

Request for Decision

Appeal of Order to Remedy - 40 Mountain Ave., Levack

Presented To:	Hearing Committee
Presented:	Wednesday, Mar 06, 2013
Report Date	Thursday, Feb 21, 2013
Type:	Public Hearings

Recommendation

THAT the City of Greater Sudbury uphold the Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy #412705 issued to Eva and Arthur Embrack, owners of 40 Mountain Avenue, Levack.

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.

Facts and Evidence Supporting the Order - Presented by Officer Gregory Bergeron

On 23 October 2012, Municipal Law Enforcement Officer Bergeron received a complaint in relation to 40 Mountain Avenue, Levack, claiming that there were electrical issues, holes in walls and that the garage was not structurally sound.

Signed By

Report Prepared By

Darlene Barker
Manager of Compliance and
Enforcement
Digitally Signed Feb 21, 13

Division Review

Guido Mazza
Director of Building Services/Chief
Building Official
Digitally Signed Feb 21, 13

Recommended by the Department

Bill Lautenbach
General Manager of Growth and
Development
Digitally Signed Feb 21, 13

Recommended by the C.A.O.

Doug Nadorozny
Chief Administrative Officer
Digitally Signed Feb 26, 13

On 25 October 2012, Officer Bergeron left a message for the complainant.

On 14 November 2012, the Officer attended 40 Mountain Avenue for the purpose of inspection.

During the inspection of the garage, the Officer observed that the exposed roof trusses overhanging the side walls were in an advanced state of decay. He also observed that the trusses were notched.

The wooden fascia boards were also bowed and rotting. The roof itself was also obviously warped.

Based on his observations, the Officer submitted an Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy as per sections 3.01, 3.03 and 3.07 of the City of Greater Sudbury Property Standards By-Law 2011-277:

1. *“Every part of a building or structure on a property shall be maintained in good repair and in a structurally sound condition so as:*
 - a. *to be capable of sustaining safely its own weight, and any additional load to which it may normally be subjected;*
 - b. *to be capable of safely accommodating all normal structural movements without damage, decay or deterioration;”*
2. *“All exterior walls and surfaces of every building or structure shall be:*
 - b. *free from cracked or broken masonry units, defective or deteriorated wood or metal siding or trim, cracked, broken or loose stucco, loose or unsecured objects;”*
3. *“Every roof and all of its components shall be maintained in good repair and in a safe and structurally sound condition.”*

The Order included the following repairs to be conducted to be in compliance with the By-Law.

“Demolish garage or conduct necessary repairs to garage roof to be in good repair and in a structurally sound condition, free from deteriorated wood.”

The compliance date on the Order was set to 6 December 2012.

On 6 December 2012, Officer Bergeron received notice that The Order to Remedy had been appealed on the grounds that there were no problems with the garage roof.

On 15 February 2013, Officer Bergeron returned to the property as a matter of follow up. His inspection revealed that repairs to the roof had not been completed. He noted that the property was vacant, for sale, and that the garage roof was heavily snow covered.

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

1. 9 pictures dated 14 November 2012.
2. Copies of the tax roll Information - confirming the property owners.
3. Copy of Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy, #412705 dated 15 November 2012.
4. Letter of appeal from Peter L. McMullen, C.A., LL.B.
5. CGS appeal confirmation letter.
6. CGS appeal date letter.
7. 6 pictures dated 15 February 2013.

Conclusion

Section 15.3(3.1) of the Building Code Act sets out the powers 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.

Section 18 of the City of Greater Sudbury's Official Plan starts with the statement "Adequate and affordable housing for all residents is a fundamental component of Greater Sudbury's Healthy Community approach to growth and development". Further statements include "the achieving diversity in the housing supply by maintaining a balanced mix of ownership and rental housing, and addressing housing requirements for low income groups and people with special needs". One of the objectives of the Policy is to ensure that the City's housing stock provides acceptable levels of health and safety through enforcement of the property maintenance standards in all forms of housing. The intent and purpose of the By-law may also be determined through statements in the preamble; "Whereas the lack of upkeep of a residential property can lead to the degradation of a neighbourhood and of a community".

It is for these reasons that the recommendation in this report is to uphold the Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy, #412705, dated 15 November 2012, to ensure that the owners of the property of 40 Mountain Avenue, Levack, comply with the maintenance and occupancy standards as set out in the CGS By-law, 2011-277.













Journals

Date According To:

2012/11/15

**Roll Information**

Roll No. 150.002.13400.0000 0

Address 40 MOUNTAIN AVE

OwnersEMBRACK EVA
EMBRACK ARTHUR STEPHEN**Legal Description**LEVACK CON 1 LOT 8 PLAN
M1009 LOT 37 PCL 24708
REG**Mailing Address**PO BOX 693
AZILDA ON
POM 1B0

4800.00SF 40.00FR 120.00D

Mortgage Code**Mortgage Acct#****Group Code****Tax Balance**

Tax Levied	Penalty	Adjustment	Payment	Balance
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Projected Balance

Total Owing:

Assessments

RTEP	82,000

Appeals

Archive Trans

Assessments

Audits

Bill Detail

Capping

Collections

Detail

Correspond ☐

Installments

Local Charge

PAP

Ph-In/Dgr

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 OF
ALL PROPERTY**

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

Case # 412705

Date of Inspection: 14 November 2012

Time: 10:00 hrs.

By-Law No.: 2011-277

Municipal address or legal description of property X Occupied Unoccupied

40 Mountain Avenue, Levack, ON.

Name of owner and mailing address

Eva Embrack, Arthur Embrack, PO Box 693 Azilda, ON., P0M 1B0

DESCRIPTION OF NON-CONFORMITY

LOCATION

**BY-LAW
Reference**

Every part of a building or structure on a property shall be maintained in good repair and in a structurally sound condition so as:

- a. To be capable of sustaining safely its own weight, and any additional load which it may normally be subjected;
- b. To be capable of safely accommodating all normal structural movements without damage, decay or deterioration;

Garage roof

3.01- 1

All exterior walls and surfaces of every building or structure shall be:

- b. Free from cracked or broken masonry units, defective or deteriorated wood or metal siding or trim, cracked broken or loose stucco, loose or unsecured objects:

Garage roof

3.03.1

Every roof and all of its components shall be maintained in good repair and in a safe and structurally sound condition.

Garage roof

3.07-1

REQUIRED ACTION

- Demolish garage or conduct necessary repairs to garage roof to be in good repair and in a structurally sound condition, free from deteriorated wood.

(Exterior roof joists overhanging walls are rotted. Facia boards also rotting)

There must be compliance with the terms and conditions of this order
before this date: 6 December 2012.

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 **5 December 2012** and, in the event that the order is not appealed, it shall be deemed to be confirmed. Subsection 15.3 (2).


Gregory Bergeron
Property Standards Officer
705-674-4455 ext. 2433

Date Order Served: **15 November 2012**

DISTRIBUTION OF ORDER TO REMEDY* - The order shall be served on the owner of the property and such other persons affected by it as the officer determines and a copy of the order may be posted on the property. Subsection 15.2(3).

REGISTRATION OF ORDER - Where a copy of this order is registered in the proper land registry office, any person acquiring any interest in the land, subsequent to the registration of the order, shall be deemed to have been served with the order on the day on which the order was served. Subsection 15.2 (4).

OFFENCE - A person is guilty of an offence if the person fails to comply with an order, direction or other requirement made under the Building Code Act, 1992. A person who is convicted of an offence is liable to a fine of not more than \$25, 000 for a first offence and to a fine of not more than \$50,000 for a subsequent offence. Subsections 36 (1) (b) and 36 (3).

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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CANADA
POST

POSTES
CANADA

REGISTERED
DOMESTIC

CUSTOMER RECEIPT

RECOMMANDÉ
RÉGIME INTÉRIEUR

REÇU DU CLIENT

R

To
Name

Destinataire
Nom

Address

Adresse

City / Prov. / Postal Code

Ville / Prov. / Code postal

FOR DELIVERY
CONFIRMATION

CONFIRMATION
DE LA LIVRAISON

www.canadapost.ca
or/ou
www.postescanada.ca

1 888 550-6333

Declared Value
Valeur déclarée

\$

CPC Tracking Number
Numéro de repérage de la SCP

RW 690 603 652 CA

33-086-584 (11-04)

Peter L. McMullen, C.A., LL.B.

Peter L. McMullen Professional Corporation
1630 Paris Street, Suite 505
Sudbury, Ontario
P3E 3C1
Tel: (705) 673 6218
Fax: (705) 222 6218
E-mail: peter@bobotech.on.ca

December 4, 2012

Secretary
Property Standards Committee
City of Greater Sudbury
200 Brady Street, Box 5000, Stn. A
Sudbury, ON P3A 5P3

VIA REGISTERED MAIL

Re: A. Stephen and Eva EMBRACK – 40 Mountain Street, Levack, ON – Case 412705

I am counsel for the above-mentioned owners of the above-mentioned property who were served with an Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy of all Property on or about November 15, 2012 with respect to the condition of the garage roof.

My clients are appealing the order to your Committee as in their opinion there is no problem with the garage roof.

Please advise my office as to the time and date of the appeal hearing of this matter.

Sincerely,



Peter L. McMullen, C.A., LL.B.

c.c. Clients

December 11, 2012

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

CP 5000 SUCCA
200, RUE BRADY
SUDBURY ON P3A 5P3

705.671.2489

www.greatersudbury.ca
www.grandsudbury.ca

Peter L. McMullen
1630 Paris Street, Suite 505
Sudbury ON P3E 3C1

Dear Mr. McMullen:

Re: Appeal of Order to Remedy, Case 412705 – 40 Mountain Street

This will acknowledge receipt of your letter dated December 4, 2012 appealing the Order to Remedy issued under the City of Greater Sudbury's Maintenance and Occupancy Standards By-law #2011-277.

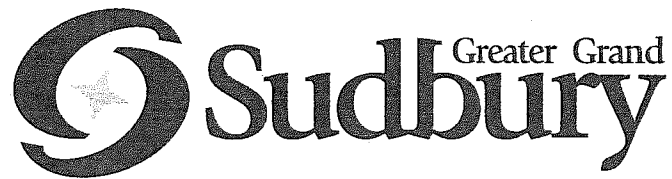
Please be advised this matter will be heard by the Hearing Committee. You will be advised by registered mail regarding the date, time and location of the public hearing.

Sincerely,

A handwritten signature in cursive script that reads 'Lisa Miller'.

Lisa Miller
Deputy City Clerk

cc. Darlene Barker, Manager of Compliance & Enforcement Services
Stephen and Eva Embrack



February 14, 2013

Peter McMullen
1630 Paris Street, Suite 505
Sudbury ON P3E 3C1

Dear Mr. McMullen:

Re: Appeal to Order to Comply – 40 Mountain Street, Levack – Case 412705

This letter is further to our acknowledgement letter dated December 11, 2012 appealing the Order to Remedy issued under the City of Greater Sudbury's Maintenance and Occupancy Standards By-law #2011-277.

The Hearing Committee of the City of Greater Sudbury has been appointed to hear Property Standards Appeals. The Committee Meeting will begin at **4:00 p.m.** on **March 6, 2013** 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 2012-277, Section 3, for your convenience. If you require any further information, do not hesitate to contact me at 674-4455, ext. 4206.

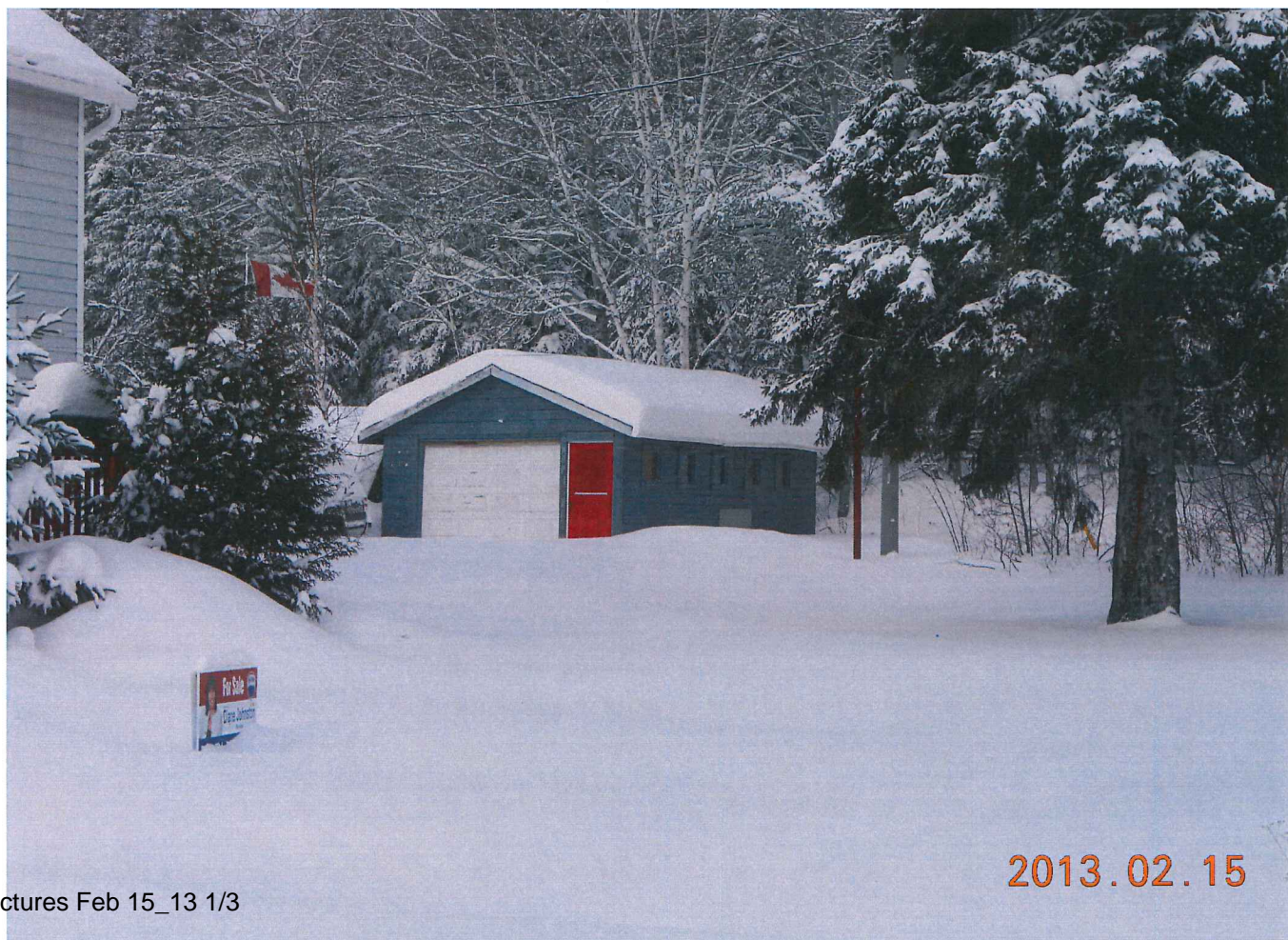
Yours truly,

A handwritten signature in cursive script that reads 'Lisa Miller'.

Lisa Miller
Deputy City Clerk

Enclosure

cc: Stephen and Eva Embrack
D. Barker, Manager of Compliance & Enforcement Services
✓ G. Bergeron, Property Standards Officer







2013.02.15



2013.02.15