

Request for Decision

Appeal of Order to Remedy - 326 Whittaker Street, Sudbury

Presented To: Hearing Committee

Presented: Wednesday, Jan 15, 2014

Report Date: Friday, Jan 10, 2014

Type: Public Hearings

Recommendation

THAT the City of Greater Sudbury uphold the Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy #448104 issued to Jenalee Pilatzke, owner 326 Whittaker Street, City of Greater Sudbury.

Background

The Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy (herein referred to as "the Order") was issued pursuant to the Building Code Act, S.O. 1992, Chapter 23 as amended, (herein referred to as "the Act").

The Council of the City of Greater Sudbury enacted By-law 2011-277, cited as the "Maintenance and Occupancy Standards By-law" (herein referred to as "the By-law"). This By-law has been passed under the authority of section 15 of the Act and prescribes standards for the maintenance and occupancy of properties within the City and for requiring properties not in conformance with the standards therein to be repaired and maintained to conform to the standards. This By-law was enacted to ensure the safety of residents and the upkeep of properties to prevent the degradation of the community and neighborhoods.

The enforcement and appeal provisions of this By-law are found in the Building Code Act. It provides for inspection powers of the officer, the issuance of an Order, the establishment of a Property Standards Committee, and the procedures for an appeal of the Order. Specific time frames and methods of notification are established in the Act and the powers of the Property Standards Committee are also set out in the Act. Further, the Act provides the authority for those assigned to enforce it the requirement to require owners of the subject property to produce "any thing" to prove the property is in compliance with the By-Law. This includes requiring an engineer's report be produced ensuring the structural integrity of elements of the property, including but not limited to retaining walls.

Signed By

Report Prepared By

Darlene Barker
Manager of Compliance and
Enforcement
Digitally Signed Jan 10, 14

Division Review

Guido Mazza
Director of Building Services/Chief
Building Official
Digitally Signed Jan 10, 14

Recommended by the Department

Paul Baskcomb
Acting General Manager of Growth &
Development
Digitally Signed Jan 10, 14

Recommended by the C.A.O.

Doug Nadorozny
Chief Administrative Officer
Digitally Signed Jan 10, 14

Facts and Evidence Supporting the Order-Presented by Officer Stephen Holt

A request for enforcement was received by Compliance and Enforcement via telephone on August 14, 2013. The complaint involved the structural integrity of a retaining wall separating the rear yards between 326 Whittaker Street and 318 Whittaker Street in the City of Greater Sudbury.

The complaint was assigned case #448104 and assigned to the officer responsible for that area, By-Law Enforcement Officer Stephen Holt, for inspection and follow-up.

On August 28, 2013 Officer Holt attended and inspected the wall separating the rear yards between 326 Whittaker and 318 Whittaker. Photographs of the wall were taken (included). Officer Holt noted that the wall was constructed of fieldstone and pieces of concrete. The wall appeared to have been constructed many years previous in order to allow the rear yard of 326 Whittaker to be filled in, thus raising its elevation above the level of the rear yard of 318 Whittaker. As a result of this, there appears to be a large stress load resulting from the earth on the side of the wall. The material that the wall consists of does not appear to be secured or anchored in place, it appears that only the weight of the rocks are holding the wall in place. It also appeared that the wall had begun to lean into the yard at 318 Whittaker, from the force of the earth behind it.

Officer Holt issued an Order to the owner to repair and make plumb the leaning portion of the retaining wall, and produce a engineer's report indicating that the wall is structurally sound. The requirements of requesting an engineer's report are to ensure compliance with section 2.10(1) of the Property Standards By-law, and are authorized by Section 15.8(f) of the Building Code Act as an inspection power of the Officer. "An Officer may order the owner of the property to take and supply at the owner's expense such tests and samples as are specified in the order."

The Order required the property be brought into compliance with the By-law on or before September 11, 2013. Officer Holt received a phone call from the father of the property owner on September 5, 2013 requesting an extension of the compliance date as the Order had just been received via registered mail by the owner. Officer Holt agreed to a two week extension of enforcement of the Order, to allow the owner to determine their best course of action. On September 25, 2013 Officer Holt received a letter requesting a hearing before the Committee.

Attached to this report for the Committee's review and in support of the recommendation in this report are the following:

1. Four photographs dated August 28, 2013.
2. Certified true copy of the tax roll confirming property owner
3. Copy of Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy Case# 448104
4. Letter from Robert and Rae-Ann Timony requesting a hearing before the Committee.
5. Signed letter from Jenalee PILATZKE authorizing Robert and Rae-Ann Timony, to act on her behalf regarding the Order and the appeal.
6. Letter to Robert and Rae-Ann Timony from Deputy City Clerk dated December 20, 2013.

Conclusion

Section 15.3(3.1) of the Building Code Act sets out the power of the committee on an appeal of an Order. It provides to the committee the same powers and functions of the officer who made the order, and can confirm, modify or rescind the Order, and can also extend the time for complying with the Order, if in the committee's opinion doing so would maintain the general intent and purpose of the by-law and of the official plan or policy statement.











Journals

Date According To:

2014/01/03

**Roll Information**

Roll No. 0570065400000 0

Address 326 WHITTAKER ST

Owners

PILATZKE JENALEE

Legal Description

MCKIM CON 3 LOT 7 PLAN 4S

LOT 272

REG

Mailing Address

326 WHITTAKER ST

6250.00SF 50.00FR 125.00D

SUDBURY ON

P3C 3X9

Mortgage Code

Mortgage Acct#

Group Code

Tax Balance

Tax Levied	Penalty	Adjustment	Payment	Balance
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Projected Balance

Total Owning:

Assessments

+	
-	

Appeals

Archive Trans

Assessments

Audits

Bill Detail

Capping

Collections

Detail

Correspond ☐

Installments

Local Charge

PAP

Ph-In/Def

Phone,Email... ☐

Post Dated

Receivables

Remarks ☐

Schedules

Tax Sale

Transactions

Vacancy

PO BOX 5000 STN A
200 BRADY STREET
SUDBURY ON P3A 5P3

CP 5000 SUCC A
200 RUE BRADY
SUDBURY ON P3A 5P3

ORDER TO REMEDY
NON-CONFORMITY WITH STANDARDS
FOR MAINTENANCE AND OCCUPANCY

Issued pursuant to section 15.2(2) of
The Building Code Act, S.O. 1992, chapter 23, as amended.

		Case #448104
Date of Inspection: August 28, 2013	Time:1125 hrs	By-Law No.:2011-277
Municipal address or legal description of property X Occupied Unoccupied		
326 Whittaker St Sudbury, ON		
Name of owner/occupant and mailing address		
Jenalee PILATZKE 326 Whittaker St Sudbury, ON P3C 3X9		
DESCRIPTION OF NON-CONFORMITY	LOCATION	BY-LAW REFERENCE
a) All retaining walls....shall be maintained in a structurally sound condition.	Leaning portion of retaining wall	2.10(1)
REQUIRED ACTION		
Repair and make plumb the leaning portion of retaining wall. Produce an engineer's report indicating the wall is structurally sound.		
<input type="checkbox"/> Emergency Order - above work to be carried out immediately to terminate danger. Subsection 15.7 (1)		
There must be compliance with the terms and conditions of this order before this date September 11, 2013.		

TAKE NOTICE THAT if such repair or clearance is not done within the time specified in this order, the Municipality may carry out the repair or clearance at the expense of the owner. Clause 15.2 (2) (c).

APPEAL TO PROPERTY STANDARDS COMMITTEE - An owner or occupant upon whom this order has been served, if not satisfied with the terms or conditions of the order, may appeal to the Property Standards Committee by sending notice of appeal by registered mail to the Secretary of the Committee on or before Sept 10, 2013 (Date -within fourteen days after service of this order) and, in the event that the order is not appealed, it shall be deemed to be confirmed. Subsection 15.3 (1).

Stephen Holt
Property Standards Officer
705 674-4455 ext 4322

Date Order Served: August 28, 2013

DISTRIBUTION OF ORDER TO REMEDY:
persons affected by it as the officer determ

REGISTRATION OF ORDER - Where a cc
acquiring any interest in the land, subsequ
the order on the day on which the order wa

OFFENCE - A person is guilty of an offenc
under the Building Code Act, 1992. A pers
a first offence and to a fine of not more tha

CANADA POST POSTES CANADA		REGISTERED DOMESTIC	RECOMMANDÉ RÉGIME INTÉRIEUR	R
CUSTOMER RECEIPT		REÇU DU CLIENT		
To Name	Destinataire Nom	FOR DELIVERY CONFIRMATION CONFIRMATION DE LA LIVRAISON		
Address	Adresse	www.canadapost.ca or/ou www.postescanada.ca		
City / Prov. / Postal Code	Ville / Prov. / Code postal	1 888 550-6333		
Declared Value	Valeur déclarée \$	CPC Tracking Number Numéro de repérage de la SCP		
33-086-584 (11-04)				

Personal information contained on this form, collected pursuant to a by-law passed under the Building Code Act, 1992 will be used for the purposes of that by-law. Questions should be directed to the Municipal Freedom of Information and Privacy Coordinator at the institution responsible for the procedures under that Act.

Original - CONTRAVENOR*	Copy - OFFICE	Copy - PROPERTY STANDARDS OFFICER	Copy - BUILDING CONTROLS	Copy- FIELD
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Robert & Rae-Anne Timony



September 18, 2013

Stephen Holt
Property Standards Officer
City of Greater Sudbury
200 Brady Street, Box 5000, Stn. A
Sudbury, Ontario
P3A 5P3

VIA REGISTERED MAIL

Re: Jenalee Pilatzke – 326 Whittaker St., Sudbury, ON – Case 448104

We are [REDACTED] of the above mentioned owner of the above mentioned property who was served with an Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy on or about September 4, 2012 with respect to the condition of a retaining wall.

We are appealing the order to your Property Standards Committee as in our opinion there is no actual retaining wall in place along the full left side of the property. We have attached signed authorization from [REDACTED] to act on her behalf.

Please advise us as to the time and date of the appeal hearing on this matter or if a meeting to discuss this issue further is necessary. We can be reached at the telephone number or at the email address stated above.

Sincerely,


Robert & Rae-Anne Timony

Written Authorization From Owner

AUTHORIZATION REQUIRED BY AGENT WHEN ACTING
ON BEHALF OF THE REGISTERED OWNER
of 326 Whittaker Street, Sudbury, Ontario

DECLARATION BY REGISTERED OWNER

I hereby authorize [REDACTED] ROBERT and RAE-ANNE TIMONY to act as my official agents respecting the ORDER TO REMEDY from the City of Greater Sudbury.

The City of Sudbury is hereby authorized to release and accept any information or a Notice of Appeal respecting the subject property to the said agent.

DATED AT: Sudbury THIS 19th DAY OF September, 20 13.

Jenalee Pilatzke

Jenalee Pilatzke, Owner

City of Greater Sudbury
Ville de Grand Sudbury



December 20, 2013

Robert & Rae-Anne Timony


Dear Mr. & Mrs. Timony:

Re: Appeal to Order to Comply - 326 Whittaker Street, Sudbury, Jenalee
Pilatzke – Case # 448104

The Hearing Committee of the City of Greater Sudbury has been appointed to hear Property Standards Appeals. The Committee Meeting will begin at **4:30 p.m.** on **January 15, 2014** in Committee Room C-12 at Tom Davies Square. Please bring any information you feel relevant in presenting your position to the Hearing Committee.

I am enclosing a copy of the City of Greater Sudbury's Maintenance and Occupancy Standards By-law 2011-277, Section 2.10(1), for your convenience. If you require any further information, do not hesitate to contact me at 674-4455, ext. 2010.

Yours truly,

A handwritten signature in cursive script, appearing to read 'BSobush'.

Brigitte Sobush
Deputy City Clerk

/ec

Enclosure

cc: Jenalee Pilatzke
D. Barker, Manager of Compliance & Enforcement Services
S. Holt, Property Standards Officer