

COMMITTEE OF THE WHOLE – JUNE 18, 2007

NOISE ATTENUATION FENCING POLICY

Recommendation

The Commissioner of Engineering and Public Works in consultation with the Commissioner of Legal and Administrative Services, recommends:

1. That this report BE RECEIVED for information purposes; and
2. That the City of Vaughan's Policy respecting the replacement and/or repair of deteriorating noise attenuation fencing located on privately owned property be consistent with the current Regional Policy and the City's Property Standards By-law 409-99, thereby not funding any such repair or replacement work; and
3. That the Noise Attenuation Fencing Policy included as Attachment No. 1 be adopted by Council; and
4. That with the use of Summer Student staffing complements, a current inventory of all existing concrete noise attenuation fencing throughout the City be undertaken in order to establish a priority listing of all deteriorating walls requiring replacement based on their condition, public safety concerns and aesthetics; and
5. That once the inventory and priority listing is completed, Orders to Comply with the City's Property Standards By-law be issued to affected property owners requiring replacement of these fences and at no cost to the Municipality.

Economic Impact

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

Communications Plan

There is no public communications plan required resulting from the adoption of this report.

Purpose

This report has been prepared in response to Council's request respecting options available to establish a City policy for the repair and maintenance of noise attenuation fencing throughout the municipality.

Background – Analysis and Options

Item 50, Report No. 72, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on December 15, 2003, recommended:

“That City of Vaughan staff, in consultation with other municipalities and the Region of York, be directed to bring forth to Committee of the Whole, a report regarding options available to establish a regional policy for the repair and maintenance of rear lot fences; and

That the City of Vaughan includes the option and impact of a local area charge for the repair and/or replacement of noise attenuation walls throughout the municipality.”

Noise Attenuation Fencing

Homes built on local residential streets that back onto either busy City collector roads or Regional arterial roads often have fencing along the rear property line adjacent to the right-of-way. These fences are required to act as noise barriers against ambient noise levels caused by high traffic volumes usually generated on the adjacent roadways. These rear lot, or flankage fences exist in numerous residential development areas throughout the City. As neighborhoods age, all fencing regardless of material, will deteriorate and eventually require repair and/or replacement. These fences are usually privately owned facilities on private property and the associated on-going maintenance is not assumed by the municipality.

In accordance with the subdivision agreement requirements between the developer and the City, noise attenuation fences are to be installed wholly on private property and not within the road allowance. Maintenance and upkeep are the responsibility of individual property owners. Also, provisions are typically made to have warning clauses registered on title, and be included in all Purchase and Sale Agreements to the homeowners stating that there is a need for such fencing and that all of the associated maintenance and repairs are solely the responsibility of the homeowner.

During the 1980's the majority of noise attenuation 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 generated on the busy roads. In many cases, now over 25 years since originally installed, they are deteriorating and require repair and/or replacement. The typical life expectancy of these pre-cast concrete walls is in the order of 30 years.

Consultation With Neighboring Municipalities and York Regional Policy

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 addresses 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 has 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 local Property Standards By-law.

Staff have consulted the Region on various, recent fencing repair/replacement petition requests received by residents 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.

As well, the City's Property Standards By-law 409-99 requires that all privately owned fencing be kept in structurally sound condition, in good repair and free of accident hazard.

In regards to financial assistance to the homeowner in the replacement of their deteriorating noise walls, the options of imposing a Local Improvement Charge and/or a Fees-For-Services charge were reviewed.

Local Improvement Charge

Ontario Regulation 119/03 permits local improvement work to be undertaken for constructing noise abatement works on a highway. Accordingly, a local improvement cannot be undertaken for replacement of the fencing on private lands. Therefore, in addition to other statutory requirements, the noise walls would have to be solely constructed on public property within the municipal right-of-way and the long term maintenance and repair would become the responsibility of the municipality.

Fees-For-Services

Section 391 of the Municipal Act authorizes a municipality to pass by-laws imposing fees or charges for services provided by, done by, or on behalf of the municipality. Under this scenario, 100% of the costs would be collected from the affected homeowners. If the noise fences were replaced on private property, 100% consent is required from all affected homeowners to enter onto the private lands and construct the fencing.

Interference with landscaping on private property would be of concern and the impacts to privately owned side yard fences which in most cases will physically connect to new noise fences would also be an issue. Currently the rear yard noise fences in some instances act as retaining walls and/or support structures for sheds and gardens. These situations may further complicate the removal and construction of new noise attenuation fencing.

A process would have to be established for consent of owners and authorization to enter onto private property for a contractor to perform the removal and replacement. Should the noise walls be replaced on public property, the concern that the City would be responsible for repair and long term maintenance applies.

Proposed Policy For The Replacement of Noise Attenuation Fencing

The costs associated with replacing and/or repairing noise attenuation fencing either under a Local Improvement or Fees-For-Services scenario would be the responsibility of the affected homeowners. It is therefore recommended that the City's Policy regarding the replacement and/or repair of deteriorating rear lot fencing or noise attenuation fencing located on privately owned property and adjacent to City rights-of-way, be consistent with the current Regional Policy and the City's Property Standards By-law 409-99; that is, the repair and/or replacement (and on-going maintenance) of these deteriorating fences shall be the sole responsibility of the individual homeowners. Refer to Attachment No. 1.

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.

Regional Implications

There are no direct Regional implications resulting from the adoption of this report.

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 in accordance with the Ministry of Environment guidelines.

Implementing a “local improvement charge” or “fees-for-services by-law” under the Municipal Act to collect funds for the removal and replacement of new fencing and/or noise attenuation walls is permitted. However, given the amount of potential fence replacement required City-wide, the implementation of any policy allowing for noise fencing replacement by the municipality either via a local improvement charge or a fees-for-services by-law, would require significant increases in administrative and technical staff in order to effectively facilitate such a policy.

In order to eliminate potential public safety concerns due to severely deteriorating fences throughout the City it is recommended that with the use of approved summer student staffing complements, a current inventory of all existing concrete noise attenuation fencing throughout the City be undertaken in order to establish a priority listing of all deteriorating walls requiring replacement based on their condition, public safety concerns and aesthetics.

Once the inventory and priority listing is completed, Orders to comply with the City’s Property Standards By-law may be issued to affected property owners requiring the replacement of these fences at no cost to the Municipality.

Should Council concur with the recommendations of this report, the City’s policy for the repair and/or replacement of such noise attenuation fencing throughout the municipality would be consistent with York Region’s Traffic Noise Mitigation Policy and the City’s current Property Standards By-law.

Attachments

1. Noise Attenuation Fencing Policy

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Respectfully submitted,

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Commissioner of Engineering and Public Works

Michael Won, P. Eng.
Director of Development/
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ATTACHMENT No. 1

NOISE ATTENUATION FENCING POLICY

June 25, 2007

In accordance with current Regional Policy and the City's Property Standards By-law 409-99, the replacement and/or repair of deteriorating noise attenuation fencing located on privately owner property shall be the sole responsibility of the affected property owner. Funding for repair, replacement and/or long-term maintenance shall not be provided for by the Municipality.