

New fence bylaw would strike ?balance? when it comes to property rights

By Brock Weir

It might be too late to address the fracas that started it all, but changes to Aurora's fence bylaws would strike a ?balance? when it comes to property rights down the line.

Council is set to approve a number of measures this week that would include the rights of property owners in existing legislation on the construction and placements of fences.

Municipalities nowadays generally regulate the height and description of fences when it comes to pool enclosures, but, in Aurora, bylaws are currently silent on the placement of fences when such a fence would restrict a neighbour's access to their own property. This came to a head earlier this year with a neighbour dispute on Wells Street, where a property owner petitioned Council for action, illustrating how her neighbour's recently erected fence was only steps from the north wall of her house, impeding not only her access to her own property, but the access of utility providers.

While the new provisions will not be retroactive, they will go towards similar situations popping up again.

?The Town's Fence bylaw does not currently contain provisions that would restrict the erection of fences where access to adjacent properties would be impeded,? said Techa van Leeuwen, Aurora's Director of Corporate Services. ?In the older parts of Town, there are some properties where buildings were constructed prior to any zoning bylaw being in place and buildings may be located in close proximity to the property line. In these situations where a building is less than two feet to the property line and an adjacent property owner erects a fence on or just inside his/her property line, maintenance and repair of the building will be difficult and/or impossible without removing [a] section of the fence.

?Staff are proposing that portions of any fence erected within two feet of a building on an adjoining property be constructed with either removable panels or hinged to provide reasonable and ease of access to adjacent property owners for the purpose of maintenance and repair.?

The changes were approved at the Committee level last week and are up for final approval at this week's Council meeting, but they nevertheless raised questions.

Councillor Wendy Gaertner, for instance, questioned why Aurora couldn't require people to get permits for every fence they want to put up.

There is nothing preventing Aurora from going down that road, said Ms. van Leeuwen, but it would be costly.

?If you consider we have about 20,000 residential properties in the Town of Aurora, it would be extremely taxing on our resources and the ability to deliver that service,? said Ms. van Leeuwen. ?We would require additional staff because almost every property has a fence.?

Councillor John Abel's concerns harkened back to this winter's discussion over the contentious Wells Street fencing issue.

?The owner, when they are building a fence that is less than two feet to the property line, the suggestion is there would be the ability to maintain and repair the [adjacent] building,? he said. ?Are you saying that if they are going to build a fence, they will need to allow for maintenance of the building they are blocking??

What Ms. van Leeuwen said her department was suggesting is when a fence is built in cases like these, a portion of the fence would need to be built in order to accommodate removable or hinged panels to allow for easy access to the neighbourhood property line.

If a neighbour registered a complaint with the Town, she added, the municipality would go out to investigate. If a fence was found to be non-compliant, ?enforcement action? would then be taken.

Councillor Jeff Thom, on the other hand, said that while removable or hinged panels might be in place, the proposed changes do not speak to fence posts that might be in the way of a neighbour redoing their siding or repainting their homes.

?If we had removable panels or panels that were hinged completely open, then I don't think maintenance would be that difficult to work around because you would be working around that post,? replied Ms. van Leeuwen.

Councillor Paul Pirri had concerns similar to Councillor Thom's, noting that hinged panels would give one neighbour an advantage when it came to accessing a property.

?If you're putting in swinging arms,? he said, ?you can't swing both ways.?