



Appeal No.: DAB 06-17

DEVELOPMENT APPEALS BOARD HEARING

Minutes of the Development Appeals Board Hearing held Thursday, November 2, 2017, in the Town of White City Municipal Office, 14 Ramm Avenue East to hear Appeal No. 06-17 - [REDACTED], Lot 5, Block 1 Plan 78R34213, 3 Meadow Road.

Panel: Dennis Gould, Chair
Glenn Weir, Board Member
Bill Wood, Board Member
Dale Strudwick, Board Member
Amanda Sutton, Board Member

Acting Secretary: Ken Kolb

Appellant: [REDACTED]

Respondent: Delainee Behrns, Development Officer, Town of White City

Adjacent Property Owners: [REDACTED] – 1 Meadow Road
[REDACTED] – 7 Meadow Road

Introductions:

Dennis Gould, Chair called the hearing to order at 7:00 PM. The Chair introduced the members of the Board, the Respondent from the Town of White City, and the Acting Secretary. The Chair acknowledged the appellant [REDACTED] and adjacent property owners [REDACTED] and [REDACTED].

Conflicts:

Board members indicated they did not have a conflict of interest.

Chairman's Comments:

- 1) The Chair explained that Development Appeal Hearings are open to the public and those who are affected by the outcome of the appeal can make a presentation to the Board. The Board considers all written materials received five days before the hearing.
- 2) Per subsection 221(d) of *The Planning and Development Act, 2007*, the Board can allow the appeal, allow the appeal with conditions, vary or refuse the appeal.
- 3) The Board must be certain that any decision it makes about the matter under appeal does not:
 - constitute a special privilege,
 - is inconsistent with the restrictions on, or injurious to neighbouring properties, and

- the amount of the requested relaxation of the zoning bylaw does not defeat its intent and purpose.
- 4) Once those who can be heard have made their presentations, the Board will reserve its decision. Appellants will receive the Board's written decision by registered letter within 30 days of the hearing.
 - 5) Board decisions do not take effect for 30 days to allow interested parties to appeal to the Saskatchewan Municipal Board, which must take place within 20 days of receiving the decision.

Official Record

Development Appeal No.: 06-17:

- 6) The documents which form the record of the appeal were inspected by the Appellant before the commencement of the hearing and included the:
 - Acknowledgement of Appeal
 - Appellant's submission, received October 3, 2017.
 - Development Officer's Report.
 - Town of White City Fence Permit Application Form E, No. F114-17.
 - Town of White City Development Permit – Notice of Decision Form "B."
 - Notice of the date for the Development Appeals Board hearing sent to the Appellant dated October 23, 2017.
 - Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated October 25, 2017.
 - Notice of the appeal sent to 9 adjacent property owners.
 - Statutory Declaration for service of the notice.

Resident Submissions:

- 7) The Secretary advised that nine (9) property owners within 75 metres were notified of the appeal application and hearing and that there were three letters of support for the Appellant received. There were no objections filed.

Procedure:

- 8) The Board Chair explained the process of presentations. The Board will first hear from the Appellant whom may present their position concerning the requested relaxation. Once completed, the Respondent provides an overview of the Town's position concerning the appeal. The Appellant may respond to the Respondent's presentation of facts, and the Town may respond to the Appellant's response. Upon completion, the Board may ask questions about the requested relaxation.

Appellant:

- 9) The Appellant wants to build the fence to improve privacy in his backyard and to prevent his dog from chasing people walking by on the pathway behind his residence.

- 10) The Appellant indicated that the enjoyment of his yard is affected by the location of the new outdoor ice rink in the park directly behind his residence.
- 11) The Appellant indicated a six-foot fence would not provide the privacy he is seeking and would not prevent his dog from seeing people walking on the path. An eight-foot fence would provide additional security and privacy.

Respondent: Delainee Behrns, Development Officer

- 12) The Respondent stated she doesn't have authority to approve the fence permit as the zoning bylaw stipulates the maximum height of fences in the Town of White City is six-feet.

Questions:

- 13) The Board asked if the Appellant approached the Town to install a green fence such as shrubs or trees.
- 14) The Appellant indicated he had approached the Town for a green fence and a regular fence. Both requests were denied.
- 15) The Board asked the Development Officer why the green fence was not an option.
- 16) The Respondent stated there is a utility easement adjacent to the property preventing the option of a green fence at that location.
- 17) The Board asked if there was any notice to the residents about the proposed rink being built in that area.
- 18) The Board Secretary stated there were public hearings and notifications sent to the property owners in the area of the skating rink.
- 19) The Board asked if there was a request from the people in the area to bring their views forward.
- 20) The Board Secretary indicated the Town had received concerns about using the park as an outdoor rink because it is an environmental reserve, concern about the loss of wildlife in the area, and loss of enjoyment of the landowner's property. There were also people at the public hearing that were in support of the location of the rink.
- 21) The Board asked if the people in support of the outdoor rink are residents of the area.
- 22) The Board Secretary indicated that there likely was representation from individuals living in the area of the park in support of the outdoor rink at the meeting.
- 23) The Board asked if the Appellant was present at the public meeting to suggest they were not in favour of the rink's location.
- 24) The Appellant indicated that the people in favour of the rink were not the people backing the park where the rink is located.

- 25) The Board asked how far the path is away from the Appellants fence.
- 26) The Appellant stated the path is about 5 to 6 feet from the existing fence and that there's a row of trees between his fence and the pathway.
- 27) The Board indicated that during a site visit the distance between the pathway and the Appellant's fence was measured to be 30 feet.
- 28) The Board asked if other neighbours were experiencing increased garbage in their yards.
- 29) The Appellant stated he was not aware of garbage issues in other yards, but that since the pathway was built in the summer he has seen an increased amount of garbage in his yard.
- 30) The Appellant indicated that an eight-foot fence would help alleviate the amount of garbage coming into his yard from the pathway system.
- 31) The Board asked if the Town had installed garbage disposal units in the area.
- 32) The Respondent reported there were units installed in the previous week.
- 33) The Board asked if the rink will have lighting and whether an 8-foot fence would mitigate the lighting coming from the rink.
- 34) The Appellant indicated that he thought the lights would be turned off at a certain time in the evening.
- 35) The Board asked if there would be a summer use for the rink.
- 36) The Respondent indicated that the rink would be used for basketball, pickleball and other activities in the summer and that the facility was meant to be used year-round.

Adjacent Property Owner: [REDACTED]

- 37) Supports the Appellants application for an eight-foot fence as his property is affected the most by the rink as it is directly behind his property.

Question:

- 38) The Board asked Mr. [REDACTED] if he wants to construct an eight-foot fence.
- 39) Mr. [REDACTED] stated he didn't have a dog, so doesn't see the need for an eight-foot fence. They are looking at a soundproof wall for their backyard.

Adjacent Property Owner: [REDACTED]

- 40) Mr. [REDACTED] supports the Appellant's application for an eight-foot fence. The change in the use of the park has impacted the Appellant's enjoyment of his yard. The impact on the community would be negligible.

Question:

- 41) The Board asked what the height restriction was for swimming pools in the Town of White City.
- 42) The Respondent indicated the minimum height was 5.5 feet.

Final comments:

- 43) The Appellant had nothing further to add.
- 44) The Respondent had no further comments.
- 45) The Appellant left at 7:26 PM.
- 46) The Respondent left at 7:26 PM.

Facts:

- 47) The facts in this appeal, as presented to the Board are:
 - 1) The subject lands are legally described as Lot 5, Block 10, Plan 78R34213 in the Town of White City.
 - 2) The subject lands are zoned R-2 as set out in the Town of White City Zoning Bylaw 581-14.
 - 3) The development permit was denied because the height of the proposed fence exceeded the maximum height of six-feet.

Conclusions and Reasons:

- 48) In an appeal of a development permit refusal, the Act places the onus on the appellant to make a case to the Development Appeals Board that, even though the development violated a municipal zoning bylaw, it should be allowed to proceed because it clears all three “bars to variance relief” as set out in clause 221(d) of the Act.
- 49) The three bars are:
 - Special privilege
 - Bylaw intent
 - Injurious affection
- 50) The Appellant is proposing to build an 8-foot fence across the back of the property. However, the maximum height allowed by the Town of White City Zoning Bylaw is six-feet. The purpose of the higher fence is to reduce noise coming from the multi-use area, deter passersby from throwing garbage into their backyard and minimize their pets’ reaction to those passing by. They are trying to regain the privacy they enjoyed before the multi-use play area and walking path was built.

- 51) Recently there has been a walking path and a multi-use play area (skating rink) built to the North of the appellant's property. The appellant has indicated that there is a lot of noise coming from the multi-use area, as well as much more bicycle and foot traffic. Some of the increase in traffic is people walking their dogs and increased garbage in their yard. The Town recently installed a garbage container along the walking path, but it is too early to know if that will reduce to waste thrown into the appellant's yard.
- 52) The Appellant suggested an alternative to the eight-foot fence is to build a two-foot berm with a six-foot fence on top of the berm. The idea of a two-foot berm and six-foot fence will not work for the Appellant as there are bylaws dealing with rear yard elevations and the two-foot berm would not be allowed.
- 53) Part of the reason for wanting the eight-foot-high fence is that their deck is raised therefore making it easier to see/hear things over the fence, also easier for their pet dog to notice passersby and bark at them.
- 54) The Appellant stated that the walking path is only five-feet from their back fence. Thus the walking traffic is very close to their back fence. However, when Board Member Bill Wood stated that he had measured the distance from the Appellants' fence to the walking path, and concluded the distance was approximately 30 feet and not the five or six feet the Appellant provided. The Appellant could not explain the discrepancy in the measurement.
- 55) During its deliberations, the Board indicated their reluctance to higher fences reducing "sight lines" where safety trouble situations could not be seen from the Appellant's yard and reported to the authorities.
- 56) The Town did have at least two public meetings to discuss the addition of the rink and park path to inform and hear the public input of which all interested parties had the opportunity of expressing their views. Some people had some concerns, and many people agreed with the building of this recreation facility in this area.
- 57) **Special Privilege:** During its deliberations, the Board indicated that allowing this appeal would be a special privilege and that they were not prepared to allow in this appeal nor in other cases that might have the same circumstances.

Therefore the Liebrecht's application does not clear this bar.

- 58) **Intent:** In the presentation, the Town representative provided the intent of the bylaw, "*the purpose of fence height regulations within the zoning bylaw is to maintain sufficient sight lines and to not block the light, air flow or the view of other homes. Six-foot fences have also been the standard for almost every municipality since it provides an adequate balance between the feeling of privacy and the feeling of enclosure*".
- 59) The Board unanimously agreed that it is important to maintain the six-foot height restrictions for fences in the Town and were not prepared to allow this appeal in this case nor in other cases that might have the same circumstances.

Therefore the Liebrecht's application does not clear this bar.

- 60) **Injurious affection:** There was no “injurious affection” demonstrated or posed during the appeal hearing.

The Liebrecht’s application, therefore, does clear this bar.

- 61) **Moved by GOULD, Seconded by STRUDWICK:** That Appeal #06-17 made by [REDACTED] for a relaxation of the Zoning Bylaw 581-14, to permit an eight-foot fence in the rear yard at 3 Meadow Place be denied as:

- 1) The relaxation would constitute a special privilege,
- 2) The relaxation would be in contravention of the intent of the fence height regulations to maintain sufficient sight lines and not block the light, air flow or the view of other homes, and
- 3) The Appellant did not demonstrate injurious affection as a result of the fence height regulations.

Carried

Adjournment:

- 62) **Moved by WEIR, Seconded by GOULD:** That the hearing be adjourned. (7:56 p.m.)

Carried



Dennis Gould, Board Chair