

## **COMMITTEE OF THE WHOLE JUNE 21, 2004**

### **REPLACEMENT OF CPR FENCE ALONG ABELL AVENUE, WOODBRIDGE**

#### **Recommendation**

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

That the necessary by-law be enacted to authorize the Mayor and the Clerk to sign an agreement with Canadian Pacific Railway to provide for the sharing of costs for the replacement of the chain link fence along the east side of Abell Avenue and Cheltenham Avenue abutting the CP Rail property.

#### **Purpose**

To initiate the replacement of the deteriorated chain link fence between the Abell and Cheltenham Avenues road allowance and the CP Railway tracks.

#### **Background**

An existing farm fence (approximately 135 M) is located along the CPR rail line on the east side of Abell Avenue north to the residential development at the north end of Abell Avenue as shown on Attachment 1. Residents have raised concerns about children crossing the CPR tracks from Memorial Hill on the east side of the tracks to access Abell Avenue on the west side.

A section of the existing 1.8M chain link fence (approximately 30M) between Memorial Hill and the tracks has been vandalized several times to keep this short cut open. The farm fence on the opposite side of the tracks is easily by-passed.

An existing chain link fence (approximately 65M) behind the low-rise development on Abell Avenue has deteriorated. It would be necessary to connect a new fence to the existing fence to have a continuous barrier along the tracks. The fabric on this fence should be replaced also. All newly installed wire mesh fence should be less than 37.5 millimeter (1.5 inch) fabric to prevent climbing.

The estimate to complete this work, including removal of over grown trees and shrubs that may impede new fence installation and the planting of suitable new species to limit access to the fence is estimated at \$20,000. CP Rail has agreed to one half the cost of the fence installation. In order to participate in the cost sharing, CP Rail requires that the City sign an agreement substantially of the form shown in Attachment 2.

The City of Vaughan share of the work, approximately \$10,000 has not been specifically allocated in the operating budget. The recently approved budget has severely restricted the City's ability to absorb additional costs in the operating budget. Should Council authorize the cost sharing with CP Rail, staff will work to identify sources of funding between the Public Works and Parks Department. If funding cannot be provided from approved 2004 budgets, the work will have to be considered for 2005.

#### **Relationship to Vaughan Vision 2007**

This report is consistent with the Vaughan Vision 2007 which seeks to improve community safety through design, prevention, enforcement and education (1.1).

## **Conclusion**

Due to the deteriorated condition of the City fence adjacent to the CP Railway tracks, pedestrians can easily cross the tracks between Memorial Hill Park and Cheltenham Avenue. It is appropriate to replace the fence and to sign a cost sharing agreement with CPR to facilitate the work.

## **Attachments**

1. Location Map
2. Draft Agreement with CP Rail

## **Report prepared by:**

Tom Sudak, Manager of Parks Services, Ext 6311  
Amanda Guida, Administrative Co-ordinator, Ext 8248

Respectfully submitted,

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

# ATTACHMENT No. 1



## C.P.R. FENCE REPLACEMENT

LOCATION : Part of Lot 6, Conc. 7

### LEGEND

 FENCE TO BE REPLACED



NOT TO SCALE

## ATTACHMENT NO. 2

# DRAFT

THIS AGREEMENT made in quadruplicate as of the xx<sup>th</sup> day of xxxxxx, 200x

BETWEEN:

**CITY OF VAUGHAN**  
(the "City")

OF THE FIRST PART

- and -

**CANADIAN PACIFIC RAILWAY**  
(the "Railway")

OF THE SECOND PART

### RECITALS

1. The City and the Railway recognize that there is a high activity of trespassing by pedestrians on the west side of the Railway corridor parallel to the Railway tracks between Cheltenham Avenue and Abell Avenue (the "Site") within the City of Woodbridge. To address these safety concerns, the City and the Railway have agreed to a cost sharing arrangements for the erection and of fencing and other improvements at the Site as more precisely described in this Agreement and as shown outlined in yellow on the plan attached here as Schedule "A". The fencing is intended to mitigate the incidents of pedestrian trespass at identified locations.

IN CONSIDERATION of their mutual covenants, and for other good and valuable consideration as contained herein, the parties agree to and with each other as follows:

#### 1. INTERPRETATION

- (1) **Reasonableness:** Wherever any consent, agreement or approval of the City or the Railway is required under the terms of this Agreement, then unless otherwise specifically provided, neither shall unreasonably or arbitrarily withhold its consent, agreement or approval.
- (2) **Interpretation Rules:** All captions and headings appearing in this Agreement are for convenience of reference only. They in no way affect its interpretation. All provisions of this Agreement creating obligations on either party are to be considered covenants. This Agreement is to be read with all changes of gender or number required by the context.
- (3) **Severability:** If any of the words or phrases of this Agreement (or its application to any circumstances) is determined to be invalid or unenforceable, then the

remaining provisions of this Agreement (or their application to other circumstances) is not affected. The balance of the Agreement (or its application to other circumstances) shall be considered valid and enforceable to the fullest extent permitted by law.

2. AGREEMENT CONCERNING MITIGATIVE MEASURES AND COST SHARING

- (1) The City agrees to erect a six-foot high chain link fence (the "Fence") within the municipal right-of-way along the westerly limit of "the site".
- (2) The City and the Railway agree to share equally in the cost of the Fence.

3. ONGOING MAINTENANCE AND COST SHARING

- (1) Maintenance Reviews: The City will schedule an ongoing maintenance review of the Site. The purpose of the maintenance review will be to ensure that the Fence is kept in acceptable repair in order to minimize the potential for trespass. The review will be tailored to the degree of maintenance required and will not preclude the Railway from conducting its own maintenance review from time to time.
- (2) Costs: The City will bear the ongoing cost of maintenance for the Fence.
- (3) Repairs: The City undertakes to repair damaged chain link fencing within a reasonable period of time after the requirement for repair comes to the City's attention. This time period is generally expected to be one to two days for easy repairs that can be undertaken by City staff. For more complex repairs that will be undertaken by a fence contractor, the City undertakes to ensure the repairs are made as soon as possible.

4. EDUCATION AND ENFORCEMENT

- (1) Future Cooperation: Both the City and the Railway agree that education and enforcement are important aspects to the success of any measures to mitigate pedestrian trespass on the rail corridors. The City and the Railway therefore agree to work together, in conjunction with the local Police Service, to supplement existing educational programs, with the terms and cost sharing arrangements to be mutually agreed upon. In particular, a program will be developed to target the identified high trespass areas to provide education and enforcement measures to reduce trespass and improve rail safety.

5. Any notice that either party may wish to give to the other under the provisions of this Agreement shall be sufficiently given if delivered or mailed to the addresses listed below:

In the case of notice by the City to the Railway:

Canadian Pacific Railway  
Southern Ontario Service Area  
2025 McCowan Road, 2<sup>nd</sup> Floor GYO  
Scarborough ON M1S 5K3

Attention: Service Area Manager – Engineering Services

In the case of notice by the Railway to the City:

City of Vaughan  
Engineering and Public Works  
2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

Attention: Mr. Bill Robinson  
Commissioner of Engineering and Public Works

#### 6. MISCELLANEOUS & GENERAL

- (1) No Waivers: No omission by either party to exercise any of its rights pursuant to this Agreement shall create or operate as a waiver of the right. Similarly, the waiver by either party of any of its rights in the case of default of the other party shall not create or operate as a waiver of any future similar right arising in the case of any future or further default.
- (2) Applicable Law: This Agreement and the rights and obligations and relations of the parties hereto shall be governed by the laws of the Province of Ontario.
- (3) Frustration of Contract: Notwithstanding anything in this Agreement, neither party shall be considered to be in default with respect to the performance of any of the terms of this Agreement if the non-performance is due to any force of nature, strike, lock-out, labour dispute, civil commotion, war or similar event, invasion, the exercise of military power, act of God, government regulations or controls, or any cause beyond the reasonable control of the party (unless such lack of control results from a deficiency in financial resources). Notwithstanding anything in this Agreement, any time periods or deadlines which become impossible to meet for reasons outlined in this section, shall be considered to have been automatically extended, without any requirement for formal amendment to the Agreement, for a period of time reasonably necessary in the circumstances.
- (4) This Agreement shall remain in place for as long as a fence is necessary at the Site.

- (5) This Agreement shall enure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the City and the Railway have executed this agreement under the hands of their respective duly authorized officers in that regard.

) CITY OF VAUGHAN  
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) CANADIAN PACIFIC RAILWAY  
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) \_\_\_\_\_  
) Senior Technical Specialist SOSA-ES  
)  
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) \_\_\_\_\_  
) Service Area Manager SOSA – ES  
)  
) I/We have authority to bind the corporation.