

Executive Summary

Complaint

The Complainant claimed that his neighbour, a commercial strip-mall property, improperly and contrary to the existing site plan for the plaza property, removed a dense tree line buffer between the plaza property and the complainant's residential property. The removal of the trees exposed the complainant to light and sound emissions and has diminished the enjoyment of his property free from such disturbances. Furthermore, wind, which was no longer blocked by the dense brush of the trees, blew over the line fence and caused damage to his vehicle. The Complainant erected a fence on his side of the property and also planted trees to mitigate the problem caused by the removal of the natural tree line buffer by the Plaza owner. The Complainant holds the City responsible for the damage to, and loss of enjoyment of his property due to the City's unwillingness or inability to enforce the site plan and require the plaza owner to replace the trees it removed in contravention thereof. The Complainant sought compensation for the cost of the trees and fence, and an apology.

Findings

Though the unfortunate situation remained unresolved from the perspective of the Complainant, it cannot be reasonably argued, nor do I find, that the City acted unreasonably in attempting to achieve compliance. The evidence provided by the City demonstrates significant (even if futile) efforts to resolve this matter. Its inability to do so (noting that the plantings remain an ongoing matter and have been partially fulfilled) was not due to a lack of effort or incompetence, but due to circumstance. Where the City may have improved in its handling of this case is in communicating these difficulties to the Complainant, which appears not to have been sufficiently or effectively.

It is my conclusion that the situation of the removed tree line buffer is a matter of site plan enforcement, and that the City of Burlington acted reasonably in attempting to achieve compliance in a difficult and complex legal and practical situation largely beyond its control. I do not find that the City erred in its handling of this situation – though I note City staff could probably have found a way to communicate more clearly with the Complainant about the difficulties the City was facing in regard to enforcement (though I also note there are likely compelling legal reasons, including privacy and privilege, as to why any such communications would have to be limited and may still not provide significant clarity in any event).

To be clear, I find it is wholly within the Municipality's discretion to determine the reasonable course(s) of action to achieve compliance with its site plan and by-law and point out that this discretion, subject only to a municipality acting unreasonably, has been upheld by the courts. I do not find this to be a case of unreasonableness, and accordingly make no findings against the City of Burlington.

Recommendations

I accordingly make no recommendations.