

INFORMATION REPORT

TO:	Chair and Members Public Works Committee
COMMITTEE DATE:	September 17, 2018
SUBJECT/REPORT NO:	Glen Carey (270 Tenth Road East) Respecting Truck Traffic and Construction of a Berm on Property (PW18083) (Ward 11) (Outstanding Business List Item)
WARD(S) AFFECTED:	Ward 11
PREPARED BY:	Bob Paul 905-546-2424, Extension 7641
SUBMITTED BY:	Edward Soldo, P.Eng. Director, Roads and Traffic Public Works Department
SIGNATURE:	

Council Direction

Further to the September 18, 2017 Public Works Committee meeting, Roads & Traffic were requested to provide a report containing a chronology of the actions taken on the property to date, identify any additional measures that can be taken to address the remaining concerns and provide an overview of the City's service standard related to the construction of berms.

Information

The property owner, Mr. Carey resides at 270 Tenth Road East; the property is located on the northeast corner of the Tenth Road East and Mud Street in Ward 11. The property has a partially installed berm along the east side to the rear of the home and a berm along the south side parallel to Mud Street within the City's road allowance. The intention of the berms was to create a visual and noise barrier between the property and Mud Street to the south, due to traffic and noise volumes along Mud Street. Mud Street is a designated Truck Route with an Annual Average Daily Traffic (AADT) of 2816 based on a 2017 traffic count. The speed limit is set at 70 km/h. The traffic volumes along Mud Street have increased over the last number of years as a 2011 traffic count on Mud Street between Tenth Road East and the Eleventh Road East recorded an AADT of 1916 vehicles/day, an increase of over 900 vehicles per day.

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OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

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Chronology of Actions

The following is a chronology of the actions on the property:

- A review of Google images indicates that the construction of the berms occurred between July 2015 and April 2016;
- The District East Roads and Maintenance Superintendent recalls speaking with the property owner in the spring of 2015 about the City supplying a few loads of fill material with the intent of the material being placed within the property limits. The Superintendent recalls agreeing to provide some fill when it became available with the stipulation that the fill was to remain on the property of 270 Tenth Road East, and that the fill was not to be placed within the right of way (ROW);
- The property owner indicated that they would be shaping the fill material to create a berm within the property line with a piece of equipment they had access to;
- After this conversation, approximately three loads of material were supplied by the District, which the resident placed along the rear lot within the property, as previously agreed to;
- The delivery of fill from District East was stopped after the first few loads as the access to the site became difficult to maneuver. The property owner then requested that the material be placed within the ROW. This request was denied by the Superintendent;
- According to the property owner, the remainder of the material deposited on site, along the front of the property and within the ROW, came from the City's contracted ditching program in the summer/fall of 2015;
- A stipulation in the City's rural ditching contract (C-13-26-15) required the contractor to supply, prior to commencement of the work, an executed Schedule D waiver for permitted fill dumping from the City's Site Alteration By-law 03-126. Documentation from the contractor in 2015 to the City's Roads & Maintenance Project Manager includes copies of all executed waiver forms. The list did not include a permit (Schedule "D") issued to the property at 270 Tenth Road East;
- A search of the District East in-house ditching records for this time period indicates no record of any additional in-house material being placed at this location nor any waiver for placement of fill (Schedule "D" to By-law 03-126) being issued for the property;
- Based on a review of the City's records available, the City appears not to be the source of the additional fill deposited on site.

The fill was deposited on the property between July 2015 and April 2016. The outstanding concern is that the material has been placed within the municipal road allowance and may impede operations along the ROW.

The placement of the berm in its present location along the Mud Street side of the property creates many issues:

- The City does not permit the construction/placement of any private berms or private infrastructure within the City's road allowance without an encroachment agreement, and in the past, has directed the removal of such infrastructure;
- In consultation with Corridor Management, given the berm's location within the ROW and the material planted around the berm, this type of an installation is not supported nor would the City enter into an encroachment agreement due to a number of reasons, including the potential safety risk to the public, and potential liability should a vehicle collide into it. In entering into an encroachment agreement, the City would assume responsibility for the long term care and maintenance of the berm, as well as taking on the liability risk associated with it in its present location;
- The berm partially blocks a vertical geodetic control bench mark. This bench mark is part of a vertical geodetic vertical control network that is available through the Ministry of Natural Resources (MNR) and Forestry Control Survey Information Exchange (COSINE). The database is available on the MNR website for all private companies and public agencies to use;
- There are concerns with potential sightline issues with southbound motorists at the intersection of Tenth Road East and Mud Street due to the berms location. While there is no existing sight line issue with the current location, future growth of trees and shrubs may restrict sightline issues.

While construction of a berm may be permitted within the property at 270 Tenth Road East, subject to approvals, the berm may not extend onto City property along the ROW.

City Standards

In consultation with Development Engineering, the City will typically deal with berms through the Site Alteration By-law or through plans of subdivision or site plans where the berms are used in combination with a barrier for noise attenuation (where the height of the barrier will exceed 3 m).

The Site Alteration By-law states:

Section 16; (c.1) despite the City of Hamilton Storm Drainage Policy and the City of Hamilton Development Engineering Guidelines, both as amended or replaced from time to time, ensure that fill placed or dumped within 6 meters of a property line shall:

- (i) Not exceed a maximum height of 2 meters; and*
- (ii) Meet existing elevations at property lines with slopes no greater than 33% grade (3H to 1V), unless exempted in writing by the Director after completion of a site plan approval process, modified as necessary by the Director, including payment of the fee for a minor site plan approval.*

Through a site plan, the City is able to ask for justification for the berm height through any noise studies and further review to planning policies.

In summary, the City will not provide any additional fill material to the berm in question until such time as the berm has been removed from the ROW and placed within the property at 270 Tenth Road East and the appropriate applications and permits have been requested and approved.