



**Title:** Port Robinson Road - Construction Maintenance Issues  
**Report Number:** PWCS2021-17  
**Meeting Date:** Tuesday, March 23, 2021  
**Report Prepared:** Thursday, March 18, 2021

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### **RECOMMENDATION(S):**

1. That this report be received for information, and,
2. That staff be directed to prepare a By-Law to prohibit the obstruction, encumbering or fouling of municipal roadways for Council's future consideration.

### **REPORT:**

At its meeting on March 2<sup>nd</sup>, 2021 City Council requested the following;

*"That the Director of Public Works and Community Services be directed to provide a report at the March 23, 2021 meeting addressing the condition and maintenance of Port Robinson Road during construction in the Empire Homes Development area."*

Staff have subsequently reached out to Empire Homes who have responded promptly with a commitment to increase the level of maintenance as described below:

*"I know there have been recent issues with mud tracking in Port Robinson related to our development. Looking ahead at the forecast for the next few weeks, there will be very warm weather which as usual at this time of year will cause even more mud to be tracked on the roads around construction sites. To ensure that we are staying on top of this as much as possible, we will be having our road cleaner (A&G) on site for 8 hours a day for at least the next two weeks. They will be continually sweeping on Kottmeier, Port Robinson and Merritt as well as flushing. We have also placed a mud mat off of Port Robinson at the location of our fill piles. I am hopeful that this will mitigate any mud tracking issues.*

*We will monitor the situation and adapt to our maintenance to the extent possible.*

*Please contact me at any time with concerns and I will ensure we will make all efforts to keep the roads clean."*

**Jeffrey Swartz, VP Development  
Empire Homes**

Staff have been monitoring the developer's maintenance efforts and acknowledge that they have increased their level of effort significantly.

The construction activity in this area is expected to increase during subsequent phases of this development and staff have reviewed the language in the standard subdivision and pre-servicing agreements to determine its effectiveness. The standard clause states;

9.1 *The Developer covenants and agrees to carry out all Works necessary to service the Plan of Subdivision in such a manner as to prevent erosion and earth, debris and other material from being washed or carried in any manner onto any road, road allowance or Highway whether opened or unopened, or onto the property of any other person or persons for the duration of construction until all disturbed surfaces have been stabilized.*

*If such earth, debris or other material is washed or carried onto such road, road allowance, whether opened or unopened, or onto the property of any person or persons, the City, its servants or agents, may, at the City's discretion, clean and remove such material, rectify any damage caused, and abate any nuisance created by the Developer in the development of the Plan of Subdivision. Muddy water shall not be allowed to leave the site and any standing water is to be eliminated.*

*The cost of any such work performed by or at the instruction of the City, shall be paid by the Developer on demand, and without limiting any of its remedies at law or in equity, the City may enforce any security available to it to recover such costs or may collect such costs in like manner as municipal taxes as provided in The Municipal Act and with the same priorities as taxes that are overdue and payable.*

This language gives the City the ability to respond to complaints and the authority to recover its costs to remedy the situation, however it is reactive and would only be applicable to a contractor/developer who has entered into an Agreement with municipality.

It is a common occurrence in subdivisions for residents moving into homes located on unassumed roads to have to deal with dust and dirt tracked throughout the internal street system. Developers are advised of any complaints received from the public and, generally speaking, the response has been reasonable under the circumstances. Staff have responded using City resources if the response time is not reasonable (depending on weather conditions, risk to public safety, etc.). In those cases the actual costs have been billed back to the developer/builder.

In the case of Port Robinson West Neighbourhood, Port Robinson Road is the only means of access for residents and businesses located east of the CN Railway. They have no choice but to navigate the construction zone during the next phases of development which could extend over the next 3-5 years. In this case the situation is more than just an inconvenience or nuisance. It is essential that response times for emergency vehicles are not impacted during construction.

To this end, staff have requested that the following condition be included as a condition in the Draft Plan of Subdivision for Phase 2 and 3 of the Port Robinson West developments;

*“That the developer be required to submit a “Construction Phasing Plan” to the satisfaction of the Director of Public Works and Community Services describing a strategy to mitigate the impacts of construction activity on Port Robinson Road and to maintain continuous emergency access for existing residents and businesses in the Port Robinson West area.”*

In addition to this, staff will be looking to remove any obstacles and upgrade the condition of the asphalt on certain sections of the Greater Niagara Circle Route to provide suitable alternatives in the event of an emergency.

Finally, staff have identified that the City of Thorold does not currently have a By-Law in place that would allow it to clean up its roads and recover such costs from an offending property owner or contractor where they are not otherwise under contract or agreement. Additional research is needed in this regard and as time permits, staff will bring this documentation forward for Council’s consideration.

**BUDGETARY STATUS:**

N/A

**STRATEGIC PLAN:**

Responsible Community Growth and Infrastructure Planning

**CANADIAN CONTENT:**

N/A

**ATTACHMENTS:**

N/A

**PREPARED BY: “original signed” Geoff Holman, Director of Public Works and Community Services**

**SUBMITTED BY: “original signed” Geoff Holman, Director of Public Works and Community Services**

**APPROVED BY: “original signed” Manoj Dilwaria, Chief Administrative Officer**