

Request for Decision

Order to Remedy Appeal- ACR 726860 (91 Logan Street, Sudbury)

Presented To:	Hearing Committee
Presented:	Wednesday, Oct 25, 2017
Report Date	Tuesday, Oct 03, 2017
Type:	Public Hearings

Resolution

Option One:

THAT the City of Greater Sudbury confirm the Property Standards Order to Remedy issued to the Owner of 91 Logan Street, Sudbury, ON, pursuant to Section 15.3(3.1)1 of the Building Code Act.

Option Two:

THAT the City of Greater Sudbury extend the time for complying with the Property Standards Order to Remedy issued to the Owner of 91 Logan Street, Sudbury, ON, pursuant to Section 15.3(3.1)2 of the Building Code Act.

Option Three:

THAT the City of Greater Sudbury rescind the Property Standards Order to Remedy issued to the Owner of 91 Logan Street, Sudbury, ON, pursuant to Section 15.3(3.1)1 of the Building Code Act.

Option Four:

THAT the City of Greater Sudbury modify the Property Standards Order to Remedy issued to the Owner of 91 Logan Street, Sudbury, ON, pursuant to Section 15.3(3.1)1 of the Building Code Act and that the modification be as follows: _____.

Signed By
Report Prepared By Tina Whitteker By-law Enforcement Officer <i>Digitally Signed Oct 3, 17</i>
Manager Review Brendan Adair Manager of Security and By-Law <i>Digitally Signed Oct 3, 17</i>
Financial Implications Apryl Lukezic Co-ordinator of Budgets <i>Digitally Signed Oct 3, 17</i>
Recommended by the Department Kevin Fowke General Manager of Corporate Services <i>Digitally Signed Oct 4, 17</i>
Recommended by the C.A.O. Ed Archer Chief Administrative Officer <i>Digitally Signed Oct 4, 17</i>

Relationship to the Strategic Plan / Health Impact Assessment

This report refers to operational matters.

Report Summary

A Property Standards Order for repair or replace of a retaining wall at 91 Logan was issued on August 26, 2016, pursuant to the Building Code Act, S.O. 1992, Chapter 23 as amended. The Council of the City of

Greater Sudbury enacted By-law 2011-277, cited as the "Maintenance and Occupancy Standards By-law". This By-law prescribes standards for the maintenance and occupancy of properties within the City and enacted to ensure the safety of residents and the upkeep of properties to prevent the degradation of the community and neighborhoods.

In receipt of a request for an appeal and failing an ability to resolve the matter, the appeal is now being brought before Committee for review and decision.

Financial Implications

There are no financial implications for this report.

Recommendations

That the Property Standards Order issued to the owner of 91 Logan Ave., City of Greater Sudbury be upheld.

Background

Property Standards Order for repair or replace of a retaining wall (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 Orders - Presented by Officer Tina Whitteker

See Appendix A

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

1. Appendix A
2. Photographs taken by Officer Whitteker: 3 photographs dated August 16, 2016, 1 photograph dated August 26, 2016, and 1 photograph dated November 23, 2016
3. Copy of Property Standards Orders for Expert Examination and Property Tax Viewer- August 26, 2016, #726860.
4. Correspondence by [REDACTED], Marc Huneault, dated January 27, 2017 and June 29, 2017
5. Copy of pertinent section of Survey

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.

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.

It is recommendation in this report to uphold the Order to Remedy for joint repair to the retaining wall, or to confirm that one owner of the adjoining properties to be responsible for the repairs, and

complies with the maintenance and occupancy standards as set out in the CGS By-law, 2011-277 and Order to Remedy issued.

Appendix A
Property Standards Appeal Committee Report
91 Logan Street, Sudbury ON- ACR 726860
Prepared by Tina Whitteker

On June 27, 2016, the City of Greater Sudbury Compliance and Enforcement Division received a complaint that the retaining wall was falling down between the properties 91 Logan St. and 93 Logan St., Sudbury. Cases #726860 and #721014 were generated and assigned to the area By-law Officer Tina Whitteker for inspection and enforcement follow-up.

On August 16, 2016, Officer Whitteker attended to the properties 91 Logan St., and 93 Logan St. and conducted an inspection of the retaining wall. During the inspection Officer Whitteker observed and took photographs of the retaining wall in poor repair between the properties and witnessed the fence in that area on 93 Logan St. was falling as well. Then spoke with [REDACTED], the owner of 93 Logan St. and [REDACTED] stated that [REDACTED] did not have a survey. As a result, Officer Whitteker advised that, with the wall spanning down what is believed to be the property line, both parties would have to share in the repair of the wall.

The owner of 91 Logan rented the property and physically resided in the neighboring property at 89 Logan St. [REDACTED] spoke with the owner, [REDACTED], who pointed out a survey pin from the rear and one [REDACTED] thought to be the front pin of the property, which showed that the retaining wall may in fact be located on 93 Logan St. property. As there was contest by [REDACTED], owner of 93 Logan St, on whether the pin in the front was in fact a survey pin, later there was an agreement between property owners that a survey from the owner of 91 Logan would be shared to identify the actual property boundaries.

Working with the [REDACTED] of the property owner, [REDACTED], over the course of August 2016, Officer Whitteker maintained communication about the possible existence of a survey that would assist in confirming the ownership of the retaining wall. On August 23, 2016, the [REDACTED] of the property owner confirmed possession of a survey. Officer called back same day and spoke to [REDACTED] that since there is a dispute regarding the lot line from the neighbor, will send Order to both as per our current procedure. Provided update that fence will be also included in Order on adjacent property, 93 Logan as issue noted prior.

On August 26, 2016 an Order to Remedy was issued to both owners of 91 and 93 Logan in hopes to support resolve the matter. The Order to Remedy issued to both parties outlined the description of non-conformity as per Section s.2.10(1) *"All retaining walls, screen walls and ornamental walls shall be constructed of durable material and shall be maintained in a structurally sound condition"*. The required action outlined as *"Repair/replace the retaining wall along the north* (south)** side of your property and ensure constructed of durable material and maintained in structurally sound condition."*

*Order to Remedy, north side, issued to 91 Logan

**Order to Remedy, south side, issued to 93 Logan.

This Order to 93 Logan also included repair or removal of the fence, which will be completed once settlement of retaining wall with Appeal.

On September 7, 2016, the owner, [REDACTED] of 93 Logan attended the Bylaw Office to request an Appeal of the Order to Remedy. As there was discussion on whether a survey was in existence to support ownership of the retaining wall, the Officer obtained agreement from the property owners that the matter would not be immediately referred to the Hearing Committee.

On November 17, 2017 it was noted that the owner, [REDACTED] of 91 Logan did obtain a survey and that it was believed the survey concluded that the retaining wall was located on the neighbour's property of 93 Logan.

On November 23, 2016 a physical review of the survey concluded that it was very close to/on the property line and in the center the wall has shifted and has fallen/leaning into her property at 91 Logan. A photograph was taken by Officer Whitteker. The issue was discussed with the owner of 91 Logan where final determination was made to proceed to Committee Appeal.

January 25, 2017 in afternoon, Mark Huneault, Lawyer from Weaver Simmons stated he was inquiring for the owner of 91 Logan and once Officer explained that if on property line both could be responsible and appeal to be heard, he stated that he may be sending letter to adjacent owner at 93 Logan to inform that it is to their benefit to repair the wall which is holding up their garage.

Thereafter the owner, [REDACTED] of 93 Logan contacted Officer Whitteker by phone on February 1, 2017 to discuss the letter received by [REDACTED] lawyer regarding the matter. [REDACTED] a [REDACTED] indicated [REDACTED] did not care about the garage and perhaps would have it knocked down and have slope installed as the letter from the lawyer indicated. At this point in time, Officer Whitteker advised that she would postpone the file as it appeared there was still willingness for cooperation and for there to be compliance.

Through February and March significant efforts were made by Officer Whitteker to mediate the dispute in hopes to achieve a resolution where both property owners would be in support of and where costs could possibly be shared. With talks breaking down with the owner of 93 Logan in March, the Officer provided for more time to support resolution.

As there was no clear resolution to the matter between both properties, and in receipt of correspondence on June 29, 2017 from the Lawyer representing the owner, [REDACTED] of 91 Logan where there was a claim that that they are not responsible for the repair but would like it to be repaired in a timely manner by the owner of 93 Logan, the matter was deferred to final resolution at the Hearing Committee level. Hearing Committee date confirmed for October 25, 2017 for resolution.













2016/11/23

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January 27, 2017

██████████
93 Logan Avenue
Sudbury, ON P3C 3E3

Dear ██████████

Re: ██████████ v. ██████████ - Property Dispute - Our File No. 73338

We are the solicitors for ██████████ and confirm that we are in receipt of an Order to repair or replace a retaining wall along a property. The retaining wall does not support our client's property it supports the neighbouring property but does appear to support a wood framed garage located on your property. Our client is not responsible for the retaining wall and it appears that the only reason the retaining wall is on their property is that it is buckling and this retaining wall was in place prior to our client's purchase of this property.

It is our understanding that the Property Standards Committee has issued an Order to Remedy against you and our client who is the owner of 89 Logan. Our client has no interest in preserving the retaining wall. She derives no benefit from the retaining wall and would be prepared to have a slope between your property and our client's property. Unfortunately, the removal of the retaining wall may adversely affect the garage that is on your property. As such it is certainly in your interest to repair the retaining wall and to place the retaining wall entirely on your property as our client has no intention of incurring more costs than necessary.

Our client is prepared to permit you to enter onto their property in order to affect a repair so long as you do not damage our client's property. Our client is doing so in the interest of being good neighbours and to bring this matter to your attention otherwise the need will be to remove the said retaining wall.

We would be pleased to discuss this matter with you at your convenience with an aim towards a reasonable resolution to this issue as the municipality is attempting to deal with this issue of the retaining wall which is encroaching on our client's property.

Yours very truly,
WEAVER, SIMMONS ^{LLP}

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Email: majhuneault@weaversimmons.com
MAJH:sv

cc: Client
Ms. Tina Whitteker (via email)

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June 29, 2017

Ms. Tina Whitteker
Property Standards Officer
City of Greater Sudbury
200 Brady Street
Sudbury, ON P3A 5P3

VIA EMAIL TO: tina.whitteker@greatersudbury.ca

Dear Ms. Whitteker:

Re: [REDACTED] v. [REDACTED] - Our File No. 73338

It has come to our attention that [REDACTED] has not attempted to resolve this issue with respect to our client. Our client was in Italy from March 8th to June 7th, 2017. [REDACTED] served a Plaintiff's Claim upon our client and actually attended at Small Claims Court attempting to obtain a Judgment as against our client who was, of course, absent. We can confirm that the action has dismissed as [REDACTED] had not suffered any damages.

At this stage our client reiterates her demands that the retaining wall be repaired and that you enforce the Property Standards By-Law. We respectfully disagree with your interpretation that retaining walls are split on a 50/50 basis and it is our client's view that the retaining wall should be removed from our client's property as it is encroaching upon our client's lands. We further take the position that the retaining wall needs to be repaired or removed and that there be an Order for the repair of the wall be made against Ms. Sutherland.

We would be pleased to discuss this matter with you at your convenience and remain,

Yours very truly,
WEAVER, SIMMONS LLP



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cc: Client (via email)
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