



## REPORT

### Council

**Meeting Date: July 7, 2025**

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**FROM:** Parks and Open Space Department

**DATE:** June 24, 2025

**SUBJECT:** Munn's Creek - Encroachments

**LOCATION:** Munn's Creek (South of Upper Middle Road)

**WARD:** Ward 5

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#### RECOMMENDATION:

1. That Council approve removal of all encroachments from Town land along Munn's Creek from 1528-1510 Elm Road (inclusive) and a Town fence be installed along the rear of these lots.
2. That staff enter into discussions with the homeowner at 1508 Elm Road to review opportunities to mitigate the encroachment behind this property which if removed will negatively impact the safety and functionality of the property.
3. That staff return to Council with an update report on the resolution of the encroachment at 1508 Elm Road by the 4th quarter 2025.

#### KEY FACTS:

The following are key points for consideration with respect to this report:

- Parks and Open Space staff have been corresponding with a number of Elm Road residents who have encroached onto Town parkland (Munn's Creek).
- Encroachments include fencing, sheds, landscaping, retaining walls, tarps and a trampoline. In most cases residents have extended private fencing across Town property to the edge of the creek – essentially annexing public lands for private use.
- Many of these encroachments are long standing and, in many cases, the current residents did not install the fences but purchased their home with the fences already in place.
- When encroachments on Town parkland are identified by Parks staff, the homeowner is contacted and requested to remove the encroachments in

accordance with the Parks By-law 2013-013. In almost all cases residents comply within the notice period. Parks staff have always taken the approach to work with the resident rather than immediately issue By-law offense notices. That philosophy has worked effectively in most instances.

- All Elm Road residents with encroachments on Town land were issued notices to remove the encroachments. A reasonable time period was allowed for the removal.
- Subsequent to the notification letter the affected Elm Road residents contacted Parks staff and requested a meeting with staff and their Ward Councillors. The resident's requested additional information regarding the process and asked if they would have an opportunity to approach Town Council on this matter.
- Parks staff have conducted 3 public meetings with the Elm Road residents, regarding this matter, in addition to meeting with individual property owners.
- The residents wish to purchase all or a portion of the encroachment area at the rear of their lots or obtain an encroachment agreement that will allow them to continue use of public land as their private amenity space. The residents requested an approximate appraisal value for the Town owned land if purchase becomes an option. Appraisal values for Town land should not be discussed in a public report but have been included within a separate confidential in camera report that is included in the council addendum agenda.
- Following a comprehensive investigation, review and consultation Parks staff is recommending Council approve the removal of encroachments from 1524-1510 Elm Road (inclusive) and direct staff to enter discussions with the resident at 1508 Elm Road. At that location there is a property line retaining wall that if removed, will impact the safety and functionality of a pool and rear yard for this resident. Additional information on that situation is described in the companion Confidential report on the July 7, 2025 agenda.
- Council approval of this report is requested.

## BACKGROUND:

Parks and Open Space staff have been corresponding and meeting with a number of Elm Road residents who have encroached onto Town parkland. The homes with the encroachments are from 1528 – 1508 (inclusive). Private fencing has been installed beyond their rear property lines, in most instances very close to the edge of Munn's Creek. Essentially the residents have extended their backyards through annexing Town parkland adding additional rear yard amenity space. Two (2) residents at 1534 and 1530 Elm Road have installed private fences *inside* the

property line, effectively contributing private property to Town parkland. The area of Munn's Creek discussed within the report is contained within Appendix A.

To verify field observations Parks staff engaged the services of J. H. Gelbloom Surveyors to identify rear property lines of all residences from 1534 - 1508 Elm Road and identify any properties which had encroachments on Town land and extended their rear yard amenity space through fencing. Individual rear property lines were identified through orange flagging tape for both staff and the residents.

Appendix B, attached to this report, is the survey performed by J. H. Gelbloom Surveyors. The solid black line that is continuous represents the property line, and the dotted line represents the private fencing. Each lot was surveyed and inventoried with respect to physical encroachments. Gardens, sheds, trampoline, tarps, walkway, retaining walls, were noted on Town land. On average each encroachment or annexed parcel of Town land extends approximately 25 ft into Town land from the property line. Some are slightly more or less depending on the meander of the creek.

Appendix C attached to this report provides a visual of each lot and encroachments with the approximate property line identified in orange for each lot. Depending on the decision of Council, Parks staff would plan to install a 4 ft vinyl chain link fence on Town property along the solid black line noted on the survey drawing. This fence would demarcate the private/public property line.

#### Parks By-law 2013-013

In Parks By-law 2013-013 under **Protection of Property** section it states,

8. No person shall, in any Park engage in the following activities, permit or direct someone to engage in the following activities or otherwise use Parkland for the following purposes;

f) cause or permit any encroachment onto Parkland including but not limited to compost piles or compost containers, woodpiles, fences, sheds, or any other buildings

Through this report staff is requesting Council approve the Recommendations noted.

#### **COMMENT/OPTIONS:**

The homes along the section of Munn's Creek being discussed in this report were originally built in the early 1970's. At that time creek blocks were not viewed as an opportunity for a recreational facility such as a trail. As a result, there was no top-of-

bank walkway established behind these Elm Road homes for a pedestrian trail, as you would typically find north of Upper Middle Road and a multitude of other subdivisions across the Town. As a result, many of these encroachments have existed for a very long time. It is important to note that many of the residents did not install the encroachment but *inherited* the annexed portion of Town property when they purchased their home. In fact, during the public consultation many residents noted they had no idea they were purchasing a property whereby they would not own the entire fenced yard.

Staff assume most residents did not obtain an OLS Ontario Land Surveyor survey prior to purchase because it would have clearly illustrated the correct property boundaries and alerted the resident that a portion of the fenced rear yard was public land and not private property.

### Concern Over Encroachments

Staff are concerned about private encroachments on Town land because they are a violation of the Parks By-law. They can hinder or block the use of public lands for Oakville residents. Left in place they can set a precedent for other residents to encroach or annex public lands for their private use and enjoyment. Some concerns about the Elm Road encroachments include:

- Safety and accessibility to Town land for Emergency Services. With the rear lot fencing extended right to the edge of the creek, it is extremely difficult to walk along the creek.
- Fences can catch or retain woody debris that comes down the creek in a high-volume rain event. This woody debris could cause high water, potential flooding, and erosion along the edge of the creek.
- Access is required to Town land to mitigate liability. Staff recently discovered dangerous trees on Town land along this area of Munn's Creek and had to remove them.
- Access to Town land along the creek allows for easier maintenance of trees and invasive species.

### Engineering Review

Due to the age of some encroachments along Elm Road, some that included retaining walls constructed of timber and gabion stones, staff engaged the services of an engineering firm to review all the properties to ensure the elimination of any structures would not negatively impact the structural integrity of backyard structures, the safety of the residents, or negatively impact the functionality of the property. The firm MTE was engaged to review the properties and provide a summary of the encroachment and a recommendation whether the encroachments could be safely removed.

The MTE report is attached to this report as Appendix D. Based on their investigation and review, they recommend the majority of encroachments onto Town property near Munn's Creek from 1528 - 1510 Elm Road can be removed and a fenceline reinstated at property limits. The consultant did note that a portion of the encroachments at 1508 Elm Road need to be maintained as it contains significant structural elements that in MTE's opinion, if removed, will cause significant impact on the safety and functionality of the property.

### Munn's Creek Erosion Mitigation Study

The homes 1528-1508 with encroachments onto Town land reside within the Munn's Creek Erosion Study. The study (Upper Middle Road – Culham Street) was completed by the Town in 2020 and approved by Council in June 2020. The study identified solutions for the stabilization and rehabilitation of Munn's Creek. The solutions address the long term sustainability of the creek and considers factors such as creek confinement, habitat function and tableland uses.

Munn's Creek rehabilitation has already been successfully completed along several sections of the creek including the section along Pembroke Road, directly opposite where the 1528-1508 encroachments exist. The rehabilitation of Munn's Creek along the rear of Pembroke residents was completed in 2021. The Elm Road portion of Munn's Creek rehabilitation has been partially designed, and capital funds are available to execute the project. Council's decision on the encroachments will dictate whether the creek rehabilitation will proceed. If Council approves the report recommendations to deny the residents request to retain or acquire the encroached land, the Elm Road portion of the Munn's Creek Mitigation project would proceed in 2026, and a property line chain link fence would be installed in conjunction with the rehabilitation works.

### Public Engagement

From the outset of the investigation into the Elm Road encroachments, Parks staff have engaged the residents and Ward 5 Councillors on actions being taken, process, considerations, options, and next steps. Letters have been exchanged, on-site meetings with residents have occurred, and three (3) public meetings have been held, March 2024, September 2024, and May 2025. The individual lot surveys revealed that in 2 cases (1534 and 1530 Elm Road) had rear yard fences installed well inside their property lines. As a result, the Town was encroaching on *their* property in these cases. To correct this situation in late 2023 Parks staff installed a new Town fence (4 foot black vinyl chain link) along the property line at the rear of 1534 and 1530 Elm Road. To ensure the Town has control over the fence in perpetuity it was installed 100 mm onto Town property.

During the public consultation, Parks staff have been steadfast that private encroachments onto Town land are not permitted under the Parks By-law 2013-013 and must be removed. Parkland is obtained for the community and annexation of town land for private use is not acceptable. Throughout the public process, residents have requested how they might be able to retain all or a portion of the encroached lands as private amenity space. Parks staff have advised they cannot grant them public land for their private use. Staff noted there are 3 options that could be submitted by staff to Council for their consideration to resolve the matter.

1. Council approve removal of all encroachments and return the annexed land to publicly accessible town land.
2. Council approves each landowner an encroachment agreement to retain a portion or all of the annexed town lands.
3. Council approve the sale of all or a portion of the encroached lands to each homeowner at fair market value.

If Council were to approve encroachment agreements, there would be costs to each resident as follows; (2025 Council approved rates and fees)

Encroachment Agreement:	\$1,929.00 + HST
Agreement preparation:	\$756.00 + HST
Reference Plan:	\$3,000 (estimated)

If Council were to approve selling all or a portion of each of the annexed parcels, the resident(s) would be required to pay for an appraisal of the property, purchase the property at market value, and pay for the cost of a reference plan.

#### Summary:

Staff deal with encroachments on to Town parkland on a regular basis. Most are portable in the sense of tables, chairs, trampoline, compost container, illegal dumping, wood piles, etc.

Many of these occur in older areas of Town where no Town fence separates public and private property. The problem of encroachments became such an issue in the 1980's that Council approved a Fencing and Gate Policy whereby all new parkland would be fenced, and private gates were not permitted onto natural areas such as woodlots, trails and most recently stormwater management ponds.

Staff have spent considerable time with the Elm Road residents and understand their perspective. Allowing them to continue annexing public land for their private use sets a bad precedent and may encourage others to fence off Town land for their

own private use. Approving the encroachments would also be in contravention of the Parks By-law 2013-013. Staff also do not support the sale of parkland to the residents or an encroachment agreement. The Town acquires parkland for the entire community and requires all the parkland in our inventory. Given the Town's reduced ability to acquire future parkland based on recent legislative changes, this makes the Town's current inventory of parkland even more valuable and necessary for the entire community. Based on the above staff recommend the following to Council:

**Staff Recommendations**

1. That Council approve removal of all encroachments from Town land along Munn's Creek from 1524-1510 (inclusive) and a Town fence be installed along the rear of these lots;
2. That staff enter into discussions with the homeowner at 1508 Elm Road with regard to opportunities to mitigate the encroachment behind this property which if removed will negatively impact the safety and functionality of the property.
3. That staff return to Council with an update report on the resolution of the encroachment on Town land at 1508 Elm Road by the 4th quarter 2025.

**CONSIDERATIONS:**

**(A) PUBLIC**

The Elm Road residents who have encroached onto Town land have been fully involved in the discussions and process. All residents have been invited to the July 7, 2025 Council meeting.

**(B) FINANCIAL**

Any costs associated with removing encroachments and installing fencing along Munn's Creek will be funded by capital project 53371810 Munn's Creek, Reaches 33-35.

**(C) IMPACT ON OTHER DEPARTMENTS & USERS**

This report was prepared with the assistance of the Transportation and Engineering, as well as Legal departments.

**(D) COUNCIL STRATEGIC PRIORITIES**

This report is aligned with the Council Strategic Priorities of Accountability, and Livability.

**(E) CLIMATE CHANGE/ACTION**

With the removal of the encroachments, maintenance of the creek and environs will be much easier and more efficient. Removal of structures and any hardscaping will return more pervious surface to Town land which is environmentally beneficial.

**APPENDICES:**

Appendix A – Aerial Context Map of Munn's Creek/Elm Road

Appendix B – Survey of Elm Road Lots with Encroachments

Appendix C – Photographs of Elm Road Lots with Encroachments

Appendix D – Engineering Report from MTE Consultants

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