation or re-grading of the ground surface.

6. With respect to the entirety of the Servient lands, the following restrictions shall apply:

- 6.1 No swimming pool or other water retention structure shall be constructed; the party carrying out such construction shall have implemented an underdrain system which discharges into the storm sewer system, and shall have been designed by a Professional Engineer in accordance with the requirements in and for the Province of Alberta and may only be constructed in accordance with the said design;
- 6.2 No automatic lawn sprinkler systems shall be permitted;
- 6.3 No water line shall be constructed unless the water line has been designed by a Professional Engineer in accordance with the statutory requirements in and for the Province of Alberta and may only be constructed in accordance with the said design; and



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7. With respect to those portions of the servient lands described as follows:

Plan 972 2228

Block 38

Lots 18 to 34 inclusive

Block 27

Lots 51,52 and 53.

Excepting thereout all mines and minerals

Roof leaders, down spouts and sump pump discharge spouts shall not discharge on to the ground surface unless the ground surface has been graded to drain towards the nearest paved street or a paved street between the roof leader or downspout and the Development Setback.

8. With respect to those portions of the servient lands described as follows:

Plan 972 2228

Block 39

Lots 1 to 9 inclusive

Block 27

Lots 54,55 and 56.

Excepting thereout all mines and minerals

Roof leaders, down spouts and sump pump discharge spouts shall not be discharged directly on to the ground surface unless the ground surface has been graded to drain towards the nearest paved street or a paved street between the roof leader or downspout and the Development Setback.

9. In the event the registered owner of any lot in the Servient Lands shall become aware of any significant or unusual erosion or subsidence within the Dominant Lands, the registered owner shall immediately notify the General Manager of the Parks and Recreation Department of the City of Edmonton and immediately take such precautionary measures to prevent further erosion or subsidence of such property as may be dictated by sound engineering practices to minimize any risk whatsoever to improvements situate thereon.
10. The registered owners of the Dominant Lands acknowledge that there is no duty owed to them by the registered owners of the lots in the Servient Lands in respect of any subsidence or erosion occurring on the Dominant Lands or to take any action in respect of same, save if such subsidence or erosion is due to default hereunder or negligence of the registered owner of any lot in the Servient Lands.
11. The burdens of these presents shall pass with, extend to, run with and bind the Dominant Lands so as to bind all successors and assigns deriving title to the Servient Lands from or through the Grantor.
12. The benefits of these presents shall pass with, extend to, run with, be enforceable by and benefit the Dominant Lands so as to enure to successors and assigns deriving title to the Dominant Lands or any interest therein from, under or through the Grantee.
13. Nothing herein contained shall obligate the Grantee to enforce the covenants contained or render the Grantee liable in damages or otherwise for any breach of performance thereof.



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14. The provisions hereof shall enure to the benefit of and be binding upon assigns of the parties.
15. In the event a Court finds any provision hereof to be unenforceable, the remainder shall continue in full force and effect.
16. Neither the granting of time by the Grantee to the Grantor or any other right for the time being of any of the said Servient Lands to remedy any breach covenants herein contained, nor the fact of the Grantee failing to take action to breach by the Grantor or any registered owners of any of the aforesaid covenants operate as a waiver or otherwise stop the Grantee from taking action thereafter to enforce these presents and any breach by the Grantor or any owner and enforce these presents and any breach by the Grantor or any owner of any of the aforesaid covenants shall be deemed to be a continuing breach may be restrained, enjoined, or otherwise remedied by appropriate process of the Grantee.
17. No fill materials shall be placed on the Servient Lands unless it is in accordance with an approved lot grading plan.

IN WITNESS WHEREOF the parties hereto have set their hands and seals before the officers in that behalf on the day and year indicated at the top of Page 1 hereof

CARMA DEVELOPERS LT

Michael D...

D. Kelly

APPROVAL:

As to Form:

[Signature]
Law Branch, Corporate Services

CITY OF EDMONTON

[Signature]
MAYOR

As to Content:

[Signature]
Planning and Development

[Signature]
a/ CITY CLERK



FOR THE NORTH SASKATCHEWAN RIVER VALLEY AND RAVINE SYSTEM

SCHEDULE "A"

TWIN BROOKS STAGE 29

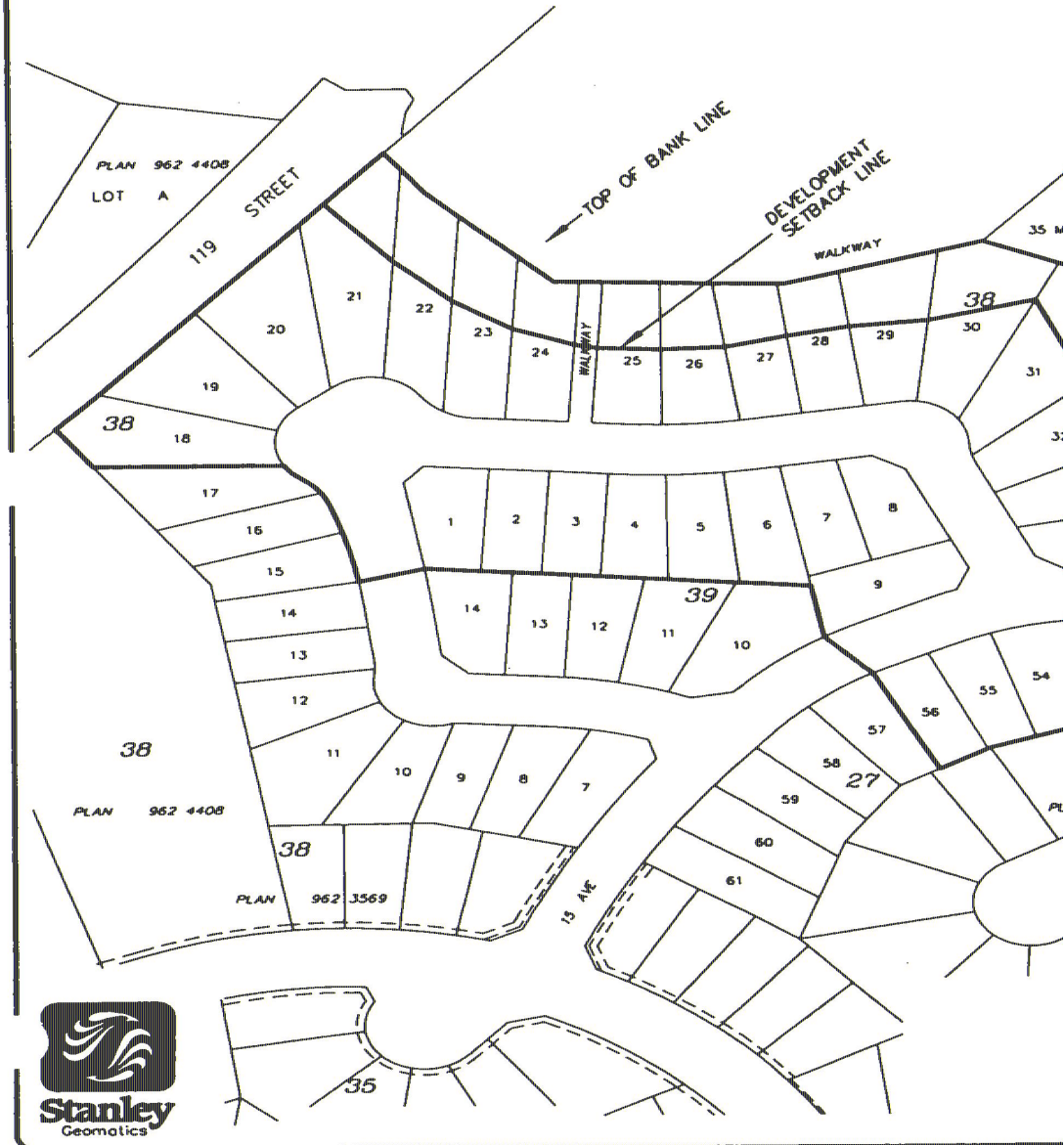
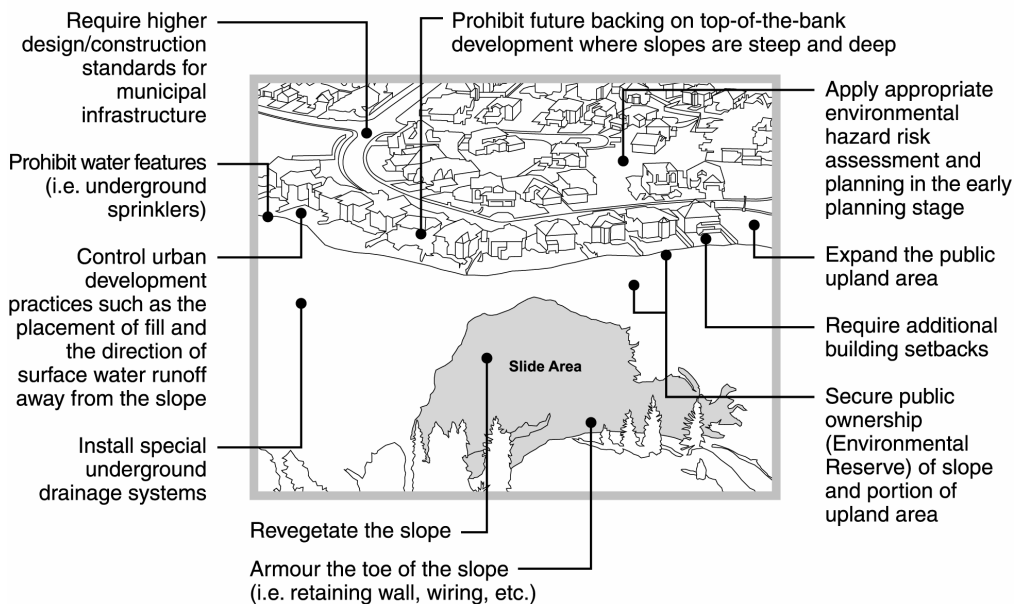
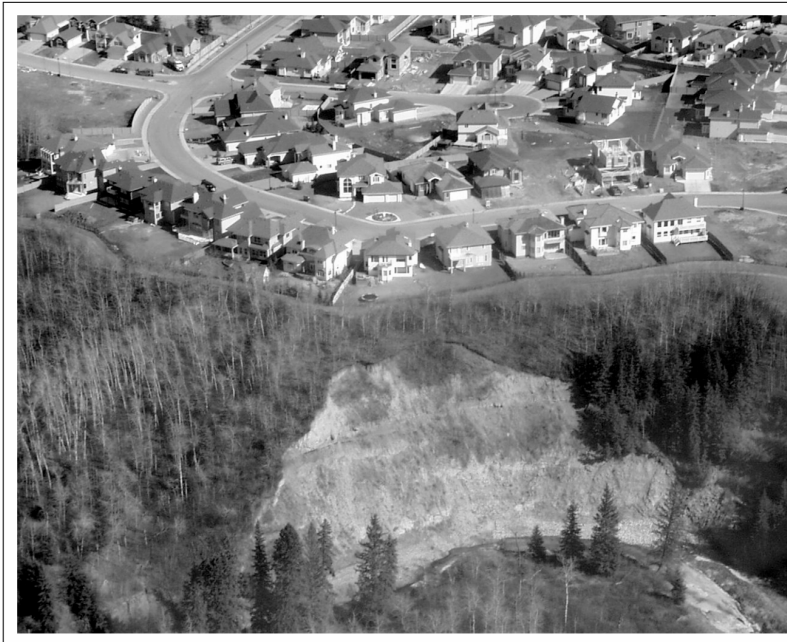


Figure 5
Managing Environmental Hazard Risk associated with Urban Development and Slope Instability



• Note: This figure is intended for illustrative purposes only.

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