



Development Appeals Board
Appeal Hearing

**DECISION OF THE WHITE CITY DEVELOPMENT APPEALS BOARD HEARING HELD AT 6:30 P.M.
TUESDAY, AUGUST 29, 2023 TO HEAR APPEAL NO. 02-23 PERTAINING TO
35 STARDUST BAY, WHITE CITY, SK**

Panel: Dennis Gould, Chair
Bill Wood, Board Member
Cory Schill, Board Member
Larry Grant, Board Member
Glenn Weir, Board Member
Ryan Fletcher, Board Member

Secretary: Cassandra Virgin

Appellants: [REDACTED], Property Owner

Respondents: Chace Kozack, Development Officer, Town of White City

Introduction:

- 1) This Appeal pertains to an Order to Remedy issued for a non-permitted use. Per subsection 2.10.5(2) of *The Zoning Bylaw*, pertaining to the powers of the Development Appeals Board (Board), it states, "nothing in this section allows a Development Appeals Board to vary a refusal to grant a use or an appeal for a use or intensity of use not permitted in a district."

Per the Town's *Zoning Bylaw*, a ditch area must be landscaped using grass only. Any other substance would be considered not permitted. As stated above, the Board does not have the authority to grant a use or vary a refusal for non-permitted uses and therefore, in this case, the Board does not have the authority to overturn the initial denial rendered by the Town.

- 2) Notwithstanding the provision previously stated, the Board has the obligation to hear appeals for Order to Remedy's. The decision rendered will capture the arguments presented but will not contemplate approval or denial of a variance for a non-permitted use.
- 3) Once those who can be heard have made their presentations, the Board may reserve its decision.
- 4) Appellant will receive the Board's written decision by registered letter or email within 30 days of the hearing.
- 5) Notice of this appeal has been provided to property owners within a 75m radius of the subject property to allow them the opportunity to assess whether they will be injuriously affected by the proposed zoning variance. Two email submissions were received. One in support and one against.

- 6) This hearing was held in conjunction with Appeal No. 03-23, pertaining to the neighbouring property of 37 Stardust Bay. Both appeals refer to the same issue and are substantially the same in their submission.
- 7) Appellant [REDACTED] Appeal No. 02-23 and [REDACTED] of Appeal No. 03-23 presented their argument together.
- 8) The findings presented herein will be reflected in both appeal decisions.

Appellants Position:

- 9) The Appellants seek relief from an Order to Remedy issued for having non-conforming ditch area landscaping as stipulated in the Town's *Zoning Bylaw*.
- 10) The Appellants have landscaped the ditch area with non-permitted material (crusher dust) instead of the permitted material (grass).
- 11) The Town maintains that the reason the ditch area must be landscaped with grass is so as not to hinder drainage. Alternative materials, meaning, anything other than grass, have the potential to cause drainage problems. However, the Appellants assert that in the five years of having crusher dust in the ditch area it has not posed any drainage problems or concerns whatsoever for either property.
- 12) The Appellants shared that on October 13, 2017, after the Town assumed responsibility from subdivision developer, the Town made drainage improvements to the development. The Appellants both signed a contract stipulating that they would cede a \$400 "ditch deposit" to the Town for completion of re-grading and re-sodding work to be done on behalf of the Appellants. The Town re-graded and re-sodded some properties front yards and planted trees in the bay area green space at Stardust and Dawn Bay. During this work, a Town Representative offered to install culvert systems in the Bay including between properties at 35 and 37 Stardust Bay through a third-party contractor. Both Appellants expressed an interest, but no contact or further discussions occurred.
- 13) Shortly thereafter, a culvert, landscaping, and sod were installed between properties 35 and 37 Stardust Bay without further consultation. It remains unclear what drainage issues each property faced during the re-grading, but the new sod placed in the ditch area was sporadically watered by the Town during the early-mid fall installation, which was less than ideal.
- 14) In addition to the above arguments, it is the opinion of the Appellants that the Town's application of the term "ditch area" is inaccurate in this case. Due to the installation of a drainage-supporting culvert between the properties at 35 and 37 Stardust Bay, as well as the subsequent backfilling and grading of the landscaping to enhance drainage, the designated area should no longer be categorized as a "ditch" or a "ditch area." Further, the "ditch area" in question as referred to in Section 3.2.5(3) of the Town's *Zoning Bylaw* is not by general working definition "a ditch".

The Zoning Bylaw does not define the word “ditch.” Instead, the application of the word “ditch” is left to the opinion of Town Officials to regulate and is not open to interpretation from an outside party.

- 15) Following the completion of the Town’s work, the Appellants took measures to enhance their property aesthetics. The Appellants found that though the grade followed proper requirements and drainage was supported by the newly installed culvert, the maintenance of the grass between the properties proved to be challenging due to various factors including, the absence of sidewalks, coupled with narrow public roadways, exposed the first foot of grass adjacent to the road to damage from road salts and vehicles and difficulty with watering the ditch area grass as installation of underground sprinklers between the properties was not possible.
- 16) As a solution to the considerable upkeep the “ditch area” grass landscaping required, the Appellants installed underground weeping tile from eaves troughs to driveway grates to further support drainage and opted to replace the grass with crusher dust as a suitable aggregate to support drainage due to its lightweight and porous nature.
- 17) The Appellants assert that the transition from grass to crusher dust further improves the aesthetics of the Town image along with sightlines in the area as the ditch area is continually tidy due to the low maintenance nature of rocks.
- 18) It is the Appellants’ opinion that the Town’s *Zoning Bylaw* is flawed with regards to ditch area landscaping and a review of the requirements should be undertaken by the Town.

Respondent’s Position:

- 19) The Development Officer does not have the authority to grant minor variances within any Zoning District.
- 20) An Order to Remedy, dated July 20, 2023, was issued following a property inspection on June 22, 2023. This inspection found that the Appellants’ ditch area landscaping did not comply with *Zoning Bylaw* regulations. Specifically, non-permitted materials (crusher dust) were found in the municipally owned portion of the road right-of-way adjacent to the appellant's front property line, known as the Town's ditch area.
- 21) To address a matter of contention, while the term "ditch" lacks a formal definition in the Interpretation section of *The Zoning Bylaw*, it is understood and continues to be applied by Town Officials to mean the segment of Town property extending from the road's edge to the property line of the front yard. This space serves the purpose of supporting the Town's natural drainage system and as stipulated in Section 3.2.5 of *The Zoning Bylaw*, must consist exclusively of grass.
- 22) In 2017, the Appellants forfeited their ditch deposit to the Town as part of an agreement to address drainage issues. The Town completed custom work in the ditch area, setting proper elevations and installing grass in the ditch area as per requirements.

- 23) In October 2018, 35 Stardust Bay applied for their landscaping permit and following inspection and was approved. The Appellant from 35 Stardust Bay received a landscaping deposit refund. However, sometime later after the approval for landscaping had been given by the Town, the Appellant replaced the grass in the ditch area with crusher dust bringing the property into non-compliance with *The Zoning Bylaw*.
- 24) Separately, the Appellant from 37 Stardust Bay applied for a landscaping permit and corresponding inspection, however, was immediately denied because the landscaping plan did not show grass in the Town's ditch area. The Appellant of 37 Stardust has not received their deposit.
- 25) The Development Officer is aware of other properties in the Town with non-permitted materials in their ditch areas. These cases will be handled similarly. To streamline administrative efforts, the Town is addressing these non-conforming properties gradually, rather than all at once.
- 26) The Development Officer lacks the authority to grant relief from Zoning Bylaw requirements for landscaping materials in the Town's ditch area, similar to minor variances for construction projects.
- 27) The Respondent had no further information to share outside of the Planning Report.

Reasons & Issues:

- 28) Per subsection 2.10.5(2) of *The Zoning Bylaw*, pertaining to the powers of the Board, it states, "nothing in this section allows a Development Appeals Board to vary a refusal to grant a use or an appeal for a use or intensity of use not permitted in a district."

Per the Town's *Zoning Bylaw*, a ditch area landscaping must be grass. Any other substance would be considered not permitted. Therefore, the Board does not have the authority to contemplate issuance of a variance in the Appellants' case.

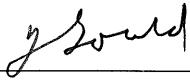
- 29) The Board recommends that the Appellants engage in constructive dialogue with the Town Officials to explore alternative solutions to meet their landscaping requirements beyond the 'grass-only' mandate. Specifically, it is suggested that the Appellants propose an alternative grass-like material such as AstroTurf to xeriscape the ditch area.

Conclusion:

- 30) Per subsection 2.10.5(2) of *The Zoning Bylaw*, pertaining to the powers of the Board, it states, "nothing in this section allows a Development Appeals Board to vary a refusal to grant a use or an appeal for a use or intensity of use not permitted in a district."

Per the Town's *Zoning Bylaw*, a ditch area landscaping must be grass. Any other substance would be considered not permitted. As stated above, the Board does not have the authority to grant use or vary a refusal for non-permitted uses and therefore, in this case, the Board does not have the authority to render a decision in this matter.

31) The Board has heard this case for the Town's record. No decision shall be rendered on this matter. The Order to Remedy issued by the Town remains valid.



Dennis Gould, Board Chair