

K. F. Carbone  
2710 West 49<sup>th</sup> ½ Street  
Austin, TX 78731  
September 8, 2010

Board of Adjustment  
City of Austin  
P.O. Box 1088  
Austin, TX 78767

Re: CASE #C15-2010-0088

Mr. Benjamin T. White's Interpretation Appeal for fence height allowance at 4921 Bull Creek

Dear Chair and Members of the Board of Adjustment,

My property is adjacent to 4921 Bull Creek. I ask that you reject Mr. White's request for an Interpretation Appeal to maintain his fence height in excess of 6-ft. because it fails to meet any of the findings of fact required by the Board of Adjustment:

- The elements required by City Code Section 25-2-899(E) have not been met, and no credible evidence has been presented to the contrary. Director Greg Guernsey verified that the required elements do not exist by personally inspecting the property in question as attested to in Mr. White's Interpretations Application. Assistant Director Leon Barba made no such visit to the property and relied solely on misleading information supplied by Mr. White and his attorney. Any difference of interpretation by Mr. Guernsey and Mr. Barba is due solely to the different set of facts available to each at the time of their decisions.
- Required facts for granting an appeal are not in evidence. There are five contiguous properties that are virtually identical to the property in question. There are no fences taller than 6-ft. within two blocks of the property in question. Therefore, granting the Interpretation Appeal would "grant a special privilege to one property inconsistent with other properties or uses similarly situated".
- The fence ordinance contains limited exceptions permitting residential fences higher than a 6-ft. average, and the property in question does not meet any of these requirements. Therefore, granting the appeal would permit a use of the property out of character "with the uses enumerated for the various districts and with the objectives of the district in question". Reasonable uses stated by Mr. White in his separate variance appeal (currently before this Board) are all met by a 6-ft. privacy fence.

In addition, the applicant has failed to provide available evidence in an attempt to mislead this Board. Please see the attached document, *Refutation to Interpretation Appeal for 4921 Bull Creek*, for details.

Thank you for your consideration and for your service to Austin.

Sincerely,

  
K. F. Carbone

Encl: Refutation, supporting documents

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Mr. White fails to tell the whole story in his Interpretation Appeal. A refutation of his claims and the pertinent evidence, including a chronology of events, is presented below (Mr. White's claims appear in bold type, followed by documented refutations).

**Pg. 1, ¶1: “I feel the correct interpretation is that the eight foot fence in question is in compliance with City Code Section 25-2-899 (E) as the elements thereof are met by the conditions existing on my property”**

This is a false statement: these conditions do not exist as verified by an inspection of the property by Director Greg Guernsey (see pages 3 & 4, *Attachments A & B: Guernsey Email and Guernsey Letter of Intent to Suspend*).

**Pg. 2, #1 Instructions: “reasonable doubt of difference of interpretations”**

Mr. White's answer never addresses the “reasonable doubt of difference” as required by the instructions for this item and thus causes his application to fail.

**Pg. 2, ¶1 of #1: “Specifically, in his letter, Mr. Barba unequivocally states”**

Mr. White fails to provide the evidence Mr. Barba used to make his decision (see page 5, *Attachment C: Cihock Map*). The access points—structures purportedly adjacent to the property line—are in actuality five and ten feet away from the property line. This erroneous information was provided by Mr. White and his attorney (see page 6, *Attachment D: Barba Meeting Transcript*). Mr. White also fails to state that the original building permit was obtained after the fence was built (see page 7, *Attachment E: Fence Chronology*), that the permit was originally issued based on City Code Section 25-2-899(E)(1) rather than (E)(2) (see page 8, *Attachment F: Fence Ordinance* and page 9, *Attachment G: Building Permit*), and that false information was provided to the City for this permit (see page 10, *Attachment H: Cain Email*) as the required slope does not exist according to GIS, and not all of the adjacent property owners gave permission (see page 11, *Attachment I: McDonald Chronology* and page 12, *Attachment J: Cihock Email*).

**Pg. 2, ¶2 of #1: “more than a year after the permits were applied for”**

A Code Complaint was filed as soon as the fence was under construction and before the permit was issued (see page 13, *Attachment K: Code Complaint*). The code complaints and ongoing correspondence with City staff show that Mr. White has been successful in delaying, obfuscating, and misleading the City in this matter. The delays in resolving this issue are due to Mr. White's actions.

**Pg. 2, ¶2 of #1: “Subsequent to Mr. Guernsey's inspection of my yard, I received Mr. Guernsey's June 24, 2010 Notice of Intent to Suspend the permit”**

Mr. White fails to mention that Leon Barba also sent a Notice of Intent to Suspend the permit on August 25, 2009 (see pages 14–15, *Attachment L: Barba Notice of Intent to Suspend*).

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**Pg. 2, ¶2 of #1: “Mr. Guernsey has now spontaneously decided”**

Mr. Guernsey is the first PDRD official to personally inspect the conditions existing on Mr. White’s property. The evidence that there are no structures permitting access by a child and no hazardous conditions on the property allowed Mr. Guernsey to confirm that the ordinance precluded a fence higher than an “average height of six feet or a maximum height of seven feet” (see page 8, *Attachment F: Fence Ordinance*). Mr. Barba’s interpretation was based on erroneous information.

**Pg. 2, #2: [entire paragraph]**

Mr. White makes many claims here without offering any proof. To the contrary, an 8-ft. fence (i) does change the use of the property in a way not permitted by ordinance, (ii) does affect the surrounding properties, (iii) is inconsistent with the height of other fences in the neighborhood which are 4-ft. chain link or 6-ft. privacy, (iv) was not consented to by all the neighbors (*Possible Forgeries* document available on request), (v) violates the fence ordinance, (vii) was built before the permit was obtained fraudulently as described above, and (vii) serves no valid purpose or reasonable use that is not served by a legal 6-ft. privacy fence as demonstrated by other properties in the neighborhood.

**Pg. 2, #3: “numerous other properties in my neighborhood on which 8’ privacy fences have been constructed”**

This is a misleading and specious argument. There are five contiguous properties that are virtually identical to White’s property, and none of them has a fence higher than 6-ft. In fact, there are no fences taller than 6-ft. within two blocks, other than a tiny section between two houses that blocks an offensive outdoor light. Mr. White has provided no evidence of these other 8-ft. privacy fences, nor their legality if they do exist.

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**Attachment A: Guernsey Email**

**RE: No Response from Director Greg Guernsey and Ongoing Incompetence of City Staff & Fw:  
Improper Notice of Public Hearing, BOA Case # C15-2010-0039**

Monday, June 14, 2010 5:00 PM

From: "Guernsey, Greg" <greg.guernsey@ci.austin.tx.us>  
To: "David Orshalick" <dorshalick@yahoo.com>  
Cc: "Ott, Marc" <Marc.Ott@ci.austin.tx.us>, "Kata F. Carbone" <kata@mail.utexas.edu>, crsolms@texas.net, trumanfenton@gmail.com, "Walker, Susan" <susan.walker@ci.austin.tx.us>, "Corpus, Grace" <Grace.Corpus@ci.austin.tx.us>, "Morrison, Laura" <Laura.Morrison@ci.austin.tx.us>, "Edwards, Sue" <Sue.Edwards@ci.austin.tx.us>, "Sandoval, Marie" <Marie.Sandoval@ci.austin.tx.us>, "Birkner, Donald" <Donald.Birkner@ci.austin.tx.us>, "Haught, Kathy" <Kathy.Haught@ci.austin.tx.us>, "McDonald, John" <John.McDonald@ci.austin.tx.us>, "Barba, Leon" <Leon.Barba@ci.austin.tx.us>

Hello David:

I visited Ben White's property last week and had the opportunity to look at improvements and vehicles in his back yard. I also was able to look at the location of the adjoining structures/sheds on the adjacent properties. Based on this information I have decided that the permit for the eight (8) foot fence should not have been issued, because the structures to the north and east are not located close enough to the property line to enable a child to climb over a six foot fence to gain access to the property, and the improvements (fire pit, horseshoe pit, shed) and vehicles (jeep and boats) on Mr. White's property do not create a hazardous situation. This interpretation would also apply to the south property line, although a shed is located in close proximity to Mr. White's property line.

The actions taken by Ms. Susan Walker modifying the Board of Adjustment (BOA) notice for the April meeting and the interpretation of the variance request filed by Mr. White was incorrect and in error. Ms. Walker was mistaken on how this Code section should be applied to this BOA variance application. I will be working with my Staff in the near future to make sure this mistake does not happen again. As I stated previously, Staff does not make a recommendation regarding BOA variance requests. I understand that a new sign was not posted and a revised notice was not sent out for tonight's BOA meeting, because Ms. Walker got this case confused with another case that is on the agenda tonight that should have been posted for the July meeting.

I have contacted legal counsel for Mr. Ben White and informed him via voicemail message of my decision and expect that he will modify his pending BOA application prior to the July meeting. If you have any questions, please contact me via e-mail or at 974-2387.

Greg

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**Attachment B: Guernsey Letter of Intent to Suspend**

**City of Austin**

Founded by Congress, Republic of Texas, 1839  
 Planning & Development Review Department  
 One Texas Center, 505 Barton Springs Road  
 P.O. Box 1088, Austin, Texas 78767

June 24, 2010

Certified: 7006 0810 0002 4210 5480

Mr. Michael Cihock  
 McLean & Howard, LLP  
 1004 MoPac Circle, Suite 100  
 Austin, Texas 78746

RE: **Notice of Intent to Suspend Building Permit No. 2008-051644-BP**

In accordance with City Code Section 25-1-417 (*Notice of Intent to Suspend or Revoke*), this letter constitutes a Notice of Intent to Suspend Building Permit No. 2008-051644 issued July 2, 2008.

In order to avoid suspension of the Building Permit, as authorized by Section 25-1-411 (*Suspension of a Permit or License*), you are required to correct the following code violations on or before August 24, 2010.

Code Violation	Corrective Action Required
<p><b>Section 25-2-899</b></p>	<p>Permit No. 2008-051644 BP was issued in error. The existing 8 foot fence is not in compliance with Section 25-2-899 (E).</p> <p><i>E) A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:</i></p> <p>(1) <i>there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or</i></p> <p>(2) <i>a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.</i></p> <p>Redesign your project or request a variance from the Board of Adjustment.</p>

Please contact Mr. Leon Barba 512-974-7254 or by email at [leon.barba@ci.austin.tx.us](mailto:leon.barba@ci.austin.tx.us) if you have any questions regarding the action required under this Notice.

Sincerely,

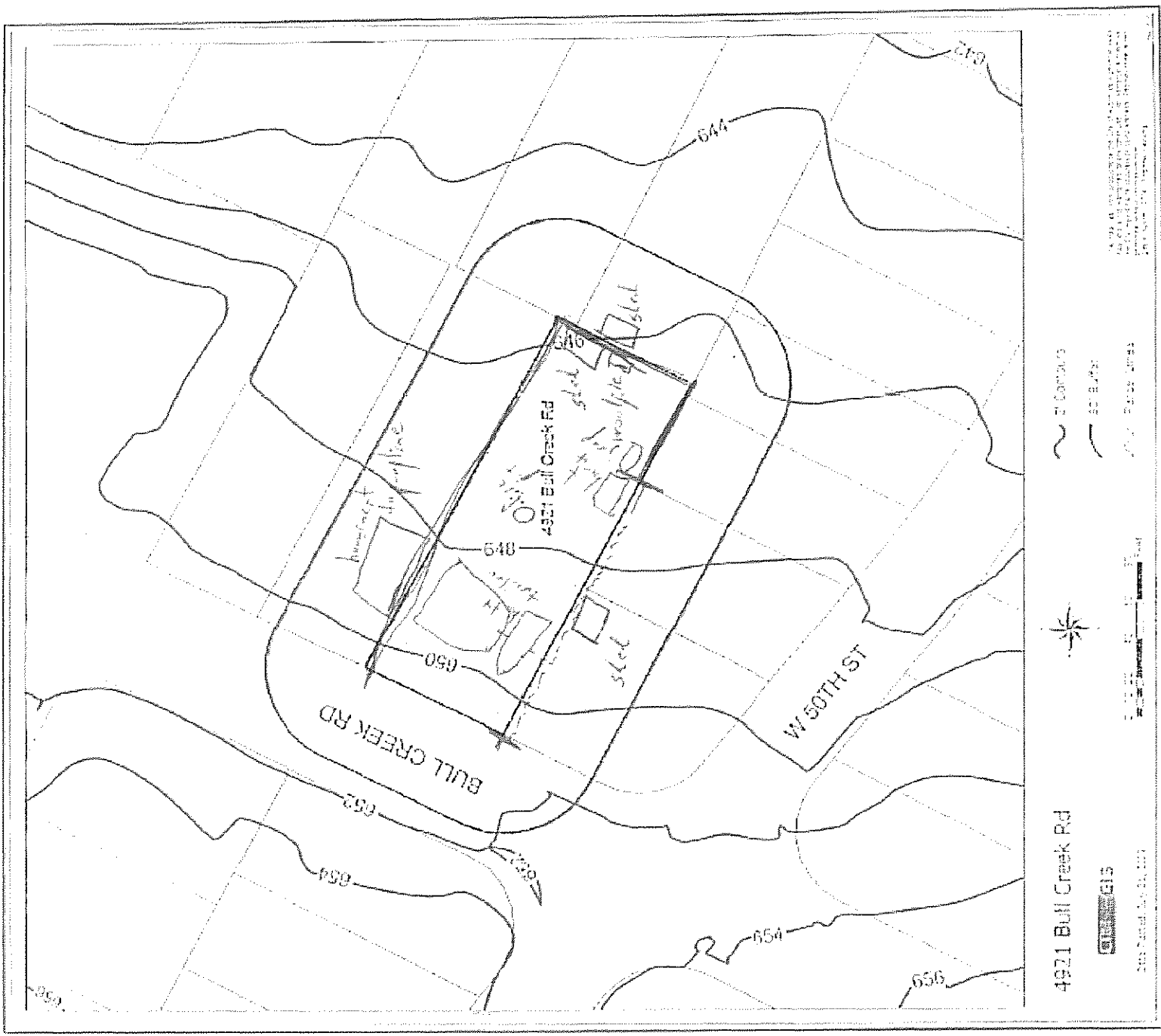


Gregory I. Guernsey, AICP, Director  
 Planning and Development Review Department

cc: Benjamin T. White, 4921 Bull Creek Rd.  
 Leon Barba, PE,

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Attachment C: Cihock Map



© 2013 GIS  
 Map Printed: July 24, 2013

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*Attachment D: Barba Meeting Transcript*

[Excerpts of a meeting with Leon Barba, Fri, 12-Mar-2010, 4:00-4:30 p.m., City Hall room 4101]

David Orshalick: ...what are the structures that exist on the other side of the fence that would reasonably enable a child to climb over a 6-ft. fence?

Leon Barba: There were 2 sheds and a house that they could use to [get over] the fence on the outside.

Leon Barba: That's the information we were presented by the attorney that they had and he indicated that he was not an architect and that's why he went to law school, so I understand that, but this is what he provided us.

David Orshalick: But you're basing that on what Ben White's attorney said?

David Orshalick: Well, Leon, are there photos that show those sheds from an investigator?

Leon Barba: No. They don't show the distance. They do show some sheds. This is the document provided by the attorney.

David Orshalick: So just that little hand drawing on that map.

Leon Barba: Mhm.

David Orshalick: And that's it.

Leon Barba: Yes.

David Orshalick: So as far as we know, there may not be any structures close enough to the fence to constitute access points to the fence for a child to climb over.

Leon Barba: I'm basing my facts on the sketch that was given to me.

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**Attachment E: Fence Chronology**

May 2008—Mr. White builds 8-ft. fence without permit (see page 13, *Attachment K: Code Complaint* and page 16, *Attachment M: Durhman & Bassett Realty Group website* where White is depicted as a real estate development professional)

July 2008—Mr. White receives permit by fraudulently claiming a slope that does not exist, incomplete neighbor permissions, and no site plan (see page 9, *Attachment G: Building Permit*; page 10, *Attachment H: Cain Email*; page 11, *Attachment I: McDonald Chronology*; and page 12, *Attachment J: Cihock Email*)

August 2009—Leon Barba sends Notice of Intent to Suspend the permits (see pages 14–15, *Attachment L: Barba Notice of Intent to Suspend*)

November 2009—Mr. White presents fraudulent evidence to Leon Barba (page 5, *Attachment C: Cihock Map* and page 6, *Attachment D: Barba Meeting Transcript*)

December 2009—Leon Barba issues letter of Administrative Decision but illogically rules two different ways on the same conditions for different parts of the fence (see page 17, *Attachment N: Barba Administrative Decision* and page 18, *Attachment O: Adjacent Properties*)

December 2009—White’s attorney responds in a letter to Leon Barba that Mr. White “intends to request a variance from the Board of Adjustment... as quickly as possible.”

March 2010—Mr. White files first variance request with BOA

June 2010—Greg Guernsey visits White’s property, gathers evidence, and issues Notice of Intent to Suspend the permits (see pages 3 & 4, *Attachments A & B: Guernsey Email and Guernsey Letter of Intent to Suspend*)

July 2010—Mr. White files amended variance request and interpretation appeal

July 2010—Mr. White asks BOA for postponement to September meeting



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**Attachment F: Fence Ordinance**

§ 25-2-899 FENCES AS ACCESSORY USES.

- (A) Except as otherwise provided in this chapter, a fence:
- (1) is permitted as an accessory use in any zoning district; and
  - (2) must comply with the requirements of this section.
- (B) In this section:
- (1) an ornamental fence is a fence with an open design that has a ratio of solid material to open space of not more than one to four; and
  - (2) a solid fence is a fence other than an ornamental fence.
- (C) The height restrictions of this section do not apply to an ornamental fence.
- (D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.
- (E) A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:
- (1) there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or
  - (2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.
- (F) A solid fence may be constructed to a maximum of eight feet in height if the fence is located on or within the building setback lines.

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**Attachment G: Building Permit**



**BUILDING PERMIT**

PERMIT NO: 2008-051644-BP  
 BULL CREEK RD

Type: RESIDENTIAL Status: Final  
 Issue Date: 07/02/2008 EXPIRY DATE: 07/24/2008

LEGAL DESCRIPTION  
 Lot: A Block: Subdivision: WILLIAM SCHOENERT ANNEX

PROPOSED OCCUPANCY: WORK PERMITTED: Remodel

ISSUED BY: Angelica Yanez

ZONING  
 SF-3

new 8' privacy fence around perimeter of property

TOTAL SQFT	VALUATION	CONST. TYPE	USE CAT.	GROUP	FLOORS	UNITS	# PARKING SPACES
Remodel: 0	Tot Val Rem: \$12,000.00		435		1	1	
TOTAL BLDG. COVERAGE	% COVERAGE	TOTAL IMPERVIOUS COVERAGE	% COVERAGE	# OF BATHROOMS	METER SIZE		

**Contact**  
 Owner, Benjamin White  
 Billed To, Benjamin White  
 General Contractor, Benjamin White

**Telephone**  
 (512) 413-3992  
 (512) 413-3992  
 (512) 413-3992

Description	Fee Amount	Paid Date
Building Permit Fee	\$135.00	07/02/2009
<b>Total Fees:</b>	<b>\$135.00</b>	

**Inspection Requirements**  
 Building Inspection

All Buildings, Fences, Landscaping, Patios, Flatwork And Other Uses Or Obstructions Of A Drainage Easement Are Prohibited, Unless Expressly Permitted By A License Agreement Approved By COA Authorizing Use Of The Easement.  
**Section 25-11-94 Expiration and extension of permit (Active Permits will expire 180 days at 11:59:59 pm after date of last inspection posted). If you allow this permit to expire, you will be required to submit a new application & pay new fees.**

The following permits are required as a separate permit: See Mechanical, Electrical, Plumbing permits for Related Fees and Inspections.

**Comments**  
 letters have been obtained from adjoining neighbors granting permission to erect the fence. Change of grade of at least 2 feet along 50 foot linear line. Some areas of fence will be at 6'.

Residential Zoning Review

Date: 07/02/2008  
 Reviewer: Darren Cain

By Accepting Or Paying For This Permit You are Declaring That You Are The Owner Or Authorized By The Owner That The Data Submitted At The Time Of Application Was True Facts And That The Work Will Conform To The Plans And Specification Submitted Herewith.

CASE #C15-2010-0088

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**Attachment H: Cain Email**

From: Cain, Darren  
Sent: Friday, June 12, 2009 2:44 PM  
To: Sandoval, Marie  
Cc: McDonald, John; Barba, Leon  
Subject: RE: Question for you...

Hi Marie,

In looking thoroughly at the code language, the permits and the history of complaints I think I am prepared to offer an answer for both questions posed. As far as the averaging of the entire fence, I did not review the plans in that way. I think in looking at the code more closely, it looks as if I should. I cannot determine whether or not the entire fence is seven feet in height or if the average exceeds six feet with what I have here. I do know, however, that staff practice on issues such as this has been consistent with the way I reviewed this fence.

As far as being eight feet tall and having the neighbors issue their approval, I see that there are a number of scanned documents with the first fence application that seem to validate permission from all adjoining neighbors. On matters such as this, we pretty much rely on the applicant to provide us with the names of the owners of these properties. What I do is look into our GIS and confirm how many adjacent properties are bounded by the 8 foot section of the fence and then look for those signatures. It is very difficult for us as a review team to individually confirm who the owners of those properties are. So, as with many pieces of information we leave that to the applicant, who must sign the application (Stating that all information is true) in order to get a permit.

As far as a measurement method, the way that I have been told is to again use GIS and turn on the contour overlay. From the property line where the fence is placed we measure out a 50 ft diameter in all directions. The contour lines in our GIS are in 2 foot increments. Obviously, this method of measurement could open up both sides of the argument, for or against. The complainant's charge that there is no change in grade is erroneous, since there is clearly a change in grade per GIS. To my knowledge, there is not an obstacle that would allow a child to jump the fence on this property.

Please let me know if any of you have any questions or need clarity on any of this.

Have a good weekend!

Darren Cain  
Planner I  
City of Austin - Watershed Protection and Development Review Dept.  
(512) 974-9113  
darren.cain@ci.austin.tx.us

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*Attachment I: McDonald Chronology*

**4921 Bull Creek Road Fence Chronology**

**July 2, 2008** A residential application for an 8' privacy fence was submitted and approved. The notes in AMANDA state that letters were obtained from the adjacent property owners and there was a 2' change in grade within 50' of the property. Notes in AMANDA also state some areas of the fence will be 6'.

**July 24, 2008** The final inspection of the 8' privacy fence was performed.

**April 7, 2009** A residential application for a 7' wood fence along the southern property line was submitted and approved. Notes in AMANDA state code section 25-2-899 (D) allows for this fence to be permitted.

**June 9, 2009** I received an email from Marie Sandoval inquiring about the two fence permits that were issued at 4921 Bull Creek Road.

**June 9, 2009 To June 19, 2009** During this time I spoke with the reviewer and found out the project was not in compliance with the following provisions:

1. The subject property does not have a change in grade of 2' within 50' of any portion of the property or adjacent property. **A variance from the Board of Adjustments will be required.**
2. The second application for the 7' wood fence will never meet the requirement of an average of 6' since 60% or more of the lot has an eight foot fence. **A variance from the Board of Adjustments will be required.**
3. Neither application has a plot plan showing the locations or sizes of the proposed fence, which is required.

**June 23, 2009** Donald Klesel of Building Inspections went to the site and confirmed fence locations and height. This reaffirmed that the 7' wood fence was not compliant as issued due to the amount of 8' fence located on the perimeter of the property.

**July 14, 2009** Leon Barba, Kathy Haught, Donald Klesel and Darren Cain met with the property owner and his attorney and told them there were problems with both permits. At this time we had to confer with the Law Department on one issue and get back with the property owner. "(D) Except as otherwise provided in this section, a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet." The Law Department stated that there are two separate and distinct height requirements in the problem sentence and that both would apply. No stand alone seven foot fences are allowed because they must have portion under seven that make an overall average of six feet.

Dan McNabb put a hold on the 7' wood fence inspection after the site visit.

**July 20, 2009** I called the property owner to tell him about the compliance issues with both permits and he referred me to his attorney for any further communication on the matter.

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**Attachment J: Cihock Email**

**From:** Mike Cihock [REDACTED]  
**Sent:** Friday, November 13, 2009 1:23 PM  
**To:** Barba, Leon  
**Subject:** RE: 4921 Bull Creek - Ben White  
**Attachments:** Donald Coffee Signature.pdf; Ernesto Blanco Signature.pdf

Leon:

Ahead of our meeting, attached please find the final signatures required for the approval of the 8' fence sections. I will also be bringing photographs to the meeting. Tried to attach them but not effective.

Michael

Michael J. Cihock  
McLean & Howard, LLP  
1004 Mopac Circle, Suite 100  
Austin, Texas 78746  
Telephone (512) 328-2008  
Facsimile (512) 328-2409

**Attachment K: Code Complaint**



**City of Austin**  
**Code Compliance Department**  
**Summary of Complaint CC-2008-036233**

**COMPLAINT INFORMATION**

**Case Status:** Closed

**Address:** 4921 BULL CREEK RD

**Legal Description:** LOT A SCHOENERT WILLIAM ANNEX

**Property Owner(s):**  
 Benjamin T. White - Owner  
 4921 Bull Creek Road  
 Austin, Texas 78731-5026

**Complaint Date:** May 13, 2008

**Complaint:** citizen states that at this resident citizens are building a 8ft tall fence and this is not legal states citizen, citizen also states that persons at this address is conducting a un licensed archery range. citizen states that he spoke with APD previously.

**Complainant:**  
 In order to maintain open communication with the public, information pertaining to a complainant is withheld as our standard practice. If you desire this information, a Texas State Attorney General's open record decision for withholding this information will be requested.

**INSPECTION INFORMATION**

**Investigator Assignment(s)**  
 Mario Ruiz assigned on May 15, 2008  
 Transferred to Mario Ruiz on May 15, 2008

**Case Log**

DATE	STAFF NAME	ACTION TAKEN
05/20/2008	Mario Ruiz	Inspection Performed
Investigator went to location in regards to the 8' fence and archery range. Met with contractor (won't give name). Contractor stated that Ben White, the owner was not in. Owner was in Las Vegas for a week. Owner could be reached on his cell phone #512-413-3992. Investigator ask if the fence could be looked in to but contractor stated that he could not allow anyone in the back yard without permission. Eight foot fence could only be seen from the side. Photo taken.		
05/27/2008	Mario Ruiz	Owner Contacted
Investigator called and spoke to owner Ben White regarding the archery range and 8' fence. Mr. White stated that he has no archery range but had only shot his bow one time in his back yard that apparently his neighbor saw him and complaint. Since then never shot his bow again. As for the 8' fence, Mr. White stated that he was applying for a variance because he could see his neighbor's living room.		
06/25/2008	Mario Ruiz	Information Update
Investigator has not received any documentation or call or any evidence that a variance has been applied for. Will send an NOV.		

CASE #C15-2010-0088

**Attachment L: Barba Notice of Intent to Suspend**



**City of Austin**

Founded by Congress, Republic of Texas, 1839  
Watershed Protection & Development Review Department  
One Texas Center, 505 Barton Springs Road  
P.O. Box 1088, Austin, Texas 78767

August 25, 2009

Certified: 7005 1820 0003 7584 9270

Benjamin T. White  
4921 Bull Creek Rd.  
Austin, TX 78731-5026

**RE: Notice of Intent to Suspend Permit Nos. 2008-051644 BP and 2009-029382 BP for fences located at 4921 Bull Creek Rd.**

In accordance with City Code Section 25-1-417 (*Notice of Intent to Suspend or Revoke*), this letter constitutes a Notice of Intent to Suspend Permit No. 2008-051644 BP issued on July 2, 2008 and Permit No. 2009-029382 BP issued on April 7, 2009.

In order to avoid suspension of the two referenced permits, as authorized by Section 25-1-411 (*Suspension of a Permit or License*), you are required to correct the following code violations on or before September 4, 2009.

Code Violations	Corrective Action Required
Section 25-2-899	<p>Permit No. 2008-051644 BP was issued in error. The existing 8 foot fence is not in compliance with Section 25-2-899(E).</p> <p><i>A solid fence along a property line may be constructed to a maximum height of eight feet if each owner of property that adjoins a section of the fence that exceeds a height of six feet files a written consent to the construction of the fence with the building official, and:</i></p> <ul style="list-style-type: none"> <li><i>(1) there is a change in grade of at least two feet within 50 feet of the boundary between adjoining properties; or</i></li> <li><i>(2) a structure, including a telephone junction box, exists that is reasonably likely to enable a child to climb over a six foot fence and gain access to a hazardous situation, including a swimming pool.</i></li> </ul> <p>Redesign your project or request a variance from the Board of Adjustment.</p>

***Barba Notice of Intent to Suspend (continued)***

Code Violations	Corrective Action Required
Section 25-2-899	<p>Permit No. 2009-029382 BP was issued in error. The existing 7 foot fence is not in compliance with Section 25-2-899 (D).</p> <p><i>Except as otherwise provided in this section a solid fence constructed along a property line may not exceed an average height of six feet or a maximum height of seven feet.</i></p> <p>Redesign your project or request a variance from the Board of Adjustment.</p>

Please do not hesitate to contact me if you have questions regarding the action required under this Notice.

Sincerely,



Leon Barba, P.E., Building Official  
 Planning and Development Review Department

cc: Greg Guernsey, Director, PDR  
 Don Birkner, Assistant Director, PDR  
 Brent Lloyd, Assistant City Attorney, Law Department  
 Dan McNabb, Building Inspection Division Manager, PDR  
 Michael J. Cihock – McLean & Howard, LLP



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***Attachment M: Durhman & Bassett Realty Group website***

Source: <http://www.dbrealty.net/team.php>

Steve Durhman, President

Steve Durhman serves as President of Durhman & Bassett Realty Group and is one of the founders of the company. Steve's primary focus is retail development and brokerage.

Randy Bassett, Vice President & CEO

Randy Bassett serves as Vice President and Chief Executive Officer of Durhman & Bassett Realty Group and is a founder of the company. Randy's specialties are in the areas of financial analysis and forecasting, contract administration, project marketing and brokerage.

Ben White, Development and Brokerage

Ben White serves in the development, project management, leasing and brokerage capacities at Durhman & Bassett Realty Group. Ben joined D&B in 2008 with 8 years experience in commercial real estate.

Barry Haydon, Brokerage

Barry Haydon serves in both brokerage and leasing capacities at Durhman & Bassett Realty Group. Barry joined D&B in August 2006 with over 14 years of marketing experience. He has a strong track record in all aspects of business development from initial customer contact through negotiating, structuring and closing large complex transactions.

Fred Thomas, Brokerage

Fred H. Thomas serves in both brokerage and leasing capacities at Durhman & Bassett Realty Group. Fred joined D&B in October 2006 with over 25 years of real estate brokerage, development and finance experience. He has a strong track record in the assemblage, entitlement and development of retail properties and has highly developed skills in negotiating, structuring and closing large complex lending, leasing and brokerage transactions.



## City of Austin

Founded by Congress, Republic of Texas, 1839  
Planning and Development Review Department  
P.O. Box 1088, Austin, Texas 78767

### Attachment N: Barba Administrative Decision

December 3, 2009

Certified Mail: 7009 1680 0000 8642 1796

Benjamin T. White  
4921 Bull Creek Road  
Austin, TX 78732

Re: Building Permit Nos. 2008-051644 BP and 2009-029382 BP

Dear Mr. Cihock:

Thank you for the information you provided at our November 16, 2009 meeting.

Following is our decision on the referenced permits:

- The requirements of the City Code for the issuance of Permit No. 2008-051644 BP have been met. The 8 ft. fence is in compliance with Chapter 25-2-899 Fences as Accessory Uses, specifically Section (E) and Section (E) (2).
- The fence permitted under Permit No. 2009-029382 BP is not in compliance with Section 25-2-899 (D). Without the adjacent property owner's approval, the fence along the property line along the south side of Mr. Ben White's property may not exceed an average height of six feet or a maximum height of seven feet. The property line is determined from the beginning of the lot (most westerly corner of the lot) to the end of the lot (most southerly corner).

However, this also means that the section of 8 ft fence on the south property line that was approved under the previous permit cannot be over 7 ft.

You have two options available:

1. Request a variance from the Board of Adjustment at the earliest available meeting or
2. Rebuild the fence in order to achieve an average height of six feet with a maximum height of seven ft.

Please provide a written response of your decision no later than December 11, 2009. If you choose option 2, please provide a time frame for completing the work.

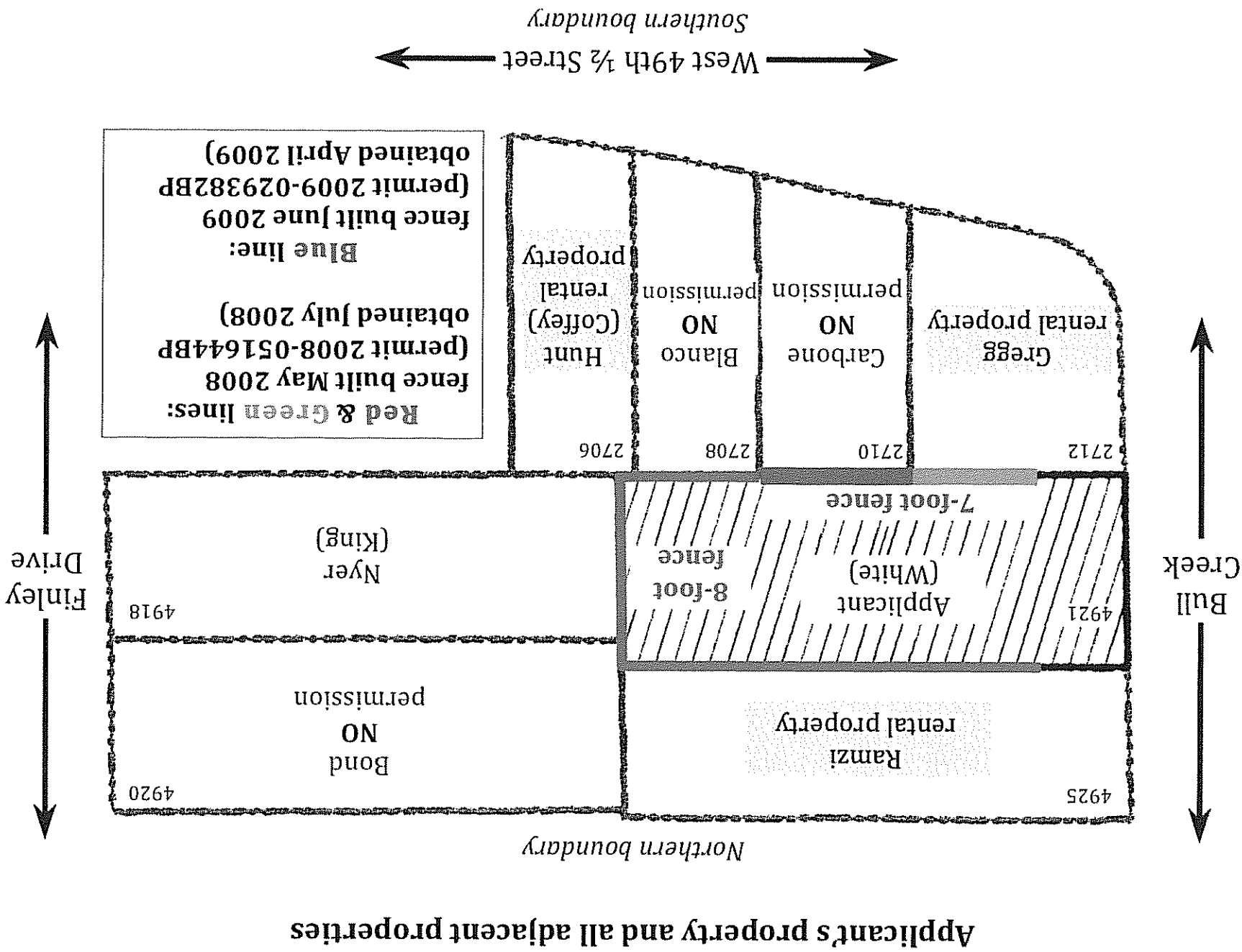
Sincerely,

  
Leon Barba, P.E., Building Official

CC: Greg Guernsey, Director, PDR  
Don Birkner, Assistant Director, PDR  
Brent Lloyd, Assistant City Attorney, Law Department  
Dan McNabb, Building Inspection Division Manager, PDR  
Michael Cihock – McLellan & Howard, LLP

*The City of Austin is committed to transparency with the community with this information and requests that all communications with the City be provided upon request.*

Attachment O: Adjacent Properties



Applicant's property and all adjacent properties