

COMMITTEE OF THE WHOLE – SEPTEMBER 29, 2009

GREGORY GATE PRIVACY FENCING

Recommendation

Councillor Bernie DiVona recommends:

1. That the City of Vaughan receive this report.
2. That Senior Management Staff be directed to conduct a review of the matters contained herein and meet with the property owners to address the issues and bring forth recommendations to resolve this issue to a future Committee of the Whole meeting.

Contribution to Sustainability

N/A

Economic Impact

The City of Vaughan Council is being requested to conduct a final comprehensive review of a series of extraordinary events with respect to a privacy fence that has deteriorated. The economic impact can not be finalized until more specific matters have been evaluated and to be considered at a future Committee of the Whole meeting.

Communications Plan

N/A

Purpose

This report has been prepared in response to a Ward 3 Subcommittee meeting, attended by Regional Councillors Joyce Frustaglio, Mario Ferri, and Gino Rosati, and Councillor Bernie DiVona, along with Engineering staff and the property owner of 124 Blaine Court, Woodbridge Ontario, earlier this year.

The property owner has been informed by the Commissioner of Engineering and Public Works, per letter dated August 28, 2009 of unique and extraordinary findings with respect to the privacy side yard fencing.

The residents under the circumstances are looking for a fair compensation package to address the issues as outlined herein.

Background - Analysis and Options

The property owners, Mr. and Mrs. Monopoli, purchased a home at 124 Blaine Court in 1988. The property owners did notify the City of Vaughan Engineering Department and the Building Department in 1988 several issues existed with grading issues and the "unsafe condition of the wall, and how several sections are loose". Appendix 1.

The property owners have expressed, the City of Vaughan conducted site inspections accompanied by the builder and it was understood these matters were to be addressed.

The property owners have expressed they had contacted the City of Vaughan on numerous occasions and were advised that no further action would be taken as the subdivision had been assumed and that privacy fencing are constructed on private property.

The property owners having purchased the property were provided with several documents:

1. Surveyor's Certificate. The survey provided to the property owners shows a wall located on Weston Road and stretching over to the daylight triangle located at the corner of Gregory Gate. The survey does not show a "privacy fencing" along Gregory Gate to either the subject property.
2. The property owners were not provided by the builder within the purchase agreement with any specifications or disclosure of any side yard fencing. The property owners were of the understanding that the side yard fencing was a municipal requirement and to be built on municipal property.
3. The property owners reviewed the legal documents and have concluded no such notification or disclosure was made in that the side yard fencing was to be built on private property nor is there any maintenance requirement normally or typically provided.
4. The property owners have expressed since the period of construction of their home there appeared to be numerous characteristics of substandard construction with the side yard fencing: the fencing base has been shown to be shallow and areas have very little concrete as a base; the fencing panels do not have horizontal brace on the top and bottom as exists with the fencing located on Weston Road thereby causing more stress on each panel; the fencing panels do not have a brace every 5 or 6 runs but rather have some 12 or 14 runs with no concrete column to spread the load and stress as is typical; the owners have also contacted the City of Vaughan Parks Department and was confirmed by Frank Romano that the contractor had damaged a slab; and the columns have been held up and maintained by the property owners as there have been separation between the vertical and horizontal runs; and the connection between the Gregory Gate fencing and Weston Road fencing has been clearly not been undertaken with a consistent or good workmanship. Appendix 2.
In summary, the property owners have been able to demonstrate the fencing has been constructed, and substantively inferior characteristics are evident to exist when comparing the fencing to the abutting wall that continues to run along Weston Road that has no evidence of deterioration.

The City of Vaughan for decades have advised the property owners the standard response in that privacy fencing is located on private property and that each property owner is obligated to maintain the privacy fencing. To support this standard expression, all parties normally and typically refer to a subdivision agreement.

The property owners attach as Appendix 3 the subdivision agreement and it does not include such disclosure as with respect to any fencing or maintenance. The property owners further submits there is no evidence their lawyer was provided with any information with respect to the privacy fencing to be located on private property and the responsibility of the property owner.

As a result of the inspection and investigation conducted by the City of Vaughan, per letter dated August 28, 2009:

"In your case, the fence has been wrongly located by the developer on the City's 0.3 metre Reserve. Accordingly, in this instance, since the VAST MAJORITY of the fence is located on City lands, we are prepared to remove and dispose of the existing fence material..."

Relationship to Vaughan Vision 2007

This report recommends a change from the priorities previously set by Council and the necessary resources have not been allocated.

Regional Implications

N/A

Conclusion

This report is requesting a full review, and after doing so, staff be directed to determine the options available to address the matters contained in this report extraordinary in nature:

- property owner has demonstrated that fencing was inferior at the time of construction;
- property owner had contacted the municipality at the time of construction and prior to assumption of the inferior construction;
- property owners has expressed they were not notified by their builder, lawyer, or does there exist any document that transfers ownership of the fencing or location of the fencing to be on private property;
- the City of Vaughan has confirmed the fencing has been "vastly constructed" on city property and not private property as is normal or typical;
- the remainder of the existing fencing next to the Gregory Gate is in excellent condition.

Attachments

- 1- Letter dated July 6, 1988 and letter dated July 20, 1988
- 2- Survey's certificate
- 3- Subdivision agreement 1987
- 4- City of Vaughan letter dated August 28, 2009
- 5- City of Vaughan e-mail from Engineering Department dated December 17, 2008
- 6- City of Vaughan e-mail from Lynn Taylor and photos
- 7- Photographs November 14, 2008 package

Report prepared by:

Councillor Bernie DiVona, ext. 8339

Respectfully submitted,

Bernie DiVona,
Councillor – Ward 3



The City Above Toronto

The City of Vaughan
2141 Major Mackenzie Drive
Vaughan, Ontario
Canada L6A 1T1
Tel (905) 832-8585
Ext 8247
E-mail bill.robinson@vaughan.ca

August 28, 2009

Mr. Frank Monopoly
124 Blaine Court
Woodbridge, Ontario
L4L 7T8

Re: **Privacy Fence South Side Gregory Gate Plan 65M-2524**

Dear Mr. Monopoly:

Further to our meeting at your property on June 18, 2009, I have now had an opportunity to review our subdivision files and our field survey conducted earlier this year (February 17, 2009). You have indicated to the City that since the privacy fence along the side of your property abutting Gregory Gate is in poor condition, you wish to have it replaced. You have also expressed your position that the privacy fence belongs to the City of Vaughan.

Our staff survey of the privacy fence shows that the fence is located outside the Gregory Gate right-of-way but generally within the 0.3 metre reserve owned by the City of Vaughan. The subdivision agreement states that fences are not to be built on City lands, and that the maintenance of fences provided under the subdivision agreement is the responsibility of the abutting land owner. The subdivision agreement also states that these fences are not assumed by the City. This fence appears to have been built in the wrong location by the developer and should have been built on your property.

The privacy fence has been in place for about 20 years and appears to be at the end of its design life. You can replace the privacy fence if you wish provided that the fence is installed on your own property and is constructed in accordance with applicable by-laws.

Normally, these fences are constructed entirely on private property as they are solely for the benefit of the property owner. In these cases, the repair and/or replacement of deteriorating fences would be the responsibility of the property owner. In your case, the fence has been wrongly located by the developer on the City's 0.3 metre reserve. Accordingly, in this instance, since the vast majority of the fence is on City lands, we are prepared to remove and dispose of the existing fence material. You can then construct a fence on your property if you wish. The City will not replace any fencing as it does not serve any municipal purpose. The work would be undertaken by City forces and the timing would be co-ordinated through our Public Works Department. We would require about a week to arrange our crew and equipment.

Please advise of your decision in this matter.

Yours very truly,

A handwritten signature in black ink, appearing to read "Bill Robinson". The signature is stylized with large, sweeping loops.

Bill Robinson,
Commissioner of Engineering and Public Works

Copy: Brian Anthony, Director of Public Works
Andrew Pearce, Director of Development/Transportation Engineering
Heather Wilson, Director of Legal Services

Appendix '1'

July 6, 1988

Town of Vaughan
2141 Major MacKenzie Drive
Maple, Ontario
L0J 1E0

Attention: Mr. Rob Bailey

Re: 124 Blaine Court
Lot 246

Dear Sir:

I have a situation whereby the grading and the laying of sod has been provided by the builder of my home (Builders-Valleypark). Now that this process has been completed, I have noticed a canal running through the back of my property. The canal is one meter away from the property line, and is one meter wide. In actual fact, I have two meters of land that is not of any use. Also I have five properties draining into my property. This does not seem fair.

Could either yourself or anyone with jurisdiction please look into this matter. Please notify me should you wish to inspect the property, so that we may agree upon a mutually convenient time.

Please do not hesitate to call me at my resident number 851-8062 or business number 756-1740.

Yours truly,



Tony Manopoli

TH:kc

RECEIVED

JUL 12 1988
TOWN OF VAUGHAN
BUILDING DEPT.

PAGE 1 OF 2

TOWN OF VAUGHAN
ENGINEERING DEPT.
2141 MAJOR MACKENZIE DRIVE
MAPLE, ONTARIO
L0J1E0

ATT: MR. BOB BONE

DATE: JULY 20, 1988

THIS LETTER IS TO CONFIRM OUR TELEPHONE CONVERSATION ON THE AFTERNOON OF JULY 20, 1988. IN REGARDS TO LOT 246 OF PLAN 65M-2924 OF THE TOWN OF VAUGHAN. IT WAS DISCUSSED THAT THERE MAY BE A PROBLEM TO THE HEIGHT OF THE WALL BUILT BY VALEY PARK SEPERATING GREGORY GATE AND LOT 246. THERE MAY ALSO BE THE PROBLEM OF THE HOUSE ON LOT 246 BEING BUILT TO HIGH. IT WAS ALSO METIONED THAT ON THE GRADING PLAN APPROVED BY THE TOWN OF VAUGHAN DOES NOT SHOW A SWALL ALONG THE BLOCK WALL. I ALSO EXPLAINED THE UNSAFE CONDITION OF THE WALL, AND HOW SEVERAL SECTION ARE LOOSE. IT WAS ALSO STATED THAT AT THE TIME OF MR. RON KOLBE (BUILDIN INSPECTOR OF THE TOWN OF VAUGHAN) VISIT TO THE SITE HE SHOOK THE WALL AND SEVERAL SECTIONS FELL DOWN. IT SHOULD ALSO BE RECORDED THAT MR. BOB BONE EXPLAINED THAT THE CONSULTING ENGINEERS ARE ANTON KIKAS LTD (CONTACT MR. J. STEWAET) AND THEY WILL BE NOTIFIED OF THIS PROBLEM AND THEY WOULD BE ASKED TO LOOK INTO THIS. IT WAS LEFT OFF THAT I WOULD BE NOTIFIED AS

JULY 20/88.

SOON AS SOMETHING WAS DETERMINED. MEANING:

① IS THERE A PROBLEM?

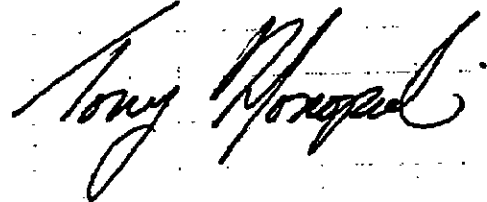
② WHAT MUST BE DONE TO RESOLVE THIS DISCREPANCY?

③ HOW SOON CAN THIS BE RESOLVED.

IF ANY PARTY IS INTENDING ON VISITING THE SITE. I WOULD PLEASE ASK IF I CAN BE NOTIFIED, IN ORDER TO BE PRESENT AT THE TIME OF VISIT.

HOME PHONE #: 851-8062
BUS. PHONE #: 756-1740

YOURS VERY TRULY,

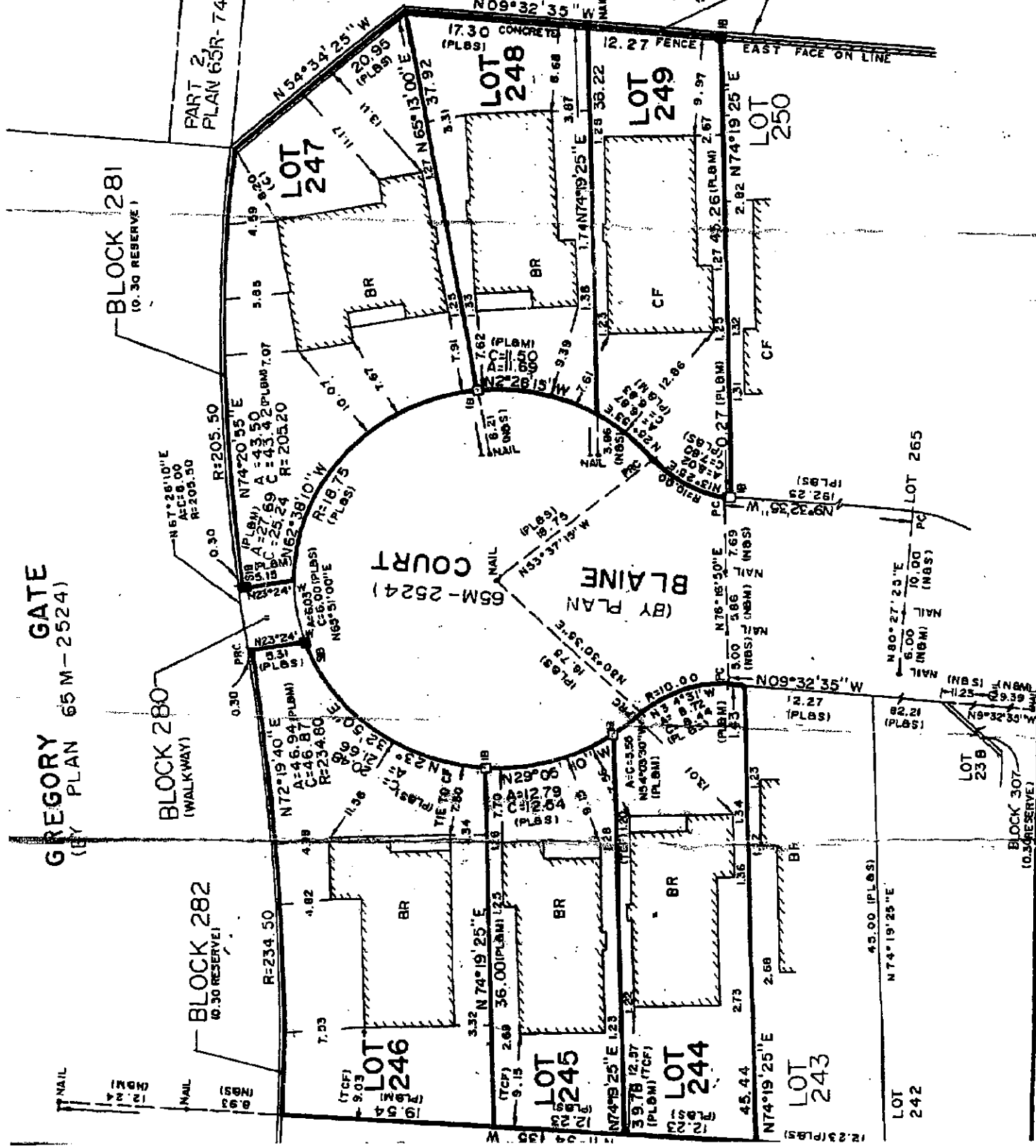


TONY MONOPOLI

Appendix 2

WESTON ROAD ALLOWANCE BETWEEN ROAD CONCESSIONS 5 AND 6

PARCEL DEDICATED PLAN PART 3 BY PART 2, PLAN 65R-7423
BY-LAW SECTION 65R-7423 PART 1
PART OF LOT 9, CONCESSION 6



P. SALNA COMPANY LTD.

SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT THE FIELD SURVEY REPRESENTED

NOTES
BEARINGS ARE ASTROMOMIC AND ARE DERIVED FROM THE EAST

ATURE

Forthwith upon receipt of the funds, the Town shall deduct its 3% charge for Administration costs and forward the sum of \$235,000.00 to the Regional Municipality of York as per Schedule "0".

21.23 Prior to issuance of a building permit for Lots 199 to 204 inclusive and Lots 246, 247 and 205, the applicant shall provide the Town with satisfactory proof that a restriction has been registered on title that prevents the transfer of the lot without the consent of the Town, which shall be given only after the privacy fence abutting such lots has been installed in accordance with the construction drawings and to the satisfaction of the Town Engineer.

21.24 The following warning clause shall be included in all Offers of Purchase and Sale or Lease for Lots 1, 13 to 18 inclusive, 39, 40, 84, 85, 86, 98 to 101 inclusive and Lot 197.

"Purchasers are advised that the dwelling occupants may be subject to parkland noise and sportsfield lighting due to the nature and use of the adjacent community park."

21.25 The Owner shall install a 1.5 metre high galvanized chain link fence along the south limit of school Block 226 on Plan 65M-2301, abutting Lots 123 to 136 inclusive within Draft Plan 19T-85113, to the satisfaction of the York Region Board of Education and the Town. The Owner shall also install a 1.5 metre high Schedule 40 black vinyl coated chain link fence along the south boundary of Block 227 on Plan 65M-2301, where it abuts Lots 121 and 122 within Draft Plan 19T-85113, to the satisfaction of the Town. The foregoing fencing is to be installed by the Owner prior to May 30, 1987, otherwise the Town shall draw on the Municipal Services Letter of Credit and proceed to construct the said fencing.

21.26 The Owner shall design and construct storm sewers and drainage systems within the Plan, adequate to accommodate drainage from Weston Road, to the satisfaction of the Regional Engineering Commissioner and the Town.

SECTION "22" NOTIFICATION

If any notice is required to be given by the Town to the Owner with respect to this agreement, such notice shall be delivered to:

