

COMMITTEE OF THE WHOLE (WORKING SESSION) JUNE 10, 2003

**PILOT PROJECT FOR NOISE FENCE REPLACEMENT
NEW WESTMINISTER DRIVE, STEELES AVENUE TO CONLEY STREET**

Recommendation

The Commissioner of Engineering and Public Works recommends:

That staff be provided direction regarding the implementation of a pilot project to facilitate the replacement of the existing, deteriorated concrete noise fence on the rear of the lots abutting the east side of New Westminister Drive between Steeles Avenue and Conley Street.

Purpose

To seek Council direction regarding a request from homeowners on Mabley Crescent in Thornhill for assistance in facilitating the replacement of their deteriorating concrete noise fence.

Background

The concrete noise fence along the east side of New Westminister Drive from Steeles Avenue to Conley Street was installed under the terms of the Subdivision Agreement signed by Cadillac Fairview, Con-Drain and ERA Investments in April, 1980. Refer to Attachment No. 1. The agreement required the developer to install a noise barrier at the property line adjacent to New Westminister in accordance with a noise report that identified barrier heights and locations together with other noise attenuation features required in the development.

The noise fence is in an advanced state of deterioration and, in fact, some sections have collapsed or been removed. In other areas, temporary bracing has been installed to prevent the walls falling into the road allowance and on the adjacent public sidewalk.

Commencing in the mid 1980's Subdivision Agreements include specific warning clauses stating that fences abutting public lands are to be constructed completely on private lands, are not assumed by the City and are the responsibility of the homeowner. As noted in previous reports, staff have determined that there are locations across the City where the fences were not accurately installed resulting in parts of these fences being situated on the public road allowance or walkway. Construction on City property was not authorized by the City. To the extent that any part of such fences may have been built on City property, such encroachments constitute trespass to City property. The City has never assumed responsibility for these fences.

In this specific location, the lots front on Mabley Crescent and the rear yards abut New Westminister. The fence is built on private property with minor encroachments on the right-of-way. A privacy fence has been constructed along the walkway from Mabley to New Westminister and is also failing.

Although the Subdivision Agreement for this development contains noise warning clauses, it predates the time when the City required specific warning clauses advising the homeowner of the location on private property and the responsibility of the homeowner to maintain the fence. In considering previous reports on the noise fence issue, Council has taken the position that the City is not responsible for the fences.

In response to requests from two homeowners on Mabley Crescent, the City has written advising them that the responsibility for repair is theirs. We have advised them that they can undertake the removal and replacement of the fence. The new fence can be constructed of either wood or concrete provided that the replacement is constructed as a noise fence. Wood construction is

preferable since it can be readily built by a homeowner and easily repaired or replaced in the future.

These homeowners could proceed to replace the fence on their properties however, since the posts do not line up with the property corners between abutting properties, it is difficult to replace only the section on one property and tie it in to the remaining concrete fence. Although such replacements have been done by homeowners in similar situations elsewhere in the City, it does result in a non uniform appearance with concrete fence interspersed with wood fence of various designs.

Since most of the subject length of fence is in an advanced state of deterioration, it would be desirable to remove and replace the entire fence, including the walkway fence, at one time.

Although the City would not be able to contribute financially to the cost of the work, should Council wish, it could direct staff to assist by co-ordinating a fence replacement contract and, subject to agreements regarding front ending financing by the affected property owners, tender for a contractor to undertake fence removal and replacement.

Should such a project proceed, the following matters would have to be covered in an agreement between the homeowners and the City:

- All property owners owning the section of fence to be replaced would have to agree to participate.
- The basis of the cost sharing for each property owner would be detailed.
- The property owners would have to consent to the City entering on private property to remove and replace the fence.
- Property owners would be required to consent to registration of an agreement on title to their property utilizing the current warning clause regarding the location and responsibility for maintenance of the new fence.

The advantages of this process include facilitating the replacement of an entire stretch of failing noise fence resulting in a new fence with uniform appearance. It would be of great benefit to the homeowners to have all the fence done at one time so that they are not faced with the problem of trying to tie into an adjacent section of old fence. A disadvantage is that for the project to proceed, any homeowner not prepared to proceed now to incur the cost of this work would have to participate to allow the project to proceed. If any homeowner does not want to participate, the project could not be undertaken.

One of the affected homeowners has volunteered to speak to his neighbours about this potential project should Council wish to undertake it on a pilot basis. This would greatly reduce the staff time involved in initiating the project.

Conclusion

Should Council wish to facilitate the replacement at the property owners' cost of the deteriorating concrete fence on the east side of New Westminister Drive between Steeles Avenue and Conley Street, then staff could initiate the work as a pilot project. Following completion of the work, staff would report on the experience and provide recommendations on whether or not to extend the project to other areas as a means to facilitate City wide replacement of old concrete noise fences.

Attachment

1. Location Map

Report prepared by

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Respectfully submitted,

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Commissioner of Engineering and Public Works

ATTACHMENT No. 1

