



## COLLIN COUNTY

Public Works Department  
700 A. Wilmeth Road  
McKinney, Texas 75069  
www.collincountytx.gov  
972-548-3700 (Phone)  
972-548-3754 (Fax)

Date: July 9, 2013  
To: Judge Self and Commissioner's Court  
From: Jon Kleinheksel, Director of Public Works   
Re: Adoption of ROW Obstruction Policy

Over the years, Public Works has encountered many challenges utilizing our dedicated right-of-way for the purpose of road and drainage improvement. One such challenge spawned a Commissioners Court order in summer 2010 addressing trees and vegetation in the ROW after a landowner commenced a bitter public relations and legal campaign to prevent PW from removing trees and vegetation in the dedicated ROW which abutted his property.

With respect to obstructions in the Right-of-Way, Public Works has historically confronted these events individually. This approach has required a significant amount of staff time meeting and negotiating with the landowner to remove the obstruction(s). Unfortunately, not all landowners are amenable and receptive to the County's improvement projects.

For example, PW is prepared to initiate extensive drainage repair along CR540 with the full support of all residents except one. One resident has inhibited and stymied the project despite our attempts to placate and reach out to the resident.

The drainage project is necessary due to erosion and sediment accumulation which has created areas of standing water. These conditions could constitute a health hazard as a result of standing water attracting mosquitoes and snakes. The resident in question owns a fence located within the 50 ft. dedicated ROW which impedes the natural flow of storm water. To date, he has refused requests to relocate his fence.

This circumstance violates the County's duty to maintain such areas free from obstruction as prescribed in the Texas Transportation Code and reiterated in opinions by Texas AG Greg Abbott.

It is clear to Public Works that the fencing in the 50 ft. dedicated ROW should be removed to preserve public health and safety. However, there is a distinct possibility the affected landowner will wage a legal and public relations battle to hinder us. Our legal counsel advised that findings of fact, made by Commissioners' Court in support of Public Works' position that the fencing in the dedicated ROW constitutes a threat to public health and safety would benefit the County in the event of legal action from the landowner. PW cannot make such declarations on the County's behalf.

In an effort to resolve this issue, Public Works commissioned our legal counsel to draft an Order of the Commissioners' Court addressing the Right-of-Way obstructions along CR540 supported by the full weight of the Texas Transportation Code (see attached). This order would mandate the removal of any obstruction from the Right-of-Way along CR540 and eliminate the need for laborious and time consuming meetings and negotiations with affected landowners. Similar Orders will be submitted to the Commissioners for consideration and approval from time to time as is necessary when dealing with other recalcitrant landowners.

However, this Order does not absolve Public Works of performing our due diligence. PW staff will communicate with landowners and attempt to resolve these discrepancies amicably before invoking the new policy. PW pledges the judicious use of this policy and will apprise the Court of our intent to invoke it. PW staff requests Commissioners' Court consideration and approval to adopt the ROW Obstruction Order pertaining to CR540.