

ADDITIONAL INFORMATION


- Item 8.2 Administrative Report under the Delegation of Authority – 4369, 4375, 4381, 4387 and 4393 Spago Crescent – Fence and Shed Encroachments, Ward 9
- a) Written submission from Michael and Cheryl Trueman is ***attached*** as additional information.

DELEGATIONS: (5 minutes maximum)

- Item 7.3 Report No. 107 of the Windsor Essex County Environment Committee - E--Mail Poll regarding Phase-out Gas-Fired Electricity Generation
- a) Derek Coronado, WECEC member
-
- Item 8.2 Administrative Report under the Delegation of Authority – 4369, 4375, 4381, 4387 and 4393 Spago Crescent – Fence and Shed Encroachments, Ward 9
- a) Vladimir Drobnyakovic, property owner
- b) Louis Elters, Solicitor representing Naren Varma Pinnamaraju, property owner

Memorandum

To: Environment, Transportation & Public Safety Standing Committee
C/O Clerks Office, City of Windsor

From: Michael and Cheryl Trueman / 4375 Spago Crescent (Lot 42) 

Date: November 13, 2020

Re: November 25, 2020 Environment, Transportation & Public Safety Standing Committee Meeting – Item No. 8.2

Dear members of the Environment, Transportation & Public Safety Standing Committee,

Thank you for receiving these observations relative to the application for an encroachment agreement for 4375 Spago Crescent we submitted for your review and approval.

Our motive to obtain an encroachment agreement is rooted in safety and aesthetics. The current location of the fence in the proposed encroachment area is set at the crown of the east side of the Sixth Concession Road drainage ditch. The placement of the fence on the crown of the ditch increases the deterrence our fence creates for those who would otherwise, if the fence were placed on the property line, have an easier time climbing over the fence to gain access to our yard and Spago Crescent. With the placement of the fence at the crown of the ditch, the ditch increases the fence's effective height.

The current fence encroachments along the east side of the ditch create a break in what would be an uninterrupted pathway created by the ditch buffer across the back of all these Spago Crescent properties adjacent the Sixth Concession Road. If the encroachment agreements are denied and the fences moved back onto the property lines, it would allow people to walk along a level pathway, thereby increasing liability for the City and compromising our safety, especially given the secluded nature of the area created by the embankment.

More than a decade ago, the Sixth Concession Road was widened, and the embankment stripped bare by backhoe, allowing pedestrians and motorists to be able to see - from a high-ground perspective - into our back yard and the personal property contained there. We have a minor daughter with a bedroom in the lower level of our raised ranch home and any means to increase deterrence of people entering our backyard is terribly important to us. Property owners on the other side of this section of Spago Crescent do not have to contend with people walking behind their homes and we *should* be able to expect the same peace of mind, especially given the secluded nature of the area created by the embankment.

The placement of our see-through, four-feet high baluster fence at the crown of the ditch is on a line of natural division between drain growth and yard grass. As you can see in the pictures provided in the meeting material, the growth of phragmites is unsightly. Fortunate for us, there is a large Norway maple inhibiting some growth of the phragmites in the ditch. There have been no attempts by City staff to

Memorandum regarding Encroachment Application for 4375 Spago Crescent**Item No. 8.2**, November 25, 2020, Environment, Transportation & Public Safety Standing Committee Meeting

manage or eliminate this invasive species from the ditch. If we are forced to move the fence to the property line, the drain growth will more easily spread onto the level grassy area; that is, unless the City were to manage growth in that area.

As we read it in the meeting materials, drain maintenance is the issue presented by City staff warranting the recommendation that the application be denied. While we can appreciate that the drainage department wants maximum flexibility to conduct maintenance, it is not hyperbole to say that the event of maintenance is very rare. As noted, when the Sixth Concession Road was widened ten or more years ago, the ditch was cleaned. This work was done from atop the Sixth Concession Road by a backhoe. The drain buffer was not used. Future drain maintenance could be carried out in this same manner. It would seem that any spoils must be removed from the area altogether, lest they erode back into the ditch, impede future maintenance, and avoid unsightliness for homeowners if simply placed at the back of these properties. When the ditch is dry in the summer months, the spoils can be transported down the path of the ditch itself or, alternatively, placed on the west-side embankment. Nevertheless, if the City were to want to use the proposed encroachment area from which to conduct drain maintenance, we would be willing to remove the fence panels between fenceposts for the time it takes for the maintenance to be completed; indeed, with the removal of the fence panels there would be still more room from which to carry out the maintenance and the encroachment area would also be clear of the phragmites and growth that could get in the way of workers. To that end, concerning the proposed article "(ii)" of the "general requirements" of an encroachment agreement, the initial application was not predicated on such a condition and the article, as written, leaves grave concern about potential liabilities for the licensee. I understand the intent of the proposed requirement, but if the text were to contain an additional clause giving the licensee a period of time to remedy the reason the encroachment is causing increased expenses before the work is carried out, this would help define those costs that the licensee can then either avoid or choose to pay, including the ability of the licensee to exit the agreement.

City staff do not have to respond to the decisions or practices of predecessors, or to give reasons why ditch encroachments are tolerated in other places, but it must be considered that for more than a decade no orders were issued for us to remove the fence. That is a very long time!

The strip of land across the back of our property has no future use, except for our enjoyment, maintenance, beautification, and security. Any cleaning can be conducted from atop the sixth concession or from within the ditch, and spoils transported away from the area following the route of the ditch or from atop the Sixth Concession Road. At a time of reduced City revenue due to business closings across the region, as well as business and personal property tax defaults, the benefit of the City receiving encroachment fees seems to be a wise outcome to our request. To deny the request would be unfortunate if only for an unplanned ditch maintenance event that, should it be planned, will receive our full support and cooperation.

Thank you for the opportunity to make application for the encroachment agreement and for your consideration on the matter.