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REAR LOT FENCE – HIGHWAY 7 PINE VALLEY DRIVE TO ABERDEEN AVENUE CITY OF VAUGHAN

The Transportation and Works Committee recommends:

- 1. The following report, August 22, 2003, from the Commissioner of Transportation and Works be received; and**
- 2. The matter be referred to Staff for further discussion with local municipalities and report back to Committee regarding options available to establish a regional policy for the repair and maintenance of rear lot fences.**

1. RECOMMENDATION

It is recommended that:

1. The City of Vaughan By-law Enforcement Department be requested to work with the property owners that about the north side of Highway 7 (Y.R. 7) between Pine Valley Drive (Y.R. 57) and Aberdeen Avenue to bring the rear lot fences up to the standard prescribed under City of Vaughan By-law 409-99.

2. PURPOSE

This report is prepared to provide information on the deterioration of the rear lot fences on the north side of Highway 7 between Pine Valley Drive and Aberdeen Avenue.

3. BACKGROUND

On February 5, 2002 a petition was received from the residents of Torii Street and Ambassador Crescent that abut the north side of Highway 7 between Pine Valley Drive and Aberdeen Avenue. The petition requested that the Region take responsibility for deterioration of the pre-cast concrete rear lot fence as a result of salt damage.

3.1 Rear Lot Fences

Throughout the Region, homes built on local residential streets that back onto major regional roads have what is referred to as a 'rear lot fence' along the rear property line adjacent to the road. From the early 1980's through to the early 1990's the majority of these fences were constructed of pre-cast concrete posts and panels and acted as a noise barrier.

As part of subdivision agreements, these fences were to be installed wholly on the private property and not on the road allowance. Maintenance and upkeep are the responsibility of the property owner.

3.1.1 Rear Lot Fences Highway 7 - Pine Valley Drive to Aberdeen Avenue

According to the subdivision agreement between the City of Vaughan and East Woodbridge Developments Limited dated June 13, 1983, the developer was required to construct "maintenance free acoustical fencing" along the rear or flankage of the lots in the subdivision abutting the Highway 7 corridor. The subdivision Agreement further provided that the fencing was not a service to be assumed by the Town. Every offer to purchase a lot in the subdivision was to provide a notice of any berm or fence to be constructed on the lot.

The rear lot fence on Highway 7 from Pine Valley Drive to Aberdeen Avenue is approximately 450 metres in length. The fence elevation is 2 metres above the road surface and is located 7 metres north of the edge of pavement.

A review of the site and fence has revealed very little salt contamination; this is consistent with the location of the fence (north side of the road, 7 metres from edge of pavement and 2 metres above the road surface). Failures have occurred in 7 vertical pre-cast posts with cracking observed in several vertical panels and caps. The failure observed is common with this type of pre-cast fence, in that unprotected reinforcement bar was used and has rusted and exploded the concrete around the reinforcing bar.

A legal survey was conducted of the fence location and it was found to be straddling the property line, with some sections of the fence encroaching on the road allowance, but the majority of it being located on private property.

3.2 Discussion

The stretch of Highway 7 from Highway 50 to Leslie Street was transferred from the Province to the Region effective June 1, 1997.

East Woodbridge Developments Limited as a requirement of the Subdivision Agreement between itself and the City of Vaughan constructed the fence. Neither York Region nor the Province were parties to this agreement.

The fact that East Woodbridge Developments Limited inadvertently constructed the fence on the Highway 7 right-of-way cannot in itself transfer ownership to the Province (the owner at the time of construction) or the Region. This also applies to liability for its maintenance and upkeep. Although the homeowner is responsible for the maintenance of the fences, the Region may also be held liable for claims for personal injury caused as a result of the fence falling within the road allowance.

In December of 2002, two property owners in this section made a claim for replacement for their rear lot fences, as a result of salt damage. This claim was investigated by the Region's insurance adjuster and subsequently denied.

4. ANALYSIS AND OPTIONS

Staff have identified two options which are detailed below:

4.1 Remove and Replace Existing Fence by the Region

The rear lot fence on Highway 7 from Pine Valley Drive to Aberdeen Avenue is approximately 450 metres in length. Initial estimates to remove and replace the fence range from \$200 to \$250 per metre for a total of between \$90,000 to \$112,500.

It should be noted that there are approximately 1000 additional metres of this fence type that back onto regional roads in this development. This option may also set a precedent for repair of all fences that abut regional roads.

4.2 Removal and Replacement of Existing Fence by Property Owners

It is very clear that the fence is the responsibility of the homeowner and not the road authority. It is therefore staffs position that any repair or replacement of the fence should be done at the expense of the homeowner.

The City of Vaughan has a Property Standards By-Law 409-99 (see *Attachment 1*) which includes the following:

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.*

Rear lot fences, as part of the subdivision agreement, were to be installed wholly on private property, and maintenance and upkeep the responsibility of the property owner. As a result, staff recommend that any removal and replacement of the existing fence be carried out by the property owners.

5. FINANCIAL IMPLICATIONS

There are no financial implications at this time.

6. LOCAL MUNICIPAL IMPACT

There are no local municipal implications associated with this report.

7. CONCLUSION

East Woodbridge Developments Limited, as a requirement of the Subdivision Agreement between itself and the City of Vaughan, was to construct a “maintenance free acoustical fencing” along the rear or flankage of the lots in the subdivision abutting the Highway 7 corridor. The fact that East Woodbridge Developments Limited inadvertently constructed the fence on the Highway 7 right-of-way cannot in itself transfer ownership or liability for maintenance and upkeep to the Region.

In that the fence is contravening The City of Vaughan’s Property Standard’s By Law 409-99, the City should be requested to work with the property owners to bring the rear lot fences up to the standard prescribed under the by-law.

The Senior Management Group has reviewed this report.

(A copy of the attachment referred to in the foregoing has been forwarded to each Member of Council with the September 3, 2003 Transportation and Works Committee agenda and a copy thereof is on file in the Office of the Regional Clerk.)