

Dear councillors,

We observed the discussion of residential right-of-way (RoW) leases during the November transportation committee meeting. We greatly appreciated the depth and breadth of the discussion, as well as the councillors' attention to objectivity and fairness. We wanted to write this follow-up letter for the City Council meeting, to address some points made during the meeting that did not match our experiences and situation.

We have not breached any terms of our actual lease: our lease does not stipulate any height requirements; also, we have paid lease fees to the City annually, which have all been accepted, so the lease should be considered active. Our RoW lease remedies fence placement issues created by previous homeowners, and was signed when we built a new fence.

We would greatly appreciate a City boulevard policy update that takes into account our specific situation, and which does not suddenly change our existing agreements with the City.

We continue to pay the City annually for the lease, and want to renew it

Mr. Magus indicated that our RoW lease is "stale". As the details of what constitute "staleness" were discussed in private, we don't have a full understanding of what the term implies, but we offer our best-effort description of the situation.

- In late 2016, we contacted the Transportation Department about the upcoming expiration of the lease. We were told that there was no problem so long as lease invoices were paid, and were not offered the option of explicitly renewing the lease.
- The City's Transportation Department has continued to issue invoices for our RoW lease, even though the lease has not been officially renewed.
- We have been paying the invoiced amount for a RoW lease every year, and the City continues to accept these payments. Our latest payment applies up to November 2019.

We presume the City is in agreement with the terms of the lease contract, and that it is still valid. There is not much more we can do if the City has not taken steps to update the lease.

Our fence does not violate the lease's height requirements

Mr. Magus stated that we have breached the terms of our lease, because a portion of our fence may not exceed 1.0 metres in height. Ms. Gardiner stated that such terms were indicated as part of the lease agreement, but this is the first time we've come across such a requirement.

- Our lease agreement does not state anything about the expected height of the fence constructed on the City RoW, nor does it actually cite any council policies, bylaws, or other documents about a fence height requirement. (See attached lease)
- When staff from the Transportation (then Infrastructure Services) Department checked our fence plans, they indicated a 2-metre fence height maximum, as well as setback requirements. They did not state anything about any 1-metre height limits.
- Since City Bylaws are now available online, we did some supplemental research.

- Section 5.13 of the Zoning Bylaw (No. 8770), apparently dating from no earlier than 2009, indicates only that **front yard** fences are constrained to a 1.0 metre height, and that **side yard** fences may be up to 2.0 metres tall.
- Although council policy C07-016 (“Lease of City Boulevard”) does indicate that side yard fences should not exceed one metre in height, we are not sure whether this particular clause is up-to-date. The policy dates from 2004, and Bylaw 8770 is about five years newer.
- The City has constructed many masonry walls in our community, including along Briarwood Rd. and Briarvale Rd. (see, for example, Figure 3). They can effectively create side yard fences that are also about 2 metres tall.
 - When we planned our fence, we followed the examples of the City-constructed walls and our neighbours’ fences.
 - We don’t see how a 1 metre side fence height maximum could be enforced without the existing City-built masonry walls creating a double standard.

Our RoW lease remedies the mistake of a previous property owner, and we obtained City approval before constructing a new fence

During the council meeting, it was implied that our residential RoW leases was requested retroactively, after we had made a mistake when constructing a fence. This does not accurately describe our situation.

- When we purchased our property in 2007, it already had a fence constructed in the City’s boulevard RoW, directly adjacent to the sidewalk. Historical satellite imagery indicates that this fence predates 2004. (See Figures 1 and 2)
- As first-time homeowners in Canada, we did not realize that the existing fence was constructed in the City’s boulevard RoW, without approval.
- In 2011, because our fences were starting to look worn out, we hired professionals to build new fences.
- Right after our old fence was torn down, the City sent a slip of paper informing us that our fence had been constructed on a City boulevard, and we could not just construct a new fence on the same location. It offered no aid nor recourse.
- We were in a difficult situation because, at the time, we had no backyard fence at all, meaning no privacy on a corner lot. The existing landscaping in our backyard meant that it would be difficult to manoeuvre a fence right at the property line boundary. Winter was also approaching soon.
- The process of resolving this encroachment was long; we spent many days looking for the right people at the City who were able to resolve our situation.
 - The solutions offered to us were to either lease or purchase the piece of land. We chose to lease the land because it offered a faster turnaround time.
- City employees were careful to verify both our fence plans and the actual constructed fence.
 - We waited for our fence plan (including height and alignment) to be approved before we asked the fencing company to begin construction.

- The Transportation (then Infrastructure Services) Department needed to verify that our fence was correctly built before it could finalize and issue the lease.

A retroactive policy change would unfairly penalize us

Our fence was carefully examined and fully approved by the City in 2011. We believe the Transportation Department's current proposal, of a sudden change in policy, would be unfair to us.

- We have never constructed (or ordered construction of) a fence that encroached without permission into the City's RoW. We were simply trying to rebuild an aging encroaching fence placed by a former property owner.
- The location of our current fence, in the City boulevard, is due to our backyard's existing landscaping, as placed by a previous property owner. This landscaping affects where a fence can be easily placed.
- We feel it would be unfair for us to bear the financial burden of a council policy that affects existing construction.
- According to our research, when other cities in Canada change enforcement standards for encroachments, the new standards only apply to newly-created encroachments, not any that had already existed. Some cities explicitly include grandfather clauses in their encroachment bylaws.

We are unable to install central air conditioning without a RoW lease

One reason we applied for a RoW lease was to create a space where we could install an air conditioning unit. This allowance is explicitly stated in the lease. (See attached lease)

- Given the exterior layout of our property and the location of our utility room, an AC unit cannot be installed elsewhere.
- Placing an AC unit in a publicly accessible area is unsafe for passersby (especially children), and also exposes the unit to possible damage.
- Air conditioning units, and their accompanying ductwork, cannot be easily relocated. This seems to imply an understanding that our lease would be in effect for a more extended period of time.

We have not yet installed an AC unit, because HVAC professionals have advised us to wait until we need to replace the furnace, and add the AC unit then. Our furnace is close to 30 years old and will need to be replaced very soon. Terminating the RoW lease would make it infeasible to install this AC unit.

Especially given the number of informal encroachments and private uses of City boulevards, we can't help but feel disproportionately and unfairly penalized by the Transportation Department's proposed termination of our RoW lease. We took the time to work with the City to discover and agree upon a non-disruptive alignment for our fence. We arranged our RoW lease with the City, despite construction schedule time pressure.

We have since received compliments from neighbours about the aesthetics of our new fence. We have always taken the effort to look after the City boulevard adjoining our property, including removing sidewalk snow even past the property line, both before and after the lease was signed.

When we applied for our lease in 2011, it was presented to us as a viable long-term solution to our unique situation. Should our RoW lease be terminated due to arbitrary actions, it would create a frustrating lack of consistency. We would greatly appreciate not having to endure another ordeal of fence construction only a few years after our last one.

Best,
Jian Liu and Ping Dong



Figure 1: Google Street View imagery of the fence constructed by a previous homeowner, circa 2009. This is the earliest-available Street View imagery of our property.



Figure 2: DigitalGlobe satellite imagery, obtained using Google Earth, of the fence on the property, circa 2004, as constructed by a previous homeowner. One can make out that the backyard fence (boxed in red) originally ran right next to the sidewalk.



Figure 3: Google Street View imagery, circa 2015, of a City-constructed masonry wall facing Briarvale Rd., close to the corner with Briarvale Bay. This masonry wall is above 1.0 m in height, and runs extremely close to a sidewalk.