

## **Staff Report 2020-0207**

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Meeting Date: June 30, 2020

Subject: Fill By-law Exemption Request – 17144 Highway 50

Submitted By: Laura Hall, Acting General Manager, Corporate Services / Acting Town Clerk

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### **RECOMMENDATION**

That Option 3 within Staff Report 2020-0207 regarding a request for an exemption to Section 11 of Fill By-law 2007-59, as amended, for the proposed landscaping work at 17144 Highway 50, be adopted.

### **REPORT HIGHLIGHTS**

- Landscaping works are proposed for a residential property which will include construction of paved terraces and walkways with surrounding garden beds, placement of a berm and removal of a portion of a retaining wall
- To complete the proposed work, changes to the grade of the land will be necessary and 53.50 cubic metres of fill and topsoil will be imported onto the lot
- As Fill By-law 2007-59, as amended, restricts the circumstances under which a Fill Permit will be issued, a Council exemption has been requested to allow the work
- Although the Town's Development Engineering Division has reviewed the proposed grading and has no concerns, by granting the exemption a precedent will be set that relaxes the current criteria for when a Fill Permit may be issued
- Based on a review of potential impacts, 3 options are provided for consideration
- Staff are recommending Option 3 as it allows the property owner to make landscaping improvements to their property while ensuring neighbouring properties are not impacted by the alterations.

### **DISCUSSION**

#### **Background**

The landscaping firm Tumber & Associates recently contacted the Town on behalf of a local property owner who resides at 17144 Highway 50 in Palgrave. Landscaping works have been proposed to upgrade the yard of the residential lot which would require both fill to be imported onto the property and changes to the grade of the land. The Town's Fill By-law does not grant Fill Permits for these circumstances and the proposed landscaping work is more extensive than what the By-law allows without a permit. Therefore, at the request of Tumber & Associates, this report is being brought forward for Council to consider granting an exemption to the Fill By-law that would allow a Fill Permit to be issued for the proposed landscaping work.

**Project Details**

The residential lot located at 17144 Highway 50 is approximately a half acre in size with a distinct triangular shape, as depicted on the map attached as Schedule A. The proposed landscaping work on the property will primarily include:

- construction of paved terraces and walkways, between the front and back of the house, to be accompanied by surrounding garden beds;
- removal of an existing fence to create a berm on the private property at the side of the house facing Highway 50 and offset approximately 8-18 metres from the curb of the roadway; and
- removal of a portion of retaining wall behind the residential home along the north west property boundary.

To complete the above work, changes to the grade of the land will be necessary and it is proposed that 53.50 cubic metres of fill and topsoil will be imported onto the property. Soil will be used for garden beds and sand will be placed to form the berm. Tumber & Associates indicated that the berm is intended to mitigate road noise and pollution from Highway 50. It is anticipated that at its highest point the berm will be 1 metre above existing grade on the property which will appear as being approximately 0.6 metres high from the street line due to the natural slope of the lot. As an existing fence will be removed to place the berm, any new fence constructed will need to comply with the Fence By-law and would not be approved through this report.

Consistent with the regular Fill Permit process, Regulatory Services will require soil tests to be submitted to ensure that all fill imported is clean and free of contaminants. No fill is proposed to be removed from the lot. As the property is adjacent to Highway 50, the Region was consulted to consider impacts. Staff at the Region reviewed the proposed work and had no concerns but advised that, while an Excess Load Moving Permit will not likely be necessary to haul fill on Highway 50, a Road Occupancy Permit will be required for the truck to access the property from the roadway. Further, the Town's Operations Division was consulted and identified no concerns regarding impacts to the nearby Caledon Trailway. Should an exemption be granted and a Fill Permit issued, securities will be collected as normal. It is proposed that the landscaping work would begin July 13 and end on September 4, 2020.

**Fill By-law Provisions**

The Town's Fill By-law restricts the issuance of Fill Permits by the Manager, Regulatory Services to specific circumstances including:

- for improving the agricultural viability and productivity of an active agricultural operation within an agricultural zone;

- where a Building Permit has been issued for the construction of a building; or
- for the temporary storage of topsoil.

The proposed landscaping work at 17144 Highway 50 does not meet any of the above criteria and is more extensive than what the By-law allows without a permit such as placement of soil to a depth of 150 millimeters. Currently, there is no variance or exemption process established in the By-law. Therefore, Council would need to grant an exemption to Section 11 of the Fill By-law for the Manager, Regulatory Services to issue a Fill Permit for the proposed landscaping work.

### **Potential Impacts**

The Town's Development Engineering Division completed a careful review and indicated that they have no concerns with the work proposed for 17144 Highway 50 based on the grading and cross section plans submitted. The proposed grading will not drain towards the Highway 50 right of way and Development Engineering advised Tumber & Associates that swales must be installed around the berm and planting beds to direct drainage to the back of the property. Further, there are no concerns with drainage to adjacent properties resulting from the work to retaining walls or construction of terraces and walkways.

While Staff do not have any concerns from an engineering perspective, it is important to note that the Fill By-law sets restrictive and clear criteria for when a Fill Permit can be issued. Approving the current request by granting an exemption will set a precedent that significantly relaxes the criteria. Instead of reserving the exemption power for crucial issues such as mitigating damage from drainage, a low threshold will be established that Fill Permits may be issued for enhancements to property. Therefore, other residents may come forward with similar requests for berms and extensive landscaping works to upgrade their residential lots. On a case by case basis it would need to be determined if proposed changes to the land are acceptable which may extend the scope of exemptions over time and deviate increasingly from the original By-law criteria.

### **Options for Consideration**

Based on the potential impacts analyzed above, Staff have set out three separate options below for Council's consideration.

**Option 1:** Grant an exemption to Section 11 of the Fill By-law for the Manager, Regulatory Services to issue a Fill Permit for the proposed landscaping work at 17144 Highway 50.

**Option 2:** Do not grant an exemption to Section 11 of the Fill By-law for the Manager, Regulatory Services to issue a Fill Permit for the proposed landscaping work at 17144 Highway 50 because of the potential precedent that may be established.

**Option 3:** Grant the exemption with conditions. Staff recommend that a condition be included to require that all additional Town engineering or Fill Permit requirements be satisfied.

**Staff Recommendation**

Staff are recommending Option 3 as it allows the property owner to make landscaping improvements to their property while ensuring neighbouring properties and roadways are not impacted by the alterations, which is a key intent of the Fill By-law.

Staff will consider landscaping improvements and works as part of the upcoming Fill By-law review that is currently underway. Such improvements are important to property owners and to the continued beautification of the municipality.

**FINANCIAL IMPLICATIONS**

There are no immediate financial implications associated with this report. Should Council provide an exemption, fees and securities related to the fill will apply. The Town's fill permit application fee is \$510 + \$2.00 per cubic metre of fill. Further, permits from the Region and Town may apply for excess load/fill - heavy truck load on Caledon roads.

**COUNCIL WORK PLAN**

The matter contained in this Staff Report is not relative to the Council Work Plan.

**ATTACHMENTS**

Schedule A: Map of 17144 Highway 50