

Request for Decision

Appeal of Order to Remedy - Elm Street, Sudbury

Presented To:	Hearing Committee
Presented:	Wednesday, May 23, 2012
Report Date	Tuesday, May 15, 2012
Type:	Public Hearings

Recommendation

THAT the City of Greater Sudbury uphold the Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy #391526 issued to the Estate of Minnie Lee C/O Peter Lee, 1254 McIntyre Street W, North Bay, ON., owner of 154 Elm St, 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 2009-100, 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 residential property within the City and for requiring property not in conformance with the standards therein to be repaired and maintained to conform with the standards. This by-law was enacted to ensure the safety of residents and the upkeep of residential properties does not lead to the degradation of a neighbourhood and of the community.

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 March 30, 2012 the City of Greater Sudbury By-Law department received a copy of a letter of correspondence addressed to the owner of 154 Elm Street from a neighboring property regarding the pigeon population and holes and opening in the roof at 154 Elm Street, Sudbury.

Signed By

Report Prepared By

Troy Rosignol
By-law Enforcement Officer
Digitally Signed May 15, 12

Division Review

Guido Mazza
Director of Building Services/Chief
Building Official
Digitally Signed May 15, 12

Recommended by the Department

Bill Lautenbach
General Manager of Growth and
Development
Digitally Signed May 15, 12

Recommended by the C.A.O.

Doug Nadorozny
Chief Administrative Officer
Digitally Signed May 15, 12

Case #391526 was generated and assigned to the area By-law Officer, Gregory Bergeron for inspection and enforcement follow-up.

On April 3, 2012, at approximately 12:45 pm, Officer Bergeron attended 154 Elm Street, Sudbury and conducted an inspection of the property. The building, which is currently for sale, is a vacant single family dwelling which was constructed in approximately 1920.

During the inspection Bergeron observed that the southwest section of the roof no longer had any shingles. He observed holes and openings in the roof leading into the attic. He observed pigeons entering and exiting from the holes and openings in question. He observed that the shingles on the roof were in an advanced state of deterioration. He also observed that the roof of the front porch was also in a state of decay and bowed in the centre.

Deficiencies of the By-law were noted and seven (7) photographs were taken. Items of Non-Conformity with the By-law are as noted;

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 which it may normally be subjected;*
 - b. *To be capable of safely accommodating all normal structural movements without damage, decay or deterioration.*
 - c. *To prevent the entry of moisture that would contribute to damage, fungus growth, decay or deterioration; and*
 - d. *To be capable of safely and adequately performing its functions subject to all reasonable serviceability requirements.*
2. *Every roof and all of its components shall be maintained in good repair and in a safe and structurally sound condition.*
3. *Without limiting the generality of this Section, such maintenance includes:*
 - c. *Keeping roofs and chimneys in a water-tight condition so as to prevent leakage of water into the building;*
4. *If any building is unoccupied, the owner or the agent shall protect every such building against the risk of fire, accident, or other hazard and shall effectively prevent the entrance thereto of all unauthorized persons.*
5. *The owner or agent of a vacant building shall board up the building to the satisfaction of the Property Standards Officer by covering all openings which entry may be obtained with at least 12.7 mm (0.5 inch) waterproof sheet of plywood securely fastened to the building and painted a colour compatible with the surrounding walls.*

On April 11, 2012, Officer Bergeron prepared an Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy, outlining the items of non-conformity with the By-law as listed in the previous paragraph, and requiring compliance with the terms and conditions of the Order before May 11, 2012. The Order was sent registered mail to the owner of the property to the address as last shown on the Assessment Rolls for the City of Greater Sudbury; Estate of Minnie Lee C/O Peter Lee, 1254 McIntyre Street W, North Bay, ON. The Order was received by the Peter Lee on April 13, 2012, as shown on the Track Status record of Canada Post.

The Order included the following repairs to be conducted in Order to be in Compliance with City of Greater Sudbury Property Standards By-Law 2011-277:

1. *Conduct necessary repairs to roof to be in a state of good repair and structurally sound – Sections 3.01-1, 3.07-1, 3.07-2, 7.01-1, 7.01-2.*
2. *Conduct necessary repairs to porch roof to be in state of good repair and structurally sound – Sections 3.01-1, 3.07-1, 3.07-2, 7.01-1.*
3. *Conduct necessary repairs to roof to prevent the entry of moisture and to be in a water tight condition. Section - 3.07-2.*

On April 23, 2012, Officer Bergeron received a (2) page letter from Mr. Peter Lee requesting an appeal.

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

1. Correspondence letter of complaint dated March 27, 2012.

2. 7 pictures dated April 3, 2012.
3. Copy of Roll Information - confirming property owner.
4. Copy of Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy, #391526 dated 11 April 2012.
5. Canada Post Tracking record RW 696 437 560 CA - Delivery Receipt for Order
6. Letter from Peter Lee requesting Appeal of the Order, dated April 23, 2012.
7. CGS appeal confirmation letter.
8. Order to Remedy Unsafe Building.

On May 4, 2012, Building Inspector Tony Pigeggi issued an Order to Remedy Unsafe Building pursuant to Subsection 5.15.9-(4) of the Building Code Act with respect to the unsafe condition of the covered front porch.

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, #391526, dated 11 April 2012, to ensure that the owner of the property of 154 Elm Street, complies with the maintenance and occupancy standards as set out in the CGS By-law, 2009-100.



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 # 391526

Date of Inspection: 3 April 2012		Time: 12:50 hrs.	By-Law No.: 2011-277
Municipal address or legal description of property		Occupied <input type="checkbox"/> X Unoccupied	
154 Elm Street, Sudbury, ON.			
Name of owner and mailing address			
Estate of Minnie Lee, C/O Peter Lee,			
DESCRIPTION OF NON-CONFORMITY		LOCATION	BY-LAW Reference
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 which it may normally be subjected; b. To be capable of safely accommodating all normal structural movements without damage, decay or deterioration c. To prevent the entry of moisture that would contribute to damage, fungus growth, decay or deterioration; and d. To be capable of safely and adequately performing its functions subject to all reasonable serviceability requirements.	Roof and porch roof	3.01- 1
2.	Every roof and all of its components shall be maintained in good repair and in a safe and structurally sound condition.	Roof and porch roof	3.07 - 1
3.	Without limiting the generality of this Section, such maintenance includes: c. Keeping roofs and chimneys in a water-tight condition so as to prevent leakage of water into the building;	Roof	3.07- 2
4.	If any building is unoccupied, the owner or the agent shall protect every such building against the risk of fire, accident, or other hazard and shall effectively prevent the entrance thereto of all unauthorized persons.	Roof and porch roof	7.01 - 1
5.	The owner or agent of a vacant building shall board up the building to the satisfaction of the Property Standards Officer by covering all openings which entry may be obtained with at least 12.7 mm (0.5 inch) waterproof sheet of plywood securely fastened to the building and painted a colour compatible with the surrounding walls.	Roof	7.01 - 2

REQUIRED ACTION

- Conduct necessary repairs to roof to be state of good repair and structurally sound.
- Conduct necessary repairs to porch roof to be in state of good repair and structurally sound.
- Conduct necessary repairs to roof to prevent the entry of moisture and to be in a water-tight condition.

There must be compliance with the terms and conditions of this order
before this date: **11 May 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 **1 May 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: **11 April 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 - CONTRAVENTOR*	Copy - OFFICE	Copy - PROPERTY STANDARDS OFFICER	Copy - BUILDING CONTROLS	Copy- FIELD
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		REGISTERED DOMESTIC CUSTOMER RECEIPT		RECOMMANDÉ RÉGIME INTÉRIEUR REÇU DU CLIENT		
To Name		Destinataire Nom		FOR DELIVERY CONFIRMATION		CONFIRMATION DE LA LIVRAISON
Address		Adresse		www.canadapost.ca or/ou www.postescanada.ca		1 888 550-6333
City / Prov. / Postal Code		Ville / Prov. / Code postal		CPC Tracking Number Numéro de repérage de la SCP		RW 696 437 560 CA
Declared Value Valeur déclarée		\$				

33-086-584 (11-04)



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FOR SALE
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Real Estate
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ASSOCIATE BROKER
673-9900
HOMES

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2011-04-03 12:40



2011.04.03 12:49



2011.04.03 12:50



2011.04.03 12:50



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Date	Time	Location	Description	Retail Location	Signatory Name
2012/04/13	AM	NORTH BAY	Item successfully delivered		
	AM		Signature image recorded for Online viewing		<u>LEE</u>
	08:36	NORTH BAY	Item out for delivery		
	07:30	NORTH BAY	Item processed at local delivery facility		
2012/04/12	18:53	SUDBURY	Item arrived at postal facility		
	15:30	SUDBURY	Item picked up by Canada Post		

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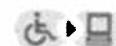
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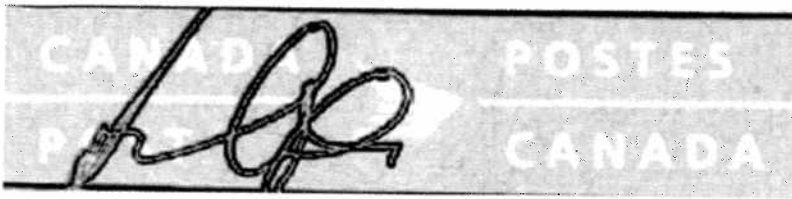
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April 23, 2012

Secretary of Committee
Property Standards Committee
City of Greater Sudbury
Box 5000, 200 Brady Street
Sudbury, Ontario
P3A 5P3

Dear Sir:

Re: Non-Conformity # 391526
Estate of Minnie Lee
154 Elm West

This is to inform you that the Estate of Minnie Lee is appealing the decision of non-conformity as expressed by your Mr. Greg Bergeron, Property Standards Officer. I am the estate trustee as probated December 3, 2010 by the Ontario Superior Court of Justice. I am responsible for the integrity of the property and assets. The unoccupied house has been up for sale "as is" for nearly a year and is registered with the realty firm of Royal LePage as posted in the front and back of the property.

Let me address the Order of Non-conformity in the order your Mr. Bergeron presented it that is the main concern is the roof, porch and the "board up the building".

The main roof or the peak roof has a small hole about six inches in the extreme northwest corner. The hole is on the overhang of the roof therefore any water does not drain into the house and consequently does not affect the structure as eluded to in your document. Upon inspection of the roof from the attic the integrity of the wood is sound. Roof boards are made from rough lumber planks as in the days of old and not plywood which would deteriorate more readily. The hole in the roof was a result of the guano from feral pigeons that frequent the area. These birds are unwanted and are not encouraged to stay in the area. Our contractor, Mr. Patrick Diotte of Barne Building and Construction Inc., stated the house structure is solid; there is no movement what so ever.

The open air front porch which I assume your order pertains to is in need of repairs. On the other hand the porch was used all year as a staging area. Last summer several vagrants lived on the porch; they were evicted. The roof does not leak but it is an eye sore and in need of repair if it were to be used in the future. Consideration to remove the porch was given over a year ago but it was decided to sale "as is". The new owner will decide the future of the porch. The foundation has not moved since I was a child well over sixty years ago.

All the lower windows and doors were boarded up to prevent unwanted entry. Additional locks were placed on all the doors. The yellow plywood used matches the yellow brick of the house. Last summer the covers were removed for saleability of the property but will remain in place for the future.

Based on the synopsis of your non-conformity charge the main thread of your case is the structure of the house is in jeopardy. Based on our contractor at the time, the structure is sound. It is an eye sore but your order does not address that issue. The property is up for sale and to show our willingness to move a sale, the price has dropped forty thousand dollars. The next owner may want the house removed and for the Estate to spend money for repair at this time is premature. For the reasons stated above I am requesting that the Order to Remedy Non-conformity be quashed.

To show you that we are operating in good faith the Estate has carried out the following since being probated in December of 2010:

- The Estate has removed four derelict motor vehicles along with a metal shed and garage.
- Employed someone to maintain the property, pick up litter, cut the grass and monitor weekly.

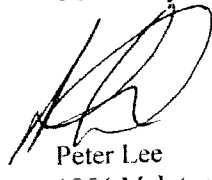
- The property has been placarded with no trespassing and private property signs front and back
- The yard is restricted to unauthorized individuals by barricading the walk way, pad locking the yard gate to discourage trespassers. Front yard is totally fenced to prevent trespassers.
- The taxes in excess of two thousand dollars, the utilities of sewer, water and hydro along with property insurance of two thousand dollars a year are paid up to date even though the property has been unoccupied for over two years. The water service has been officially shut off at the curb box.
- All the lower windows and doors have been covered over with plywood to prevent unauthorized entry. The doors have been given extra pad locks to prevent forced entry.
- It has taken nine, forty yard NIM containers to clean out the house. Through this process we have recycled all the metals such as boilers, dryers, washers, ironing presses, stoves and open and closed water tanks. Over a dozen trailer loads of paper and card board has been recycled through your facilities. Large quantities of antifreeze, paint, oils and washer fluids have been recycled through your hazardous waste depot verses landfilled; your hazardous waste truck made two pickups.
- The furnace oil tank has been drained of its contents to prevent potential spills from occurring.
- Property perimeter has been marked off with iron T bars and further tagged with florescent ribbons.

As you have read the Estate has been diligently trying to recycle and clean at the same time adhere to your orders of non-conformity.

A year ago your Mr. Bergeron placed an order against the Estate for having waste material around the property. At that time we were in the process of cleaning the property. Forty Yard waste containers were rented from NIM Waste Disposal. NIM allows a three day grace period after which an additional rental fee is applied to the containers. To offset this we would stock pile the waste outside in the yard or on the porch until forty yards was achieved to fill a container. Mr. Bergeron claims to be acting on a complaint from our neighbours to the east, Anzil. This past winter the Coopers to the west were caught dumping their snow load from their parking lot onto the estate. The amount was at least ten feet high by twenty feet by thirty feet. I have enclosed pictures for your perusal. A letter was forward to them addressing our concerns. Shortly after, I received a letter from the Coopers; I append a copy for your information. I now receive another order from your office concerning holes in the peak roof; holes were a result of the guano from feral pigeons. We do not want the birds there nor do we encourage them. Originally during the nineteen fifties and sixties these birds frequented Coopers property as the premises was a rooming house. When the house was appraised the appraiser indicated that the Coopers and Anzil were interested in the property for parking. Anzil's group has approached the Estate to use the yard for parking.

Your agency has issued two orders on the property with in a space of a year. I don't know if your agency is over zealous in carrying out the typical "bean count". I do know every time an order is placed on a property; the value decreases somewhat. The obvious question would be that perhaps there is collusion going on between your agency and prospective purchasers. I am contemplating forwarding a copy of this letter to your Mayor asking her to investigate.

Yours truly



Peter Lee

Enclosed
cc Royal LePage Realty
cc Valin Partners Law, Mr. Gordon Prisco

Order to Remedy Unsafe Building

Pursuant to Subsection 5.15.9-(4) of the *Building Code Act, 1992*

Order Number:

Date Order issued: May 4, 2012

Address to which Order applies:

Application/Permit Number:

154 Elm Street
Sudbury, Ontario

Order issued to:

1. Estate of Minnie Lee C/O Peter Lee

An unsafe condition, as defined in subsection 15.9-(2) of the Building Code Act, is found to exist at the above-noted location by reason of the following:

Description of Unsafe Condition	Location	Section Reference
The existing exterior front covered porch and landing are in a condition which is considered to be structurally inadequate for the purpose for which it is to be used and could be hazardous to the health and safety of persons accessing it.	The existing front covered porch roof at the address listed above.	Ontario Building Code Act 15.9(2)(a)&(b)
Required Remedial Steps		
Provide temporary means of restriction to the area, and temporary shoring, cribbing and measures required to maintain safe conditions at the front covered porch roof during the completion of the proposed remedial work. Within a reasonable amount time, if not sooner, obtain a building/demolition permit and proceed with the reconstruction or demolition of the exterior front porch, to restore the structural integrity and normal use of the affected area.		

You are hereby ordered to take the remedial steps set out above or render the building safe ON OR BEFORE May 18, 2012.

Order issued by:

Name Tony Pileggi

BCIN 14557

Signature

Telephone no. 674-4455 Ext 4329

Contact name
(optional)

Contact tel. number (optional)

Prohibiting occupancy of unsafe building – If an order of an inspector under subsection 15.9-(4) is not complied within the time specified in it, or where no time is specified, within a reasonable time, the Chief Building Official may, by order, prohibit the use or occupancy of the building and may cause the building to be renovated, repaired or demolished to remove the unsafe condition. See ss. 15.9-(6) to (9).

Municipal lien – If the building is in a municipality, the municipality shall have a lien on the land for the amount spent on the renovation, repair or demolition of the building under subsection 15.9-(4) and the amount shall be deemed to be municipal taxes and may be added by the Clerk of the municipality to the collector's roll and collected in the same manner and with the same priorities as municipal taxes. See subsection 15.9-(10).

PENALTIES ARE PROVIDED FOR VIOLATION OF THE BUILDING CODE ACT AND BUILDING CODE

• It is illegal to obstruct the visibility of a posted Order. It is also illegal to remove a posted Order unless authorized by an inspector or Registered Code Agency (see ss. 15.9-(11), 16.1-(2) & (3)).

• Failure to comply with this order is an offence which could result in a fine. (*Building Code Act, 1992* s. 36)

• Information contained in this document is considered, pursuant to the Building Code Act and forms part of a public record open to inspection by any person upon request at the City of Greater Sudbury, 200 Brady Street, Sudbury, Ontario. For more information, please contact the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. 156 s. 11(1)(a).