

TO:	CHAIR AND MEMBERS COMMUNITY AND NEIGHBOURHOODS COMMITTEE MEETING ON AUGUST 16, 2011
FROM:	JAY STANFORD, M.A; M.P.A. DIRECTOR, ENVIRONMENTAL PROGRAMS & SOLID WASTE
SUBJECT:	ROCKS WITHIN THE PUBLIC BOULEVARD AT 965 WESTDEL BOURNE

RECOMMENDATION

That, on the recommendation of the Director – Environmental Programs & Solid Waste, the following actions **BE TAKEN**:

- (a) That Municipal Council **BE ADVISED** that the property owner at 965 Westdel Bourne has placed large rocks within the public boulevard in contravention to the City’s Streets By-law and has requested an exemption to the By-law to allow the rocks to remain. Municipal staff has attempted to resolve this matter with the property owners in a manner that maintains public safety and allows the homeowner to beautify the boulevard. The homeowner has recently relocated some rocks and removed others; however many rocks remain a concern.
- (b) That Civic Administration **BE DIRECTED** to implement one of the following options available to address this matter:
 - (i) Enforce the S-1 Streets By-law and request in writing that the boulevard be restored to meet the requirements of the by-law by September 13, 2011 (15 days after Council’s August 29 meeting). If the work is not completed, the work will be undertaken by or for the City of London and include the removal of these rocks and the re-establishment of an appropriate road-side shoulder and the costs will be invoiced to the owner at 965 Westdel Bourne; or,
 - (ii) Grant an exemption to the S-1 Streets By-law at 965 Westdel Bourne and enter into a Licensing Agreement with the property owner to allow the rocks to remain as they currently exist, for a two year period. The License Agreement shall clearly contain clauses relating to indemnification and insurance that transfer the liability, risk and all expenses related to the rock feature to the property owner at 965 Westdel Bourne.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

None

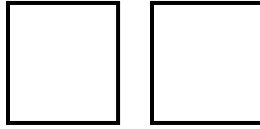
BACKGROUND

PURPOSE

On July 19, 2011, a Delegation was scheduled before the Community and Neighbourhoods Committee (CNC) for Mr. Salvatore Cambria of 965 Westdel Bourne to hear concerns regarding an encroachment of large rocks on the road allowance in front of his property. Councillor Polhill provided a verbal report with respect to this matter on behalf of Mr. Cambria. On July 25, 2011, Municipal Council resolved:

*That the Civic Administration **BE REQUESTED** to report back at the August 16, 2011 meeting of the Community and Neighbourhoods Committee, in response to a request from S. Cambria, 695 West Del Bourne for an exemption to the Streets By-law to allow his rock garden on the road allowance; it being noted that Councillor B. Polhill provided a verbal report with respect to this matter, on behalf of Mr. Cambria.*

The primary purpose of this report is to advise Municipal Council of the situation which has arisen at 965 Westdel Bourne with regards to the placement of various sizes of rocks within the public boulevard immediately adjacent to the travelled portion of the roadway. The placement of this rock feature is a contravention of the Streets By-law and poses a safety concern. Municipal staff has attempted to resolve this matter with the property owners in a manner that maintains public safety and allows the homeowner to beautify and protect the boulevard area. The homeowner has recently relocated some rocks and removed others; however many rocks remain a concern.



CONTEXT

The property owner at 965 Westdel Bourne placed rocks, including several large ones, along the entire frontage of this property and immediately adjacent to the travelled portion of the roadway (see photographs below). This landscape feature is in contravention of the City of London’s S-1 Streets By-law, which states:

“no person shall, (either by himself or by permitting others) without lawful authority, obstruct, encumber, injure, or foul or cause or permit the obstruction, encumbering, injuring or fouling of any street.”

The intent of this Council Policy is to maintain the integrity of the right-of-way throughout the city. This is achieved by protecting the road allowance from encroachments and encumbrances that could potentially impact the safe, open and free access of the right-of-way.

The placement and scale of this landscape feature at 965 Westdel Bourne poses a safety concern to the public, including pedestrians, cyclists and motorists passing through this area. This feature also presents a significant interference and risk to the City’s ability to provide road side operations and maintenance such as snow ploughing, street sweeping and grass cutting in the immediate area plus a danger to municipal staff, vehicles and equipment.

Street encroachments are prohibited by the City’s Streets By-law and the established practice is to require removal of any encroachments that pose a danger to the public or interfere with City operations at the encroacher’s expense.

Alternatively, the City can require the owner of the encroachment to enter into an encroachment or license agreement containing terms acceptable to the City if the encroachment provides benefit to the community. In these cases, a one time or annual fee may also apply. Where the encroachment is determined to be of a minor nature, the City, at its absolute discretion, may choose to waive the requirement for an encroachment or license agreement although the property owner has the right to apply for an agreement.

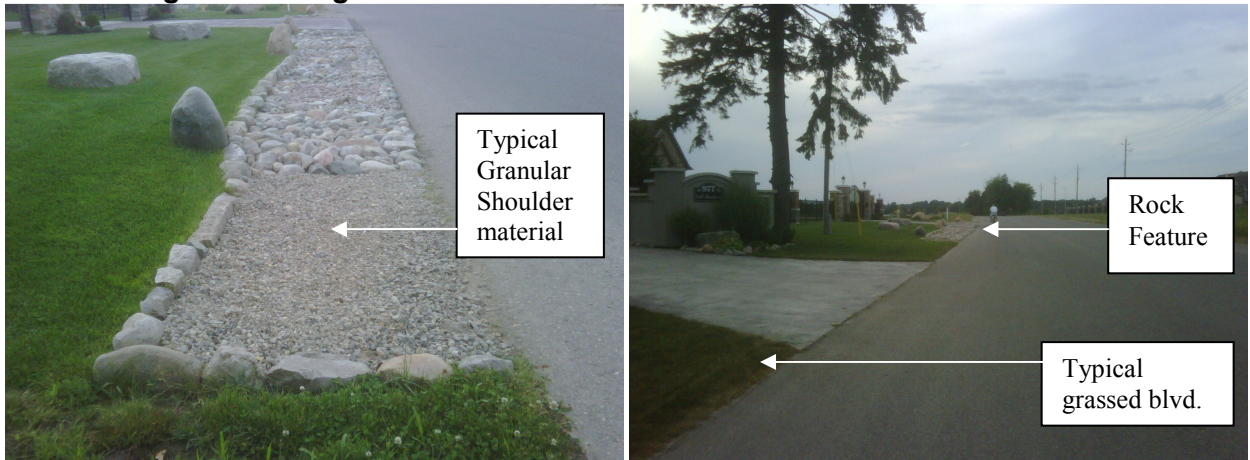
View looking south adjacent to existing shoulder in front of 965 Westdel Bourne

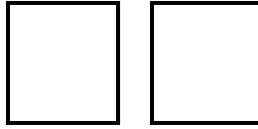


Approx. size = 10” x 5”

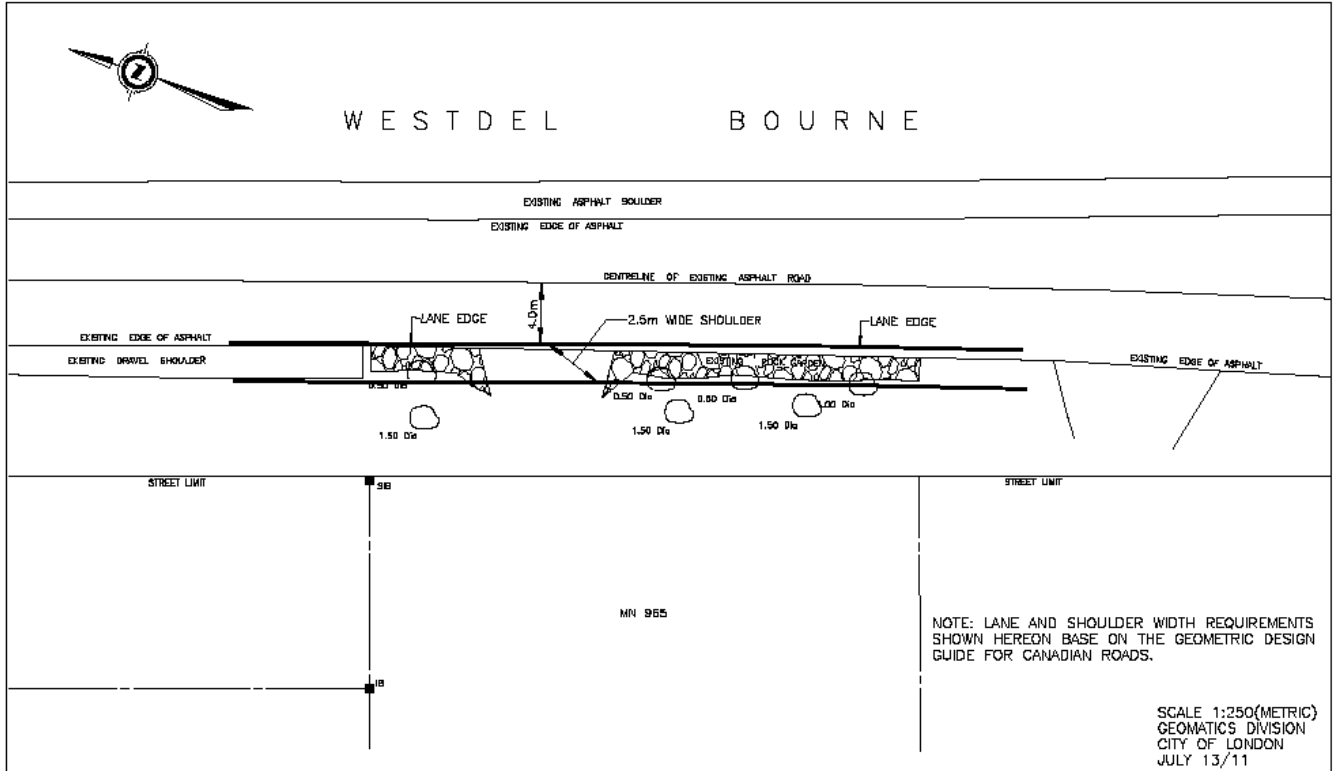
Approx. size = 3”x 4”

View looking north along 965 Westdel Bourne





A survey of the boulevard in front of 965 Westdel Bourne is provided below. The diagram shows that the main clustering of rocks is placed within the 2.5 meter road-side shoulder. This shoulder width is the standard width of a road-side shoulder for this class of road and its posted speed.



DISCUSSION

Why was this landscape feature built at this location?

The property owner has stated to staff that his reasons for placing the rocks at this location was a response to concerns regarding lawn maintenance within the road allowance portion of this property. The property owner claims that garbage trucks, delivery trucks and snow ploughs were constantly tearing up his lawn in this portion of the boulevard. His solution was to place these large rocks where a road side shoulder or grassed boulevard would otherwise be located and to help beautify the boulevard.

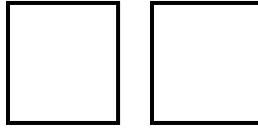
How were we made aware of this feature?

A complaint was received by Customer Relations staff about the placement of rocks adjacent to the travelled portion of the roadway.

What are City staffs concerns?

A number of City staff have reviewed and provided comment in relation to the placement of these rocks in the road allowance. Staffs comments have been summarized in the following points:

- The placement of the large rocks in the road allowance poses a safety concern to the public, including pedestrians, cyclists and motorists passing through this area. This presents a liability risk to the City of London.
- Most of the larger rocks are placed at an elevation that is higher than the adjacent paved roadway.
- The placement of the large rocks pose a risk and interference to road side operations and equipment and pose a potential safety concern to staff. For example, this area was covered with significant amounts of snow throughout this past winter. Markers were placed around the rocks. City staff took steps to ensure that roadside operation crews were aware of these large rocks adjacent to the travelled road in an effort to limit potential damage to equipment. The placement of these rocks prevented road operations staff from widening the windrow of snow in this area of Westdel Bourne, thereby narrowing the traveled corridor and limiting the widening of sight-lines at the end of driveways in this immediate area.



License/Encroachment Agreements

License Agreements involve granting permission for short or fixed periods of time, for non-permanent structures or objects and are between the City and the current property owner. This report will only discuss License Agreements since the rocks are non-permanent in nature. Encroachment Agreements generally involve granting permission for more permanent type structures (buildings, canopies etc.) on public land for long and indefinite periods of time. These agreements are registered on title and transfer with property ownership.

Realty Services Division of the City administers License Agreements for the occupation of public lands for private use. Realty Services have indicated that there are approximately 80 active license agreements in place in the City. These agreements generally involve licensing for sidewalk cafés/patios, use of rear yard green spaces for private use, parking and storage areas for business, etc on public property. Most license agreements generally involve parkland and underutilized public sites. Requests for license agreements are assessed on a case-by-case basis by Civic Administration. Staff reviews the impacts of the proposed encroachment on the basis of its potential interference with public safety, municipal use, specifically the maintenance of the municipal infrastructure, and its potential to create a hazard to city workers, the public and city assets. With the exception of sidewalk cafés/patios and parking, license agreements for the occupation of the City's road allowance for private use are generally not granted by Civic Administration as they often involve risks to public safety and interfere with the maintenance and use of municipal infrastructure.

Options towards achieving resolution:

The following options are available to resolve this matter.

Option One:

Enforce the S-1 Streets By-law and request in writing that the boulevard be restored to meet the requirements of the by-law by September 13, 2001 (15 days after Council's August 29 meeting). If the work is not completed, the work will be undertaken by or for the City of London and include the removal of these rocks and the re-establishment of an appropriate road-side shoulder as follows:

- Municipal staff will make arrangements for the removal of the rocks from the roadway. This operation will involve a minimum of a half day of staff and equipment time and the presence of an enforcement official on site.
- The rocks will be disposed of off-site.
- Municipal staff will re-establish a 2.5 metre shoulder at this location with sod and/or appropriate granular materials.
- All costs associated with the removal of these objects will be invoiced to the property owner.

Authority for staff to undertake such action is granted in the Streets By-law through the following clauses:

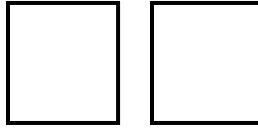
No person shall, (either by himself or by permitting others) without lawful authority, obstruct, encumber, injure, or foul or cause or permit the obstruction, encumbering, injuring or fouling of any street.

2.10.2 A police officer, police cadet or municipal law enforcement officer may remove, impound, restrain or immobilize any object or vehicle placed, stopped, standing or parked on the street or highway over which the Corporation has jurisdiction, in contravention of this by-law.

2.10.5 Subject to subsections 2.10.7 and 2.10.8, all costs and charges for the removal, care and storage of any object or vehicle under this by-law are a lien upon it which may be enforced by the Corporation in the manner provided by the *Repair and Storage Liens Act*, R.S.O. 1990, c. R.24, as amended.

Option One:

Grant an exemption to the S-1 Streets By-law for 965 Westdel Bourne and enter into a License Agreement with the property owner to allow the rocks to remain as they currently exist, within the road allowance, for a two-year period.



A license agreement with a two-year monitoring period will allow staff and new residents to assess the risks and impacts of this structure as the surrounding developing area builds out. This option is subject to the owner entering into a license agreement which will include requirements for the owner agreeing to accept all risk and all costs arising from placement of the rock feature and to provide evidence of satisfactory insurance coverage, for liability arising out of the placement of this rock feature on the City property.

The following clauses shall be included in any license agreement between the owner and City relating to indemnification and insurance:

1. (a) The Licensee shall indemnify and hold the City harmless from and against all liability, loss, claims, demands, costs and expenses, including reasonable legal fees, occasioned wholly or in part by any acts or omissions either in negligence or in nuisance whether wilful or otherwise by the Licensee, its employees or other persons for whom the Licensee is responsible.

(b) Notwithstanding the City Streets By-law no. S-1 the Licensee further agrees to waive any subrogation against the City, its employees and agents with respect to all property that is the subject of this License;
2. (a) The Licensee shall at its own expense obtain and maintain third party general liability insurance including personal liability, personal injury, broad form property damage, contractual liability, owners' and contractor's protective products and completed operations, contingent employers liability, cross liability and severability of interest clauses on City form no. 0788 in an amount not less than Five Million (\$5,000,000.) dollars and shall include the City as an additional insured with respect to the Licensee's operations and obligations under this Lease;

(b) The Licensee will deliver evidence of such insurance to the City at inception of this License and thereafter promptly on each insurance renewal date for the duration of the License.

(c) The City reserves the right to request such higher limits of insurance or other types policies appropriate to this Agreement as the City may reasonably require;

(d) Failure to satisfactorily meet these conditions relating to insurance shall be deemed a breach of this Agreement.

ACKNOWLEDGEMENTS:

This report was prepared with assistance from Joy Jackson, Manager of Risk Management, and the City Solicitors office.

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