

## **COMMITTEE OF THE WHOLE – JUNE 19, 2006**

### **FENCING LANGSTAFF ROAD**

#### **Recommendation**

The Commissioner of Engineering and Public Works recommends:

That this report BE RECEIVED for information purposes.

#### **Economic Impact**

There are no immediate budgetary impacts resulting from the adoption of this report.

#### **Purpose**

This report has been prepared in response to Council's requests respecting;

- the concerns of residents regarding the deterioration of rear lot fencing along the south side of Langstaff Road between Ansley Grove Road and Stan Gate, and
- related Regional and Local Municipal policies and responsibilities regarding the repair and maintenance of rear lot fences (noise attenuation fencing).

#### **Background – Analysis and Options**

Item 23, Report No. 25, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on May 8, 2006, recommended:

“That staff prepare a report for the next available Committee of the Whole meeting to address the concerns of residents as outlined within the petition to include the role, responsibility of the City of Vaughan, Regional Municipality of York and residents. Report to include a response to each of the six questions as outlined below and as contained within the petition; and

That staff review and/or consult with the Regional Municipality of York with respect to noise attenuation fencing as per York Region Policy dated May 2005 or any other related policy as provided by the residents and attached.”

#### **Rear Lot Fences**

Homes built on local residential streets that back onto either busy City collector roads or Regional arterial roads often have ‘rear lot fencing’ along the rear property line adjacent to the right-of-way. During the 1980’s the majority of these fences were constructed of pre-cast concrete posts and panels and were required to act as noise barriers against ambient noise levels caused by high traffic volumes usually generated on the busy roads. These types of rear lot fences exist in numerous residential development areas throughout the City. In many cases, now over 20 years since originally installed, they are deteriorating and require repair and/or replacement. The manufacturer of these noise walls was Evercrete Limited, which is no longer in business and therefore there is no possibility of recourse against that company.

Towards the late 1970’s, the Ministry of the Environment formulated standards for acceptable noise levels within new residential subdivisions. However, it fell on the municipalities to actually impose the requirements that would allow these standards to be met. Since that time, noise attenuation barriers together with other types of solutions have been implemented by the City of Vaughan and the Region of York for new developments through the subdivision servicing agreement process.

As a condition of draft plan approval the City and the Region require the completion of a Noise Study for all proposed residential subdivisions. The key purpose for a noise study is to investigate all potential ambient noise sources in the area of a development, including traffic noise and to recommend mitigation measures such that all anticipated noise levels within residential outdoor living areas do not exceed maximum allowable levels as established by the Ministry of the Environment.

In accordance with the subdivision agreement requirements between the developer and the City, these fences are to be installed wholly on the private property and not on the road allowance. Maintenance and upkeep are the responsibility of individual property owners. Also, provisions are typically made such that warning clauses registered on title, must be included in all purchase and sale agreements to home owners stating the need for such fencing and that all maintenance and repair is the homeowner's responsibility.

#### York Region Traffic Noise Mitigation Policy for Regional Roads

On March 23, 2006, after extensive discussions and input from the local municipalities and the Urban Development Institute/Ontario (UDI), Region of York Council adopted an updated Noise Policy for the mitigation of traffic noise on Regional roads.

The policy establishes noise assessment and mitigation requirements for Regional capital road projects, review and approval of new development applications, consideration of retrofit noise mitigation and to address potentially unsafe situations of privately owned noise barriers adjacent to public areas on Regional roads.

With respect to severely deteriorating privately owned noise barriers that are located adjacent to Regional roads, the Region's policy dictates the following process to address potentially unsafe situations adjacent to public areas:

1. Potential hazards shall have owners directed by the local municipality as soon as the hazard had been identified by Regional forces to correct the problem within a fixed time period.
2. Failure to comply shall result in Regional Staff working with local municipal Staff to have unsafe sections dismantled and have removed materials either disposed of or stockpiled on or adjacent to the owner's property. All costs incurred will be back charged to the homeowner with the assistance of the governing local municipality via the Property Standards Act.

#### City of Vaughan Property Standards By-Law 409-99

The City's Property Standards By-law 409-99 includes the following requirements related to privately owned fencing.

*Every fence shall be kept:*

1. *In structurally sound condition.*
2. *In good repair and free of accident hazard.*
3. *Maintained in a structurally sound condition and plumb, unless specifically designed to be other than vertical.*
4. *Maintained free from health, fire and accident hazards.*
5. *Protected from deterioration by the application of paint or other suitable protective materials of uniform colour, or constructed of a material that is inherently resistive to such deterioration.*
6. *Made with suitable materials and shall be designed and erected in a workmanlike manner and maintained so as not to create an unsightly appearance.*

7. *Maintained free from posters, signs, notices, advertising materials, words, slogans, pictures, drawings or other defacement.*
8. *Capable of performing safely the function for which they were constructed.*

#### Petition By Local Residents to Replace Damaged Fence Adjacent to Langstaff Road

The Langstaff Lane Subdivision Agreement between the City and Prombank Investments Limited was executed in 1985. As part of the development of this subdivision and in accordance with the noise study completed at the time, a 1.8 metre high acoustic barrier along the rear lot lines of Lots 1 to 25 and 28 to 50 inclusive (Registered Plan 65M-2354) was required.

The pre-cast concrete noise fence (acoustic barrier) constructed along the south side of Langstaff Road between Ansley Grove Road and Stan Gate now over 20 years old, has deteriorated to the point where portions of it are structurally unstable.

The following clause was included in Section 21.13 of the subdivision agreement between Prombank Investments Limited and the City.

*"No part of any noise attenuation measure shall be constructed on or within the Regional Road right-of-way on Langstaff Road. Fences adjacent to this Regional Road may be constructed on the property line provided that they are not higher than 1.83 metres. The maintenance of noise barriers and fences and landscaping bordering on the Langstaff Road, Ansley Grove Road and Stan Gate rights-of-way and located on or abutting Lots 1 to 25 inclusive, and 28 to 50 inclusive, shall not be the responsibility of the Region or the Town and shall be maintained by the Owner as part of the municipal services as required by this Agreement. **Following the Town's assumption of services in this Plan, the maintenance of the fences and barriers shall be the responsibility of the abutting lot owners, and each such owner shall be responsible for the portion abutting his lot.**"*

In addition, Section 19.4 requires that the Owner shall include in every offer or agreement to purchase a lot in the Plan, a clause stating that the Purchaser will be required to maintain the acoustical measures constructed as part of the Subdivision Agreement.

The total length of fencing in question, in need of repair or replacement is approximately 580 metres. This stretch of fence impacts 35 adjacent residential property owners, Lots 14 to 25 and Lots 28 to 50 inclusive of Registered Plan 65M-2354.

Based on the above noted information the following is provided in response to the petition submitted by the effected local residents.

#### **1. What is the total cost?**

It is estimated that the cost to remove and replace the existing 1.8 metre precast concrete fence would be in the order of approximately \$330 to \$400 per metre. This cost is based on all associated works required with the fence replacement, including but not limited to surveying, inspection, retrofitting of sideyard fencing to suit, grading rehabilitation and sodding. For 580 metres of fence the total would be approximately \$232,000 (580m @ \$400/m). Based on the number of property owners impacted by this work, the cost breakdown per individual property owner is approximately \$6,700 (\$232,000 / 35). This is strictly an average per owner and would vary depending on the type of material, existing conditions and the length of property frontage for each individual owner. Individual property lengths vary between 6 metres and 26 metres.

**2. What materials will be used?**

It is proposed that a similar material in appearance to the existing fence, pre-cast concrete panels is used. As an alternative wood could also be used. This would not have a significant impact on the cost however. For aesthetic reasons, it is imperative that the replacement of the deteriorated portions of the fence should be as similar in appearance as is reasonably possible in relation to the existing surrounding fences.

**3. How will new footings be poured?**

Concrete footings should be poured at a sufficient depth to protect against frost action and should be designed in accordance with the manufacturer's/engineer's specifications.

**4. What is the height? (They recommend 3 metres in height because of the excess or higher traffic and noise pollution they experience.)**

It is anticipated that the new fence would be the same height as the existing fence, 1.8 metres, as that is the height that was originally designed to mitigate ambient noise levels to be within acceptable limits according to Ministry of the Environment guidelines. Further, this would ensure uniformity with other existing neighbouring fences in the area.

**5. How will the contract be awarded?**

This would be at the owner's discretion, as the work would be done on private property and a private contract is required between the Property Owner and the Contractor.

**6. How will old material be disposed?**

This should be stipulated in the final contract for the work. Typically, all old material should be disposed of off site and can be recycled at various facilities where certain construction material is accepted.

Consultation With The Region of York

A similar petition requesting the Region of York take responsibility for deterioration of pre-cast concrete rear lot fence as a result of salt damage, was received by the Region of York from the residents of Torii Street and Ambassador Crescent abutting the north side of Highway 7 between Pine Valley Drive and Aberdeen Avenue. In 2003 Regional Council formally responded by requesting the City work with the property owners directly to bring the rear lot fence up to the standard prescribed under the City's Property Standards By-law 409-99. The Region of York declined all ownership over the matter. This Regional methodology has been further enforced by the York Region Traffic Noise Mitigation Policy for Regional Roads as adopted on March 23, 2006.

Staff have consulted the Region on the recent Langstaff Road fencing petition request and were advised that as the fences were on private property, it would be the sole responsibility of the respective homeowners to remove and replace the failing fence as per the Region's current Noise Mitigation Policy for Regional Roads.

A future report will be brought forward to the Committee of the Whole in the fall to address the City's policy respecting the removal and replacement of private noise walls throughout the City.

## **Relationship to Vaughan Vision 2007**

In consideration of the strategic priorities related to service delivery excellence as established by Vaughan Vision 2007, the recommendations of this report will assist in establishing and communicating service level standards that are affordable and sustainable; and in respecting the review of enforcement, compliance and monitoring of regulations related to public safety.

This report is therefore consistent with the priorities previously set by Council. All necessary resources have been allocated and approved.

## **Conclusion**

Rear or flankage lot fencing abutting roadways is typically required as a noise barrier to ensure anticipated noise levels within residential outdoor living areas do not exceed maximum allowable levels as established by the Ministry of the Environment.

York Region's Traffic Noise Mitigation Policy for Regional Roads states that severely deteriorating privately owned noise barriers located adjacent to Regional roads remain the responsibility of the private property owner, and that this matter shall be enforced by the governing local municipality via the Property Standards Act for the Province of Ontario.

The City's current Property Standards By-law 409-99 specifically dictates that all privately owned fencing shall be kept in good repair and free of accident hazard by individual property owners.

Similar rear lot (noise) fencing currently exists extensively throughout the City not only abutting Regional Roads but also adjacent to local collector roads assumed by the City. As neighborhoods age, all fencing regardless of material, will deteriorate and eventually require repair and/or replacement. These fences are privately owned facilities on private property and the associated on-going maintenance is not assumed by the municipality.

Implementing a local area charge or "Special Area Development Charge" under the Development Charges Act, 1997, to collect funds for on-going maintenance of infrastructure including fencing and/or noise attenuation walls is not permitted by the Development Charges Act. Maintenance costs are deemed to be not development related.

## **Attachments**

N/A

## **Report prepared by**

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Respectfully submitted,

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Commissioner of Engineering and Public Works

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