

COMMITTEE OF THE WHOLE (WORKING SESSION) – JANUARY 25, 2005

ENCROACHMENT POLICY ON CITY ROAD ALLOWANCES OR EASEMENTS

Recommendation

The Commissioner of Engineering and Public Works in consultation with the Commissioner of Community Services and the Director of Legal Services recommends that:

1. The verbal presentation of the Commissioner of Engineering and Public Works be received for information and discussion; and
2. Staff report to a future Committee of the Whole meeting regarding a new comprehensive Encroachment By-law and the administration thereof and addressing those issues identified by Committee.

Purpose

The purpose of this report is to report on the development on a new comprehensive Encroachment By-Law in response to Council direction to review and recommend an Encroachment Policy governing the permitted uses, specifically on the City's road allowances, as well as to seek direction on cost recovery for re-instating resident altered roadside ditches to their former state.

Background - Analysis and Options

In 2003, Council directed;

“That staff be directed to report to a Committee of the Whole meeting in the Fall of 2003 with a review and recommendations for an Encroachment Policy governing the permitted use of city road allowances.”

Currently, the City has an Encroachment policy related to open space and parkland approved by Council on July 4, 1994 as per Attachment 1. Engineering's comments relate to concerns about Storm Water Management and the potential for slope failure. Encroachments related to the road allowances or easements have been dealt with by Staff in various Divisions on an individual basis.

GTA Municipalities were contacted for existing municipal Encroachment policies and by-laws. Based on this review it is recommended that a new comprehensive Encroachment by-law should be developed having regard to the experience of other municipalities.

Staff conducted preliminary discussions with the Engineering, Public Works, Legal, By-Law & Parks Departments. The Draft Encroachment Policy and includes updated Engineering/ Public Works sections, previous report comments, in addition to our existing policy related to open space and parkland. The Draft Policy suggests that encroachment matters would be dealt with by a proposed new Committee, on a case by case basis, made up of representatives from the Engineering, Public Works, Legal, Parks and Planning Departments which would meet quarterly or as needed.

Ditches

One common problem with encroachment on road allowances is in the older and rural areas of the City where storm water is conveyed from the road surface into a roadside drainage ditch. A number of residents have taken it upon themselves to fill in the roadside ditches abutting their properties, and either channel the storm water through buried culvert pipes, or block the flow of water completely. In addition to altering the flow of the water, many have built elaborate driveway entrance features across the ditch and culvert pipe on the City's property making maintenance

and replacement of the culvert pipes extremely difficult and costly. Some residents indicate they have obtained approval to do this through the site plan process, while others have done so without any regard for the fact it is the City's property.

A year 2000 Ministry of the Environment report titled, "An Evaluation of Roadside Ditches And Other Related Stormwater Management Practices", indicates that roadside ditches not only convey storm water, but, by their very nature, assist in improving the quality of water and provide a natural means of groundwater recharge. Groundwater recharge is an important component in areas identified to be within the Oak Ridges Moraine area, as well as for residents who depend on private or municipal wells for their water supply.

Filling in the roadside ditches not only causes problems with the environmental benefits of roadside ditches, but it causes problems for staff in terms of maintenance. Buried pipes that become frozen in the winter cannot always be thawed due to the length of buried pipe. Blockages in buried pipes also require extensive and costly restorations if they span too great a length. In addition, filling in of the ditches can cause premature road deterioration. The water that once flowed into the ditch off of the road surface may now have nowhere to go except to flow back under the road base, causing premature deterioration of the road during freeze/thaw cycles.

As roadside ditches are located within the City's road allowance, the City has the authority to dig up these buried pipes and restore the drainage ditches to their former state, i.e. an open grassed ditch. The following excerpts are from the Drainage Act, R.S.O. 1990.

Drainage Act

R.S.O. 1990, CHAPTER D.17

Person responsible for obstruction to remove it on notice

80. (1) When a drainage works becomes obstructed by a dam, low bridge, fence, washing out of a private drain, or other obstruction, for which the owner or occupant of the land adjoining the drainage works is responsible, so that the free flow of the water is impeded thereby, the persons owning or occupying the land shall, upon reasonable notice in writing given by the council of the local municipality whose duty it is to maintain and repair the drainage works or by a drainage superintendent appointed by the council, remove such obstruction and, if it is not so removed within the time specified in the notice, the council or the drainage superintendent shall forthwith cause it to be removed, and the cost thereof is payable to the municipality by the owner or occupant of the land. R.S.O. 1990, c. D.17, s. 80 (1); 1998, c. 18, Sched. A, s. 1 (4).

Collection of cost of removal

(2) If the cost of removing the obstruction is not paid to the local municipality by the owner or occupant of the land forthwith after the completion of the work, the council may pay the cost, and the clerk of the municipality shall place the amount of cost upon the collector's roll against such land and such amount shall be collected in the same manner as real property taxes. R.S.O. 1990, c. D.17, s. 80 (2).

Roads Section staff have compiled a list of locations where roadside drainage ditches have been filled in. Notwithstanding the authority granted above allows the City to recover costs, there will be issues in individual cases where date or person responsible for the alteration cannot be determined or there may be a dispute.

At its meeting of December 6, 2004, Council adopted a recommendation that staff be directed to report on alternative options that would allow ditches in Old Maple to be removed in accordance to strict City of Vaughan standards. This report will be brought forward with the report on the comprehensive new Encroachment By-law. The final version of the encroachment policy will contain provisions regarding the reinstatement of ditches.

Relationship to Vaughan Vision 2007

Vaughan Vision goals 1.1, Improve Community safety through design prevention, enforcement and education and 4.4, Ensure City wide protection of the environment are applicable.

This report is consistent with the priorities previously set by Council; however, a review of the necessary resources will need to be undertaken.

Conclusion

It is recommended that staff take into consideration all of the comments from Committee and report to a future Committee of the Whole meeting. That report will recommend a comprehensive Encroachment Policy By-law to address encroachments including those on road allowances and will address the issues of removal of ditches in the Old Maple and boulevard grass cutting.

Attachments

1. Current Open Space/ Parkland Encroachment Policy
2. Draft City of Vaughan Encroachment Policy

Report prepared by

Brian T. Anthony, CRS-S, C. Tech, Director of Public Works, Ext 6116
Gino Martino, B.A., C. Tech, Engineering Technologist - Capital, Ext 3151

Respectfully submitted,

Bill Robinson, P. Eng.,
Commissioner of Engineering and Public Works

Gary P. Carroll, P. Eng.,
Director of Engineering Services

Brian T. Anthony, CRS-S, C. Tech,
Director of Public Works

ATTACHMENT NO. 1

#1

CITY OF VAUGHAN

Item 66, Report No. 11 of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on July 4, 1994.



66 OPEN SPACE/PARKLAND ENCROACHMENT POLICY

The Committee of the Whole In-Camera recommends:

That the revised Open Space/Parkland Encroachment Policy, attached as Appendix "2", be approved.

CITY OF VAUGHAN
POLICY MANUAL

SECTION: PLANNING	POLICY NO.:07.2.02
CNL: 94.07.04(66)	
DEPARTMENT: URBAN DESIGN	SUBJECT: OPEN SPACE / PARKLAND ENCROACHMENT POLICY

Council resolved:

That the revised Open Space / Parkland Encroachment Policy, attached as Appendix 2", be approved.

APPENDIX 2

OPEN SPACE/PARKLAND ENCROACHMENT POLICY

The City of Vaughan affirms its commitment to preserving parkland and open space and to this end adopts the following Encroachment Policy.

A) Illegal Encroachments

- 1) It is general policy that illegal encroachments on parkland, open space and storm water detention channelization lands be removed.
- (a) The City of Vaughan will not actively take steps to identify illegal encroachments, however where such encroachments are identified through observations by operational staff in the performance of their duties or through complaints, this Policy shall apply to such encroachments and the property owners encroaching shall be notified and shall be required to comply with this Policy.
- (b) In the event that a property owner refuses to either remove an encroachment or enter into an agreement (e.g. license or lease) as provided for in this Policy, that staff are authorized to take appropriate legal action to have the encroachment removed.
- 2) Where an encroachment is identified, an analysis examining the history, nature and extent of the encroachment together with the long and short term departmental objectives should be undertaken to provide Council with the recommended disposition of the matter, which may include sale, lease, license, or removal.
- 3) Where structures are involved, and/or it is impossible to remove the encroachment without considerable expense and disruption, consideration may be given to permitting the encroachment to remain for as long as the abutting landowner owns his land. Such permission will terminate upon the sale of the abutting lands and will be subject to appropriate conditions. A request by a subsequent landowner to maintain the encroachment shall be considered in the context of this Policy.
- 4) Encroachments which are generally minor in nature but which are not so serious as to require removal, or where removal can cause undue hardship, permission to maintain the encroachment may be given subject to appropriate conditions.
- 5) Current market values rental rates, plus an administrative cost, shall apply to sales, leases and/or licenses. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the lease and/or licence, which may include such matters as survey, legal and registration costs, insurance costs, and protective covenants and restrictions on use.

B) Requests for Encroachments

- 1) The existing Policy respecting the sale of parkland, open space and stormwater detention channelization lands, is confirmed as the City's general Policy and attached hereto as Appendix "1".
- 2) Where a request to permit an encroachment or to purchase land is received, an analysis shall be undertaken to identify recreational, environmental, planning and engineering objectives, and concerns in order to provide Council with the recommended disposition of the matter.

- 3) Where it is demonstrated that for reasons of security, safety, environmental, conservational and recreational integrity, and/or prohibitive cost of maintenance that it is beneficial to for the City, the lands may be disposed of by way of sale, lease, or license.
- 4) Current market values, rental rates, plus an administrative cost, shall apply to sales, leases, and/or licenses. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the lease and/or license, which may include such matters as survey, legal and registration costs, insurance costs, and protective covenants and restrictions on use.

Appendix "I"

EXISTING POLICY

"Council resolved:

That Open Space lands (not including Park land) should not be conveyed to owners of residences to enable them to extend their lots except in compliance with the following conditions:

1. The lands should not be below top of bank.
2. The lands should be sold at the market value for parklands zoned Open Space.
3. The Town should erect a 5 ft. black vinyl fence along the new property line.
4. Lands should be sold only if rear lot lines would be continuous to avoid gap-toothed appearance.
5. All expenses including surveys and fences should be paid by the purchaser."

POLICY COUNCIL APPROVED MAY 3, 1986

NON-ACTIVE OPEN SPACE LANDS

Open Space Lands that have either been purchased or dedicated under the Planning Act as Parkland

That the municipality not sell or lease any parkland that has been purchased or dedicated under the Planning Act.

The general implications of no sale or lease of parkland would be:

- (a) the residents would not obtain any private use of the lands
- (b) the boundary line between the residents and the non-active parkland should be properly fenced, if not already done so under subdivision agreement, then at the municipality's expenses; and all encroachments, if any, removed
- (c) Town maintenance responsibility would continue
- (d) full public access
- (e) the stability of any slopes beyond the residents lot line would remain with the municipality.

STORM WATER DETENTION CHANNELIZATION LANDS

Open Space Lands that have been dedicated at no cost to the Municipality for providing Flood Plain or Storm Water Management Channelization or Pooding

For storm water management channelization, flood plain, or ponding lands which have been dedicated to the municipality at no cost specifically for storm water management purposes, the following policy:

- A. That the municipality not convey any lands within storm water management areas below the finalized top of bank as identified by the Engineering Department in consultation with The Metropolitan Toronto and Region Conservation Authority.
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- B. The any lands between the abutting resident's lot line and the finalized top of bank may be sold at nominal cost providing that all survey, legal, conveyance, and, if required, fencing costs or fencing relocation costs be paid by the abutting residents; and further that, where practical, all the residents abutting the particular storm water management areas must participate.

- C. That commencing immediately all subdivisions be lotted back to a realistic and "finalized" top of bank line; that fences be installed on the rear lot lines; and that any unauthorized filling beyond the top of bank for the purpose of extending backyards into the storm water management areas be deemed to be encroachments and removed at the owner's expense.

SALE OF OPEN SPACE LANDS

That the costs involved in transferring Open Space Lands to the owners of abutting lands, including surveys, fencing, and administrative charges shall be charged to them on an acreage basis pro rata.



Encroachment Policy

January 25, 2005

DRAFT

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POLICY STATEMENT:

The City of Vaughan minimizes and discourages restrictive, private use of City-owned property whether on open space/ parkland, road allowance or easement by removing unauthorized encroachments, increasing public awareness and, where feasible, installing permanent barriers along the limits of City-owned property. However, the City of Vaughan may, at its discretion, authorize permissible encroachments.

PURPOSE:

This policy outlines a procedure to (a) identify encroachments, (b) administer encroachments by authorization or removal, and (c) prepare encroachment agreements, where appropriate.

This policy is also a mechanism to:

- collect market rents for authorized encroachments
- recover costs incurred in administering encroachment agreements
- minimize the opportunity of litigation claims associated with encroachments
- minimize the opportunity for claims of adverse possession.

DEFINITIONS:

In the context of this policy the following terms are defined:

Adverse possession: A means of acquiring title to real estate by an occupant who has been in actual, open, notorious, exclusive, and continuous occupancy of City-owned property for a period of not less than ten years. The Limitations Act, R.S.O. 1990, c.L.15, states that ownership of road allowances and laneways cannot be lost through adverse possession. Furthermore, the Land Titles Act, R.S.O. 1990, c.L.5, provides that title cannot be acquired by adverse possession in land registered under the Land Titles system.

City-owned property: All real estate owned, managed or leased by the City of Vaughan.

Easement: Means an interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose, but does not include an interest created by a licence.

Encroachment: The deliberate or inadvertent construction, installation or extension of a physical nature on, above or below the ground of City-owned property by the owner of an adjacent private property, said construction, installation, extension including, but not restricted to buildings, structures, fences, appurtenances, paving, cables, pipes, landscaping, goods and waste.

Expenses: Means any and all sums of money actually spent or required to be spent by the City, and shall include but not be limited to all charges, costs, administration fees, GST, outlays, legal fees and losses.

Highways: Means a common and public highway and includes any street, sidewalk, bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway.

Owner: The assessed owner, the occupant or tenant of a property located adjacent to City-owned property as indicated officially in Land Titles.

Public Lands: Means lands owned by, leased, licensed to or under the management of the City, and shall include but not be limited to any public highway, road, street, avenue, parkway, lane, alley, square, place, viaduct or trestle, water, thoroughfare, way or bridge, park, woodland, greenbelt, storm water management facility, open space, municipal golf course or cemetery, and all parts thereof, including any surface, grassed area, boulevard, ditch, curb, gutter and sidewalk.

Right-of-Way: Means a person's legal right, established by usage or by contract, to pass through grounds or property owned by another person.

RELATED POLICIES AND PRACTICES:

Open Space/ Parkland Encroachment Policy – July 4, 1994
Disposal of City Property By-law

IDENTIFICATION OF ENCROACHMENTS:

In liaison with the general public, other government agencies and City departments, the Real Estate Section of the Legal Services Department will maintain a directory of authorized encroachments. Encroachments shall be identified from legal documents, compliance letters, aerial photographs, surveys, visual inspections, complaints or information from internal and external sources. The existing encroachments shall be identified as either authorized (i.e. a written encroachment agreement is currently in effect) or unauthorized (no City approval granted). Based on a case by case review of encroachments undertaken by the affected City Department, the (“**new**”) Real Estate Committee comprised of Engineering, Public Works, Legal, Parks and Planning will advise the owner that the encroachment will be recommended for authorization or removal. The Real Estate Committee in conjunction with the affected Department will similarly review new requests by owners for approval of encroachments.

In order to initiate a Departmental review, a (“**new**”) Complaints Form will be completed by the originator and submitted to By-law Enforcement for a field inspection report. By-law Enforcement shall complete the inspection and forward a copy of the report to the originator, the affected Department and the Real Estate Committee.

ADMINISTRATION OF ENCROACHMENTS:

Administration of encroachments, as prescribed by the Real Estate Committee, is the responsibility of the Real Estate Division, Legal Services Department. In the administration of an encroachment all affected City Departments and outside agencies will be consulted.

Encroachments will be administered in one of two ways – authorization or removal.

a) Authorization of Existing or New Encroachments:

An owner may continue encroaching on City-owned property by By-law alone for the *Sale of the Land* or for a specified length of time with written approval from the City together with an encroachment agreement (*leases or licence*).

i) Sale of Land

Sale always implies that the lands are surplus to municipal needs. At draft plan approval stage one of the primary areas of negotiations is establishing the top of bank in order to create a rear lot line which is to be a realistic boundary between open space and residential or adjacent land use/ zoning. The purpose of this boundary is to establish a

safe setback from the valley or hazard lands and to ensure that the valley slopes or fringe areas are not destabilized by uses such as retaining walls, gardens and sheds.

Open space lands have been conveyed to the City for nominal consideration for environmental and engineering reasons or to enhance the City's parkland holdings. Where environmental reasons such as the preservation of natural wildlife habitats and environmentally sensitive areas are applicable, sale should be prohibited per provincial statute or regulation.

If these lands are routinely sold the perception will be given that the City is not committed to preserving its open space lands. This has a negative effect on negotiations to acquire future holdings. These factors must be carefully considered so as not to increase the reluctance of developers to settle for reasonable top of bank lines.

In general, staff supports the existing sale policy that prohibits sale of land below the top of bank. Sale should not be considered as a standard policy. However, if the circumstances are in any way unusual or if it is of benefit to the City to sell, i.e. side yards/ unused walkways or road allowances, it may be considered as an appropriate mechanism to resolve an encroachment problem.

In fact, all municipalities have provisions that allow for sale of land for existing encroachments. Criteria used to support such a decision can be as follows:

- i. To straighten boundary line;
- ii. Where it is demonstrated conclusively for reasons of security, safety, environmental, conservational and recreational integrity, and the cost of maintenance, that the lands should not remain as parkland or if it is of benefit to the City to sell them, the lands may be disposed of. The saleable area is therefore considered to be surplus, meaning not necessary to fulfil the City's operational mandate;
- iii. An analysis of Parks and Engineering objectives and the nature and history of the encroachment should be undertaken. Where it is deemed appropriate to sell, the land may be sold at market value or the value in contribution to the abutting site.

ii) Leases

Leases may be granted for any period of time and for any amount. Most municipalities use both *long-term* and *short-term* leases depending on the circumstances of an existing encroachment. The City has entered into a few long-term leases respecting open space lands.

Granting a lease results in the land coming under the jurisdiction of the Landlord and Tenant Act and therefore requires a monitoring system. However, it is difficult to enforce any conditions regarding use of lands. In addition, the tenant is liable for insurance, taxes and rent. Usually, the documents are registered on title in the Registry Office. Potential problems associated with *long-term* leases are summarized as follows:

- i. Long-term lease may imply that the lands are surplus to our needs that may be of concern where such lands have been originally conveyed to the City for environmental or engineering reasons or parkland.
- ii. Residents tend to perceive leases as permanent grants of rights in the lands and therefore proceed to bring in fill and to construct retaining walls. It is extremely difficult for the City to enforce provisions, as most areas are fenced. Enforcement may cause an administrative load.
- iii. Long-term leases, especially those over 50 years are almost equal to an easement sale when considering valuation of the land. The City land may be of

benefit to the abutting owner by increasing the value of their existing lot as the lease usually runs with the land. It is appropriate to charge a higher amount for such leases.

- iv. Long-term leases on parkland or open space water management areas may encourage new encroachment requests.

Staff can support long-term leases in certain circumstances, i.e. where the City may benefit by reducing maintenance costs for landscaping purposes, or for other reasons. Specific covenants such as prohibiting the cutting of trees or the changing of a garden can be recommended depending on the specific situation. Any failure to abide by the covenants would result in the City taking possession. A long-term lease need not be assignable upon sale of the abutting land to ensure the City has an opportunity to review compliance with its policies and conditions.

In a situation where numerous residents on a street are requesting land to be added to their rear yard, the Parks Department has suggested that if Council approves a lease, using a *short-term* lease i.e. 10 years with a cancellation clause to allow for flexibility of future City needs or planning. The problems associated with *short-term* leases are summarized as follows:

- i. If the lease is terminated, the fencing would have to be relocated and residents may be reluctant to absorb the cost.
- ii. If a lease is cancelled, or not renewed at the end of the ten years, the City will be on the defensive to provide reasons for their decision. Residents may expect immediate development of such area by way of landscaping, or planting of trees to offset any negative perception.
- iii. A lease even for only 10 years implies the land is not needed and is therefore, surplus, and sets some level of permanency to the encroachment.

Staff can support charging a higher fee for assignable long-term leases of over 20 years. Short-term leases could be either a one-time administrative charge, plus costs, taxes and insurance, or a yearly rent.

Yearly rent for land is usually calculated on the basis of the per sq. m. rate x 10% rental x the area.

However because these leases would have restrictive covenants regarding grading, etc it would be more appropriate to charge less, i.e. 50% of rental, or an annual fee to cover costs. Where leases are granted for landscaping purposes only, or are on ravine and open space area, most municipalities charge a nominal amount plus costs and a one-time administration fee.

iii) License of Occupation (Permit)

A license is different from a lease in that it is limited permit exclusive and personal to an individual for the use of or entry to land. It denotes a shared occupation, does not run with the land and is non-registerable and non-assignable. On short notice the granted permission can be terminated.

Licenses are usually used in situations where it will not be possible to remove illegal encroachments without undue hardship. Such an arrangement stresses that the encroachment is not permanent and that the City intends to ultimately use the lands.

Some municipalities prefer licenses because leases are more binding and perceived as more permanent.

Licenses may be granted for a term, i.e. five years, renewable upon re-evaluation. Normally they are valued at rates similar to those of leases taking into consideration the use permitted, fencing provisions and duration. However, due to the municipality's ability to retrieve the lands on short notice, licenses may be given for nominal amounts plus a one time administrative cost.

In Vaughan, residents requesting rear open space who wish to fence in the area are expected to object and have in the past to a license because of the non-permanent nature, they appear to be generally unprepared to incur additional costs such as fencing. The meaning of a lease versus a license is easier to understand, and therefore generally preferred by the residents.

This alternative can be used to legalize existing encroachments or to grant "gardening plots" where appropriate or to permit use for a short interim period until a park is developed.

b) Removal of Existing Encroachments:

Where an encroachment is not authorized to continue, upon written notification from the City it is incumbent upon the owner to cease the encroachment forthwith and remove all improvements within a specified time period at the owner's expense. The enforcement of the removal shall be the responsibility of the Legal Services Department, in this case By-Law Enforcement to issue the notice upon its own initiative or upon the request of the Department in control of the affected lands. The costs of enforcement, including legal proceedings, shall be borne by the Department in control of the affected lands and recovered from the owner.

Where request for removal of an encroachment is not complied with within the stipulated period of time the following options may be considered:

- i. Where the encroachment consists of objects/structures etc. that can easily be moved, City staff may remove the objects/structures at the expense of the owner.
- ii. Where the encroachment consists of trees or other vegetation, City staff may remove the trees or vegetation and discard them or relocate them elsewhere on City-owned property at the expense of the owner.
- iii. In all other cases the concerned Department shall request the Legal Services Department to commence legal proceedings to regain possession of the land and the Legal Services Department may commence an action against the owner.

In the case of non-compliance a letter shall be sent by registered mail to the owner describing the above options. Notice will be served to the owner to ensure interruption of continuous possession.

In the case of non-payment of encroachment agreement fees and/or charges for removal of encroachments from City property, the value of the outstanding fees and/or charges will be added to the tax roll pursuant to the Municipal Act, s. 220.1, as authorized by the applicable by-law.

ENCROACHMENT AGREEMENT:

An encroachment agreement, which at the sole discretion of the City, may be registered on title, will specify all responsibilities of the owner and the City including insurance and maintenance requirements. The agreement may take the form of a permit, license or lease or the encroachment when required may be authorized by by-law alone. The term of the agreement, to be determined by the City, will be for: a specified duration of time, for the life of the encroachment, until the sale of the owner's property, until

application is made for development of the owner's property, or until the encroachment area is required for municipal purposes. The owner will be required to pay an administration fee and current market rent for the lands subject to encroachment as well as all survey and registration costs. The cost of the administration fee shall be determined annually. Current market rent shall be ten percent of current market value of the land subject to encroachment for the first year of the agreement, increased by three percent per annum for each subsequent year of the term of the agreement. Current market value shall be based on the highest and best use of the owner's property.

Where the Real Estate Committee is prepared to recommend a sale of land, a report to Council will be prepared under the direction of the City Solicitor.

DEPARTMENTAL COMMENTS:

a) Parks Department Comments

In principle, and consistent with the Parks and Recreation Master Plan, the Parks Department do not agree with the sale, lease or licence of any park or open space lands owned by the City. In their opinion, the sale of such lands will erode the inventory of parks and open spaces and the Master Plan recommends that such lands not be sold.

However, should Council approve the sale or lease of such lands in certain circumstances, the Parks Department recommends the following conditions:

- i. That the subject lands not be sold, but that instead the owner enters into a lease with the City.
- ii. That for long-term leases or sales the owner place a black chain link fence to include the land being leased, and for short-term, a post and wire farm fence (with finished wood posts every eight (8) feet), delineating the area being leased. For short-term leases, that the existing property line fence be retained and the City permit a maximum ten (10) feet opening, or gate, to the leased area whereas with a long-term leases the old fence can be removed.
- iii. That the maximum land to be leased be ten (10) feet from the property line.
- iv. That the City of Vaughan Engineering Department review any such request and comment on any impact on the storm water management requirements.
- v. That the lease for short term be for no more than five (5) years, and that the City retain the right to terminate the lease with reasonable notice.

b) Engineering & Public Works Departments Comments

i) Open Space/ Parkland/ Storm Water Management

Most open space areas are designed for overland flow routing and/ or storage of floodwaters. There are also areas that are identified as having potential for slope failure through erosion or instability.

For most overland flow routes any grading or additional filling would create disruption of flows and/ or reduction in storage areas. Therefore when these areas are sold or leased, there is a likelihood of filling which can disrupt the original engineering design.

In summary, the biggest concern relates to the use of the land and change in grading that could affect the flow/ storage of water. The width of area and degree of slope, or its stability, have a bearing on the Departments comments.

ii) Road Allowances or Sewer, Water and Road Easements

The Engineering & Public Works Departments do not support any sale, lease or licence of any road allowance or easements owned by the City except in the case of sale where it

can be demonstrated that the road allowance or easement is no longer needed to support or improve City's infrastructure.

In certain locations, permanent existing encroachments, such as signs as per by-law 178-2003, 179-2003 & 203-92, fences or landscaping improvements can be tolerated within the road allowance or easements but it should be discouraged for the following reasons:

- i. *Public Safety* – Encroachments on public lands can be a safety hazard to the public, i.e. over grown landscaping/ vegetation or fencing blocking sight lines for daylight triangle.
- ii. *Restoration Costs* – Encroachment increase costs to the taxpayer for restoration of public lands, i.e. unground sprinklers, unauthorized filling and obstruction of roadside drainage ditches, pool drains or rain water leaders with holes in curb, landscaping driveway curbs, pattern concrete driveways, driveway posts, pillars, illegal driveways in daylight triangle or garden/ storage shed/ building materials within our sewer easements.
- iii. *Insurance Claims* – Encroachment may give rise to serious liability claims resulting from accidents within the road allowance, i.e. large boulders in boulevard, flooding resulting from unauthorized filling/ culvert alteration or landscaping river stone rocks picked up during snow removal activities and catapulted towards homes, cars or people.

The Departments will not actively seek to identify encroachments but will deal with them on a case-by-case basis. Where the Departments anticipate work within the City's road allowance or easements the Departments will attempt to advise owners to remove all encroachments prior to the commencement of work. The Departments will not repair or replace any encroachments as owners do so at their own risk. Our only responsibility is to replace to the City's standard works; owners who take it upon themselves to install speciality items like pattern concrete driveways or other unique landscaping features do so at their own risk and the City cannot be held responsible for failure to restore or replace it to the owner's satisfaction.

However, where the Departments receives an Encroachment Application Form from the Legal Department for roads or easements that we adopt the following procedure:

Encroachment of City Roads or Sewer, Water and Road Easements

- i. *That the subject lands not be sold.*
- ii. *That where existing structures encroach upon a City road allowance or easement, the Commissioner of Engineering and Public Works or his/ her designate be authorized to work with the Legal Department to issue encroachment "permits" (leases or license only) for said structures if appropriate. The said permits to be issued only on the following conditions:*
 - a) **CLEAR ACCESS.** *That the encroachment, in the opinion of the Commissioner of Engineering and Public Work or his/ her designate, does not adversely affect or impede the public use of the road allowance, in the case of an easement, our ability to service/ replace our infrastructure or create any safety concerns;*
 - b) **SURVEY.** *That the applicant supplies the City with an Ontario Land Surveyor (OLS) plan showing the accurate dimensions of the encroachment;*
 - c) **COSTS.** *That the applicant be responsible for all costs associated with the encroachment including registration and legal costs if required;*

- d) **INSURANCE.** That the City is held harmless from any liability or claims for damages resulting from the encroachment in the appropriate form and of a specified amount of liability insurance policy, with the City named as an "Additional Named Insured" therein;
 - e) **WHO.** That the permission to encroach be granted only to the owner or purchaser of the property;
 - f) **TERM.** That the "permit" be for no more than five (5) years with the City's right to terminate the "permit" with minimal notice;
 - g) **FEE.** That a fee be attached to Legal's Encroachment Application Form to cover the Departments' costs; &
 - h) **EXTENSION.** No further extension or and additional encroachment rights granted.
- iii. That where a structure encroaches upon a City road allowance or easement, and the said road allowance or easement, in the opinion of the Commissioner of Engineering or Public Works or his/ her designate, does not adversely affect or impede the City, the City may release that portion of the roadway or easement affected by the encroachment subject to the following conditions:
- a) **PROOF.** That the applicant prove to the City that the roadway or easement is no longer needed to maintain or improve the City's infrastructure;
 - b) **COSTS.** That the applicant be responsible for all legal, survey and registration costs associated with the release;
 - c) **APPROVAL.** That such releases of easement rights be approved by City Council; &
 - d) **FEE.** That a fee be attached to Legal's Encroachment Application Form to cover the Departments' costs;

In addition, to further educate property owners the Departments would also like to see the development of a City wide brochure along with this information being posted on the City's Web site. This brochure could be included with water billing distributed from time to time and or with the welcome to Vaughan new home package.

c) T.R.C.A. Comments

Toronto and Regional Conservation Authority (T.R.C.A) has the authority to ensure that the land use conforms to Ontario Regulation 158 made under the Conservation Authority Act. This means that there can be not structures in a flood plain area, or filling within the regulated area.

In general, Authority Staff do not support the sale or lease of publicly owned hazard lands as the intent of public acquisition of valley lands is to protect such lands against unwise use which could affect the land's ability to perform its natural functions from the flooding and erosion perspective. Their experience has shown that allowing such lands to be leased or sold results in unwanted encroachment and enforcement difficulties.

Should Council decide to lease or sell such lands, then the following conditions are suggested by T.R.C.A.:

- i. If high/ dry and beyond 10m setback from the top of bank, T.R.C.A. has no concerns.
- ii. Lease contain provisions to ensure that there is compliance with the fill regulations within the Regulated area and no structures be permitted in the flood plain areas.

- iii. Fencing needs to be appropriate for the area.
- iv. \$3,000/ac should be used as a base value for the flood plain areas so as not to jeopardize their market estimates. This equated to \$300/year per acre for flood plain. They are aware that most municipalities charge more than this rate.
- v. An agreement is registered on title of the property having the effect of prohibiting the removal of vegetation, alteration to grades, or placement of any buildings or structures (including fencing) within such lands. This would be a tripartite agreement between the owner/ lease, City of Vaughan and the T.R.C.A.

SUMMARY

In general, the City must retain its obligation to preserving parkland, open space, road allowances and easements by establishing an encroachment by-law to safeguard environmental, operation and engineering concerns. Due to the reality of the situation the policy/ by-law must provide a mechanism for dealing with existing and requests for encroachments.

The City of Vaughan affirms its commitment to preserving parkland, open space, road allowance and easements and to this ends adopts the following Encroachment Policy to facilitate the development of a by-law:

a) Illegal/ existing Encroachments

- i) It is general policy that illegal encroachments on parkland, open space, road allowance and easements lands be removed.
- ii) The City of Vaughan will not actively take steps to identify illegal encroachments, however where such encroachments are identified through observations by Operations staff in the performance of their duties or through complaints, this Policy / By-law shall apply to such encroachment and the property owner(s) encroaching shall be notified and shall be required to comply with this Policy/ By-law.
- iii) In the event that a property owner refuses to either remove an encroachment or enter into an agreement (e.g. license or lease) as provided for in this Policy, that staff are authorized to take appropriate legal action to have the encroachment removed.
- iv) Where an encroachment is identified, an analysis examining the history, nature and extent of the encroachment together with the long and short term Departmental objectives should be undertaken to provide Council with the recommended disposition of the matter for the sale of the land especially in cases where there is a strong potential for an adverse possession claim and when required for the lease, license or removal.
- v) Where structures are involved, and/ or it is impossible to remove the encroachment without considerable expense and disruption; consideration may be given to permitting the encroachment to remain for as long as the abutting landowner owns the land and agrees to enter into an Encroachment Agreement. Such permission will terminate upon the sale of the abutting lands and will be subject to appropriate conditions. A request by a subsequent landowner to maintain the encroachment shall be considered in the context of this Policy/ By-law.
- vi) Encroachments which are generally minor in nature but which are not so serious as to require removal or where removal can cause undue hardship, permission to maintain the encroachment may be given subject to appropriate conditions, agreement or applicable fees.
- vii) Current market values rental rates, plus an administrative cost, shall apply to sales, leases and/ or licenses. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the lease and/ or licence, which may include such matters as survey, legal and registration costs, insurance costs, and protective covenants and restriction on use.

b) Request for Encroachments

- viii) That Open Space lands (not including Park land) should not be conveyed to owners of residences to enable them to extend their lots except in compliance with the following conditions:
 - i. The lands should not be below top of bank.
 - ii. The lands should be sold at the market value for parklands zoned Open Space.
 - iii. The City/ owner should erect a 5 ft. black vinyl chain link fence along the new property line.
 - iv. Lands should be sold only if rear lots lines would be continuous to avoid gap-toothed appearance.
 - v. There is a strong potential for an adverse possession claim.
 - vi. The purchaser should pay all administration expenses including for surveys and fences.

- ix) That the City not sell or lease any parkland, road allowance or easements that have been purchased or dedicated under the Planning Act. The general implication of no sale or lease would be:
 - i. That residents would not obtain any private use of the lands.
 - ii. The boundary line between the residents and the non-active parkland should be properly fenced, if not already done so under the subdivision agreement, then at the municipality's expenses; and all encroachments, if any, removed.
 - iii. City maintenance responsibility would continue.
 - iv. Full public access.
 - v. The stability of any slopes or preservation of environmental areas beyond the residents lot line would remain with the municipality.

- x) For storm water management, flood plain or ponding lands which have been dedicated to the municipality at no cost specifically for storm water management purposes, the following policy:
 - i. That the City not convey any lands within storm water management areas below the finalized top of bank as identified by the Engineering Department in consultation with the Toronto Region Conservation Authority.
 - ii. That any lands between the abutting resident's lot line and the finalized top of bank with a minimum 5m offset may be sold at nominal cost provided that all survey, legal, conveyance, and, if required, fencing costs or fencing relocation costs be paid by the abutting residents; and further that, where practical, all the residents abutting the particular storm water management areas must participate.
 - iii. That commencing immediately all subdivisions be lotted back to a realistic and "finalized" top of bank line; that fences be installed on the rear lot lines; and that any unauthorized filling beyond the top of bank for the purpose of extending backyards into storm water management areas be deemed to be encroachments and removed at the owner's expense.

- xi) Where a request to permit an encroachment or to purchase land is received, an analysis shall be undertaken to identify recreational, environmental, planning and engineering objectives, and concerns in order to provide Council when required with

- the recommended disposition of the matter.
- xii) The public does not view the encroachment as a restrictive use of public land and/ or an impediment to the enjoyment of the land.
 - xiii) Where it is demonstrated that for reasons of security, safety, environmental, conservational and recreational integrity, not necessary to support or improve infrastructure and / or prohibitive cost of maintenance that it is beneficial to the City, the lands may be disposed of by way of sale, lease or license.
 - xiv) Current market values, rental rates, plus an administration cost, shall apply to sales, leases and/ or licenses. Appropriate conditions respecting the maintenance of the encroachment shall be imposed in the lease and/ or licence, which may include such matters as survey, legal and registration costs, insurance costs, and protective covenants and restrictions on use.

ATTACHMENTS:

Proposed City of Vaughan Encroachment By-Law - pending
Proposed Encroachment Application Form - pending
Proposed Internal Encroachment Complaints Form -pending

CONTACT:

For more information contact: