

COMMITTEE OF THE WHOLE – JANUARY 17, 2012

PRIVACY FENCE ON THE SOUTH SIDE OF GREGORY GATE 124 BLAINE COURT, PLAN 65M-2524 WARD 3

Recommendations

The Commissioner of Engineering and Public Works recommends that Council direct staff to reiterate the City's offer to property owner of 124 Blaine Court to remove and dispose of the existing concrete privacy fence, which is next to Gregory Gate.

Contribution to Sustainability

Maintaining the integrity and function of privacy fencing contributes to the sustainability of the rear yard amenity area of a residential lot.

Economic Impact

The cost associated with bracing or removing and disposing of sections of the private fence at 124 Blaine Court which present a hazardous roadside condition can be accommodated in the current operating budget of the Public Works Department.

Communications Plan

The owner of the property at 124 Blaine Court will be advised of Council's decision with respect to the request to replace the existing private fence on the south side of Gregory Gate.

Purpose

This report has been prepared to respond to Council's direction of October 13, 2009 and to provide a chronology of staff's discussions with the owner of the property at 124 Blaine Court with respect to the existing privacy fence on the south side of Gregory Gate.

Background - Analysis and Options

Records show that in early November 2008, the owner of the property at 124 Blaine Court informed the City that the existing concrete (Evercrete) privacy fence along the rear of his lot next to Gregory Gate was failing and requested the City to replace it. This property is located near the intersection of Gregory Gate and Weston Road as shown on Attachment No.1.

On March 31, 2009, the property owner made a deputation to the Ward 3 Sub-Committee with respect to the deteriorating condition of the existing concrete privacy fence next to Gregory Gate. In his submission to the Sub-Committee, the property owner indicated that the existing fence was prematurely failing due to poor design and construction. In addition, there was some question as to the location of the existing fence in relation to the property line. Staff was directed to review the available subdivision files to obtain the documents relevant to the design, construction and certification of the fence, and to conduct the necessary field investigation to determine the exact location of the fence.

Staff conducted a review the original subdivision file and noted this concrete (Evercrete) privacy fence was installed by the subdivision developer (Pine Weston Land Inc.) in the late 1980's. The municipal services in this subdivision were design and certified by the consulting engineering firm of Anton Kikas Limited.

Subsection 21.12 of the subdivision agreement between Pine Weston land Inc. and the City dated April 22, 1987 specifies that “no part of any noise attenuation fence shall be constructed on or within the road right-of-way of Weston Road or Gregory Gate. Fences adjacent to Weston Road or Gregory Gate may be constructed on the property line provided that they are not higher than 1.83 metres. Maintenance of noise barriers and fences and landscaping bordering on the Weston Road or Gregory Gate right-of-way shall not be the responsibility of the Regional Municipality of York or the Town and shall be maintained by the Owner until assumption of the services in the Plan. Thereafter, the maintenance of the fences and barrier shall be the responsibility of the abutting lot owners, and each such owner shall be responsible for the portion abutting his lot”.

The municipal services in the Pine Weston Phase 2 Subdivision, Plan 65M-2524 were assumed by the City on June 22, 1992 pursuant to By-law No.189-92.

On February 17, 2009, City staff carried out a survey of the privacy fence which showed that the fence is located partly on the City's 0.3 metre reserve which is next to the south boulevard on the Gregory Gate road allowance, and the remainder of the fence is on private property.

On June 18, 2009, staff met with the property owner on site to examine the fence and to obtain further information.

On August 28, 2009, staff sent a letter to the property owner outlining the result of their document search and field survey. In this letter, staff noted that the privacy fence has been in place for about 20 years and appears to be at the end of its design life. However, given that the existing fence was mistakenly located by the developer partly on the City's 0.3 metre reserve and there is a risk that the fence may collapse, staff offered to remove and dispose of the existing fence material. Staff did not agree to replace the fence as it does not serve any municipal purpose and it exists solely for the benefit of the lot owner.

Council, at its meeting on October 13, 2009, received Item 27, Report 42 with respect to the existing private fence on the south side of Gregory Gate and approved the following resolution:

“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”.

A copy of Item 27, Report 42 is included as Attachment No.3 to this report.

As directed by Council, staff did meet with the property owner on December 10, 2009 to further discuss the matter of the fence. The property owner maintained his position that the City should replace the existing fence because the fence isn't entirely on his property. Staff explained that the broader issue of noise and privacy fences had been considered by Council several times in the past. In keeping with the provisions of the subdivision agreement, Council has consistently taken the position that the maintenance and replacement of privacy fences is the responsibility of the lot owner. Accordingly, City staff was not in a position to build a new fence for him. However, given the fence is located partly on a City 0.3 metre reserve and may collapse onto the municipal boulevard, staff reaffirmed the offer to remove and dispose of the existing fence material in this case. After the existing fence is removed, the property owner could construct a new fence entirely on private property. This proposal was not acceptable to the property owner.

Staff has recently spoken to the property owner and confirmed the staff position regarding this fence matter, and advised him this report was being brought forward for Council's consideration.

Relationship to Vaughan Vision 2020 / Strategic Plan

In consideration of the strategic priorities related to Vaughan Vision 2020, the recommendation of this report will assist in planning and managing growth, and economic vitality. This report is therefore consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Regional Implications

There are no regional implications associated with this report.

Conclusion

The City's has consistently taken the position that where fences are located on private property, the maintenance and replacement of the fence is the responsibility of the lot owner. This policy has been reflected in subdivision agreements for many years. However, given a large part of the existing concrete privacy fence along the rear yard of the property at 124 Blaine Court is located on a City owned 0.3 metre reserve and may collapse onto the municipal boulevard, it is recommended that staff reiterate the offer to the property owner to remove and dispose of the existing concrete privacy fence.

Attachments

1. Location Plan
2. Extract from Council Meeting Minutes of October 13, 2009, Item 27, Report No. 42

Report prepared by:

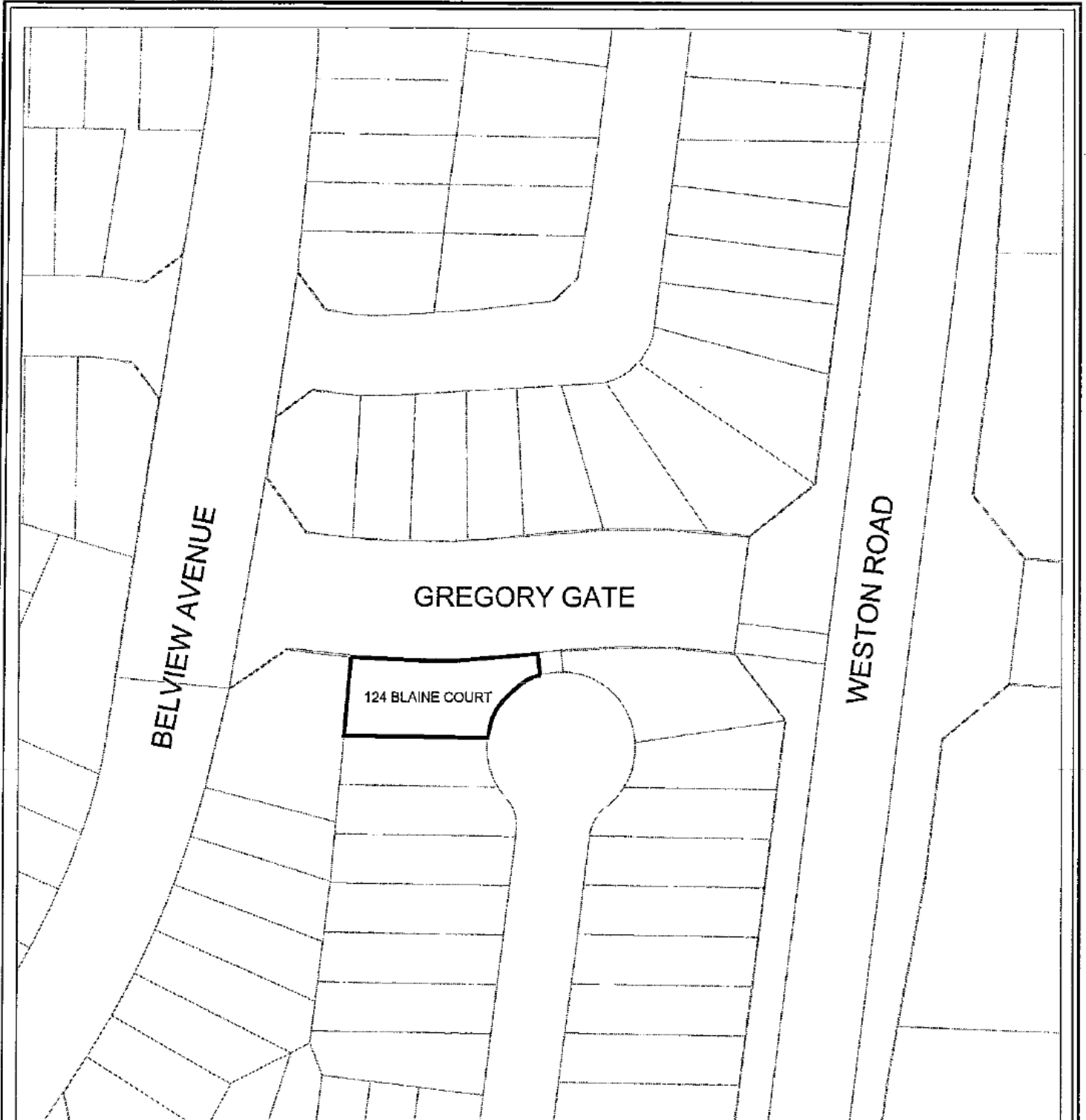
Andrew Peace, Director of Development/Transportation Engineering, Ext 8255

Respectfully submitted,

Paul Jankowski, P. Eng.
Commissioner of Engineering
And Public Works

Andrew Pearce, C.E.T.
Director of Development/
Transportation Engineering

ATTACHMENT No. 1



REPAIR OF PRIVATE FENCE ON THE SOUTH SIDE OF GREGORY GATE

124 BLAINE COURT, LOT 246, PLAN 65M-2524

WARD 3



N.T.S.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF OCTOBER 13, 2009

Item 27, Report No. 42, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on October 13, 2009.

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GREGORY GATE PRIVACY FENCING

The Committee of the Whole recommends approval of the recommendation contained in the following report of Councillor DiVona, dated September 29, 2009:

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.

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF OCTOBER 13, 2009

Item 27, CW Report No. 42 – Page 2

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".

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF OCTOBER 13, 2009

Item 27. CW Report No. 42 – Page 3

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

(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)