

**TOWN OF WHITE CITY**  
**DEVELOPMENT APPEALS BOARD**

**September 26, 2012**

Minutes of the Tuesday, September 26, 2012 Development Appeals Board Hearing held in the [REDACTED] White City Municipal Office, 14 Ramm Avenue East to hear Appeal #05-12, [REDACTED], Lot 6, Block C, Plan 61R28095, 14 McKenzie Landing.

**Present:** Chairman: Dennis Gould  
Board Members: Glenn Weir, Bill Wood, Wes Memory

Development Officer: Debi Breuer

Secretary: Bonnie Stanley

[REDACTED] (adjacent property owners)

**Appellant:** [REDACTED]

**Introductions:**

Chairman Dennis Gould stated that the board had come to order at 7:00 PM. The Chairman introduced the members of the Board, the Town [REDACTED] and the Secretary. The Chairman acknowledged the Appellant [REDACTED].

**Conflicts:**

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

**Chairman's Comments:**

The Chairman explained that Development Appeal Hearings are open to the public and those who are affected by the out come of the appeal can make a presentation to the Board. Written materials received within 5 days of the hearing will be considered by the Board.

Authorized by *The Planning and Development Act, 2007*, the Board can allow, allow with conditions, vary or refuse the appeal.

The Board must be certain that any decision it makes about the matter under appeal does not constitute a special privilege 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.

Once those who can be heard have made their presentations the Board will reserve its decision. Appellants receive the Board's written decision by registered letter within 30 days of the hearing. 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 #05-12:**

The documents which form the record of the appeal were inspected by the Appellant prior to the commencement of the hearing and included:

- ██████████ or the hearing.
- ██████████ email submission dated September 21, 2012 – 3 pages.
- Development Officer's Report.
- Background information from Development Officer regarding proposed building.
- The Town of White City refused Development Permit.
- Professional Building Inspections, Inc. Permit Information Form and Plan Review Check List.
- Residential Development Permit
- Exhibit "A" to Bylaw No. 534-09.
- Application for Building Permit.
- Site Plan.
- Notice of the date for the Development Appeals Board hearing emailed to the Appellant dated September 3, 2012.
- Notice of the date for the Development Appeals Board hearing sent to Board and Council members and the Development Officer dated September 3, 2012.
- Notice of the appeal sent to 5 adjacent property owners.
- A copy of Bylaw 541-10.

- A copy of Part XI, Division 1, of *The Planning and Development Act, 2007*; the duties and responsibilities of the Development Appeal Board.
- The signed commissioned Statutory Declaration for service of notice.

**Resident  
Submissions:**

The Secretary advised that four (4) property owners within 75 metres were notified of the appeal application and hearing and that no objections have been received.

**Procedure:**

The procedure was explained for presentations. To begin the board will hear the appellant present their position with respect to the requested relaxation. Once their presentation is completed the town representative presents the town's position. The Appellant is then allowed to respond after which the town responds. Once the appellant and respondent have made their presentations board members will ask questions about the requested relaxation.

The Appellant stated:

1. He purchased the lot from Mauri Gwyn Developments in 2008 and the lot length was 37 metres. There was also revised plan of subdivision in 2008 which had the lot at 36 metres in length. He was not aware of the 36 metre change all his blue prints were put together based on the subdivision plan that the property was 37 metres in length.
2. At ISC the title is registered at 31 metres in length. His house plans do not fit. He had no idea about the 31 metre length of the lot. He stated that if he can't get the setback approval then the whole house needs to be changed. He would simply like get on with his development. He has had financing in place since May and when the surveyor came out to survey the property it was discovered that the lot was 31 metres and that's when everything stopped. If he doesn't get started soon he will have to redo his financing in November.

3. He is asking that the subdivision plan that was signed off by the town in 2008 for the 36 metres so that he can start construction.

**Town Development Officer: Debi Breuer**

██████ Development Officer stated that basically everything is ██████ report. Mr. ██████ is not at fault. Mauri Gwyn is at fault for giving Mr. ██████ the wrong subdivision plan. Mauri Gwyn did ask to get subdivision changed to get buffer strip but he failed to register the proposed plan of subdivision with ISC. The Town has contacted Mauri Gwyn and they are in the process of re-registering the plan of subdivision. Once registered the proposed building would comply with zoning bylaw. The town is also asking for temporary relaxation until the ██████'s subdivision get approved and registered with ISC. The solution to Mr. ██████'s problem was to come to Development Board and ask for the relaxation so that he can proceed.

**Question:**

- Q: Is there any reason that the Town would not approve the plan of subdivision?
- A: No. It already has been approved.
- Q: How many other houses does this affect?
- A: 6 including mine.
- Q: Clarification – Lot #6 is Mr. ██████'s and Mark Nyeste is Lot #7, Question for Debi Breuer in regard Mauri Gwyn development. Is there anything legally binding to make him re-register?
- A: Mauri Gwyn has no choice as it affects everyone in McKenzie Landing.
- Q: Was Mauri Gwyn invited to this hearing?
- A: Yes.
- Q: Why didn't the Town insist that Mauri Gwyn re-register the proposed plan of subdivision?

- A. There are other bylaw issues involved in this. The Town is waiting for documentation from ISC before the Town can get the proposed plan of subdivision off to Community Planning. Mauri Gwyn has also made the application to Community Planning.
- Q. Can the Town confirm that Mauri Gwyn Development has submitted the request/subdivision application to Community Planning for approval?
- A. The Town confirmed that the application has been submitted.

**Final comments:**

██████████: He would just really like it that any time that this developer comes to the table for another subdivision to make sure that he gets the other subdivisions done first. He is asking for approval so he doesn't need to get refinanced and to get his trades and material ready for construction.

Development Officer: The Town is after Mauri Gwyn on any new developments and will ensure that this new plan of subdivision is registered with ISC.

The Appellant left at 7:20 PM.

The Town Representative left at 7:20 PM.

**Facts:** The facts in this appeal, as presented to the Board are:

- 1) The subject lands are legally described as Lot 6, Block C, Plan 61R28095 in the Town of White City.
- 2) The subject lands are zoned R-5 as set out in the Town of White City Zoning Bylaw 541-10.
- 3) The development permit was denied because the single detached dwelling encroached into the required 8 meter rear yard setback.

**Conclusions and Reasons:**

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.

The developer, Mauri Gwyn Developments Ltd, applied to Community Planning on September 9, 2008, to revise their Subdivision Plan. That plan was approved but the

Developer had the responsibility to **register** the plan with ISC within 2 years. However, they failed to register the revised subdivision plan with ISC and the Town had no knowledge or reason to believe that this registration had not been completed. This failure to register has consequently delayed the appellant in his building plans, resulted in an unnecessary DAB hearing, and possibly will result in additional costs in the construction of the home.

The only reason that this appeal is before the Development Appeals Board is because of the Developers “failure to register” the revised subdivision plan with ISC, and for this reason the Board recommends that in cases like this the Developer should be held responsible for the costs of this unnecessary appeal hearing.

In addition, the Board recommends, that in the future, the Town should follow-up to ensure that Developers do register their subdivision plans with ISC.

In this case, the Developer has reapplied to Community Planning for second approval of the revised subdivision plan, and the Town has assured the Board that they will follow-up to ensure that such registration is completed in a timely manner.

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.

The three bars are:

- Special privilege
- Intent
- Injurious affection

Special Privilege: During [REDACTED] session the Board indicated that they were prepared to grant this application. [REDACTED] acted in good faith using the subdivision plan provided to him by the Town Office to plan a home that would comply with all of the Town's setback requirements.

Assuming that Mauri Gwyn does register their most recent subdivision plan, there would be no need for this relaxation request.

Therefore the application does clear this bar.

Intent: Assuming that Mauri Gwyn does register their most recent subdivision plan, there would be no need for this relaxation request.

Therefore the application does clear this bar.

Injurious affection:

There was no "injurious affection" demonstrated or posed during the appeal hearing.

The application therefore clears this bar.

### **Appeal #05-12 Decision**

In accordance with the requirements of the *Planning and Development Act, 2007* the following is the decision of the Development Appeals Board hearing on September 26, 2012 at the Town of White City Municipal Office.

[REDACTED] S GOULD: Moved/Seconded: BILL WOOD: That Appeal #05-12 made by [REDACTED] for a relaxation of the Zoning Bylaw 541-10, to permit a single detached dwelling to encroach into required 8 meter rear yard setback be granted, for the following reasons:

- 1) The relaxation does not contravene the Town's Basic Planning Statement and intent of the Zoning Bylaw.
- 2) The relaxation does not encroach upon or injuriously affect neighbouring properties.
- 3) The requested relaxation is not a special privilege as others have been granted a similar relaxation.

**Carried.**

**Adjournment:**

**BILL WOOD: Moved/Seconded: GLENN WEIR:** That the hearing adjourn at 8:00 PM.

**Carried**

  
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**Dennis Gould, Board Chair**