

November 7 2018

Dallas New

Re: Right-of-Way Boulevard Leases

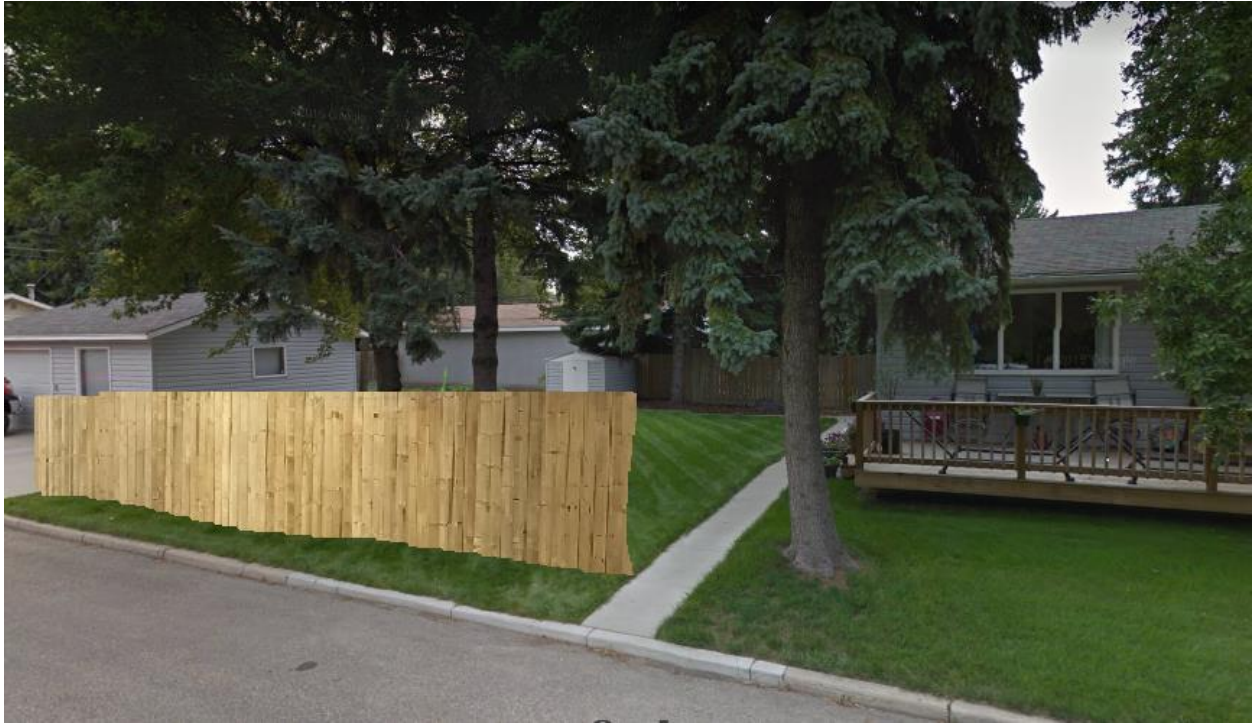
This is a follow-up to my request to speak at the November 6 Transportation Committee meeting regarding the proposed recommendations to eliminate all residential leases. First I will summarize what I presented at the meeting, and then conclude with a few new comments.

As a summary of what I presented at this meeting:

In 2015, I purchased a house in Sutherland. I had a fence installed right away (as I was in the hospital recovering from an emergency back surgery at RUH), so that I would be able to let my dogs into the backyard.



The people I hired to put the fence in had no experience working with properties without sidewalks. Because of this, they installed the fence much too close to the curb. It obstructed vision and elicited a complaint from a neighbour to the city.

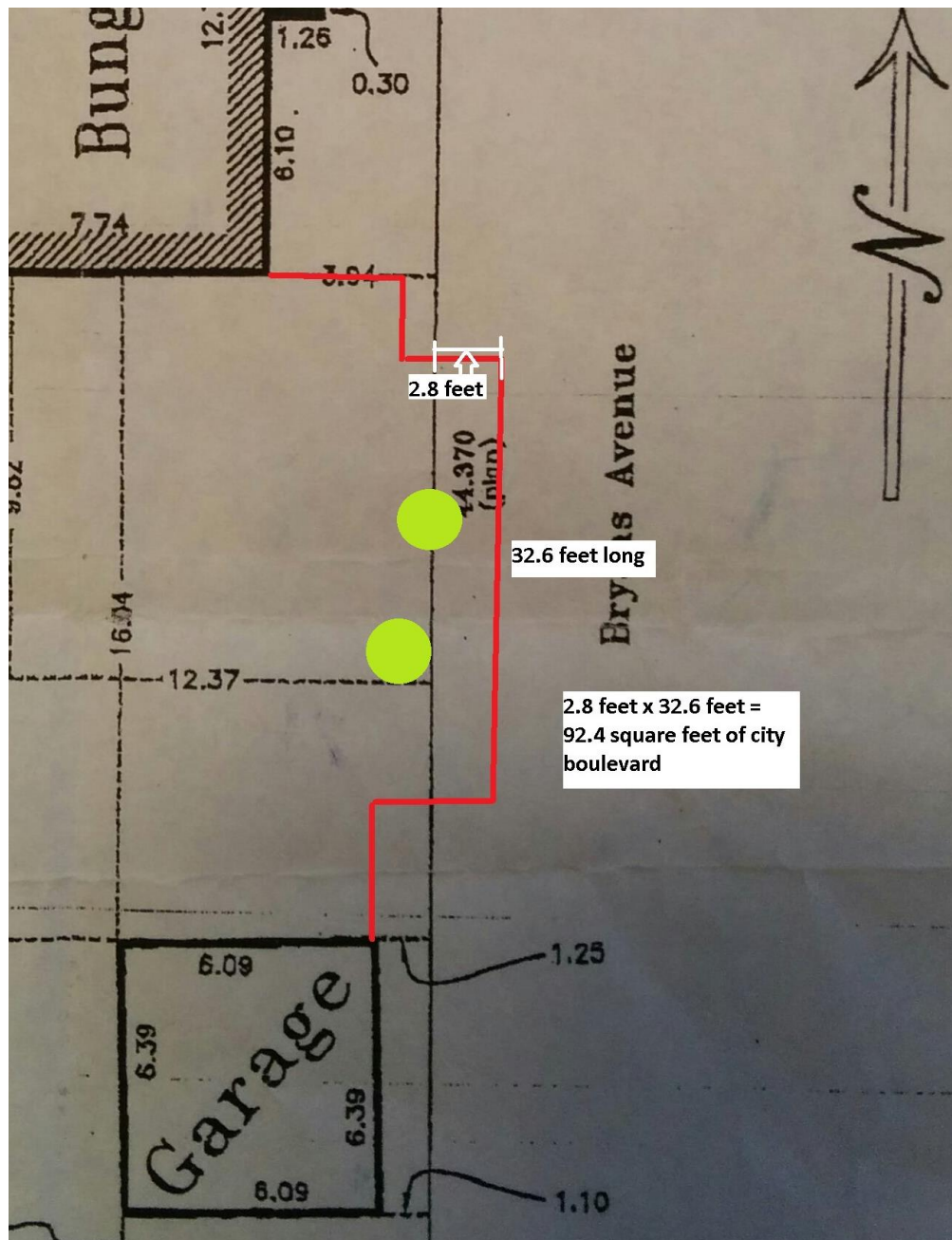


A city official came to the property and instructed the fence builders to move the fence back, since it was obstructing traffic views. Recognizing our mistake, we pulled up the fence posts and moved the fence back following the proposed guidelines (at least 2.7 meters from the curb).



This is where the fence was moved. As you can see it does not obstruct any views (my house is out of the frame on the right, and my garage is on the left side of the fence). The city official returned, and told us that the fence was still on city property and would still need to be moved further back. Where we had placed the fence was 2.8 feet still on city property, over a space of 92.4 square feet.

The reason I did not want to move the fence a third time, was because of two beautiful trees directly on the property line:



Neither of these trees (one a Manitoba maple, one a Colorado Blue Spruce) are city-inventory trees, meaning I am responsible for their care and maintenance.

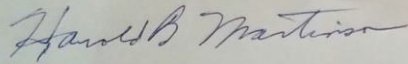
Wanting to keep these trees in my backyard, I approached the city about a lease. To do so, I took several photos showing that the fence does not obstruct views. As well, I solicited endorsement from my only adjoining neighbour Harold, who both wrote me a letter of support and attended the council meeting in person to show his support for the fence.

October 15 2015

I am writing this letter in support of the fence built by Dallas New at 401 113th St. As the only other neighbour with property along that boulevard (113th St across from CF Patterson Park), I can assure the city that I have no problem with the fence encroaching a few feet onto city boulevard. I strongly support her leasing this section of boulevard so that she will not have to move the fence.

Thank you and please contact me if you have any questions.

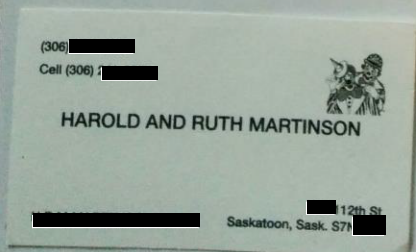
Sincerely,



Harold Martinson

██████-112th St.

306-██████



These trees are an extremely important piece of my backyard. I spend my summers reading under them in my hammock, and hang my clothes on them to dry. Furthermore, I've had extensive landscaping completed to provide nutrient-rich mulch to these trees, to keep them healthy.



In conclusion

My fence:

- does not obstruct views
- is well maintained and cared for
- is endorsed by my neighbours
- is on land currently leased for \$200 per year

Building a fence directly on the property line will be unsightly (zig zag around trees? Incorporating trees into fenceline?)

Can we find possible solutions so I can continue to enjoy my beautiful trees?

- Continued lease?
- Land purchase?
- Other options?

New comments:

I would also like to add a supplement to what I presented at this meeting. The Acting Transportation Manager (Mr. Magus) told the committee members during his presentation that each of the 6 residential leases were in direct violation of their lease, specifically referencing fence height (over the permitted 1.0 meter allowance). Councillor Gersher asked for clarification about this issue – whether these height restrictions were clearly outlined in the leases. The Solicitor, and Mr. Magus, both replied that these were clearly outlined in every lease. However, my own lease states that my fence is permitted to be 2.0 m in height (please see 4d below)

2. The term of this Agreement is 5 years commencing January 23, 2017 and ending January 22, 2022 (the "Term"), which Term may be extended for a further 5 years subject to the parties reaching agreement on rent.

Rent

3. The Lessee shall pay rent to the City in advance on or before the 21st day of November for each year of the Term in the amount of \$200 per annum, plus Goods and Services Tax ("GST").

Lessee's Covenants

4. The Lessee hereby covenants with the City:
- (a) to use the Land only for the purpose of increasing residential yard area;
 - (b) to ensure that no permanent structure is constructed or placed on the Land;
 - (c) to restore the Land to topsoil and grass upon termination of the lease;
 - (d) to ensure that the fence will not exceed 2.0 metres in height, and will be set back at least 2.7 metres from the curb;
 - (e) to ensure that if a driveway is installed, a crossing permit must be obtained from the Transportation division;
 - (f) to maintain the Land in a clean, tidy, sanitary and safe condition at all times, and not permit garbage or waste to accumulate on or about the Land;
 - (g) to permit the City by its servants or agents at all reasonable times to have a full and free access to any and every part of the Land, to view the state of repair and for any other reasonable grounds;
 - (h) not to sublet the Land or any portion thereof or assign this Agreement or part with the possession of the Land without first obtaining the written consent of the City;

I have not violated the terms of my lease in any way. Furthermore, I'd like to highlight the unique (and unfortunate) circumstances by which have put me in this predicament. The city currently only investigates encroachments on a complaint-basis, meaning there are likely hundreds of other citizens encroached on city property without issues. I initially built a fence much too close to the road, which elicited the complaint.

I moved the fence to the appropriate distance of 2.7m (which certainly resolved the issue that prompted the complaint), but am still being forced to pay \$200 per year to leave my fence around my trees.

I would love to be given the option to purchase this land from the city. As was mentioned in the meeting, this would eliminate any confusion about the leased land if I ever sold the property. My fence is not bothering anyone and is allowing me to enjoy two beautiful trees on my property.

Alternatively, I ask the city to honour their lease termination agreements, as I have not breached the terms of my agreement (please see below):

- (i) to indemnify and save the City harmless from any and all liability, damage, expense, cause of action, suits, claims or judgments arising from injury to person or property on the Land or arising either directly or indirectly by virtue of the Agreement;
- (j) to maintain and keep in force during the term of this Agreement, general liability insurance in an amount not less than \$2,000,000.00 in a form satisfactory to the City which will name the City as an additional insured. The Lessee will provide proof of such insurance to the City at the beginning of the term of the Agreement;
- (k) at the Lessee's own cost and expense to comply with the requirements of every applicable bylaw, statute, law or ordinance, and with every applicable regulation or order with respect to the condition, equipment, maintenance, use or occupation of the Land; and
- (l) to maintain the Land at the Lessee's own cost and expense and be responsible for all snow removal.

Re-Entry by City

5. If the rent or any part of the rent payable under this Agreement is unpaid for 30 days after becoming payable (whether formally demanded or not), or if any covenant in this Agreement is not performed or observed or if the Lessee abandons the Land, the City may re-enter upon the Land and this Agreement will be automatically terminated. The termination will not affect the City's other rights under this Agreement.

Termination

- (1) The City may terminate this Agreement if the Land is required for future road development by providing the Lessee with 30 days' written notice of its intention to do so.
- (2) The parties may terminate this Agreement upon breach of the terms by the Lessee.

Notices

6. All notices given pursuant to this Agreement shall be sufficiently given if delivered personally or if mailed prepaid and registered to: