

NOTICE OF APPEAL TO PROPERTY STANDARDS COMMITTEE

Case #: 729526

Order to Remedy Non-Conformity with Standards for Maintenance and Occupancy of All Property

Date order served: September 22, 2016

Date order received: September 28, 2016

Name of Owner



Sudbury, ON



Required disclosures and/or witnesses for appeal hearing:

- Attendance of Melissa Laalo;
- Attendance of Kyle Anderson;
- Attendance of Andre Guillot;
- Attendance of Brendan Adair;
- Copy of Order issued by Melissa Laalo to 633 Lavoie Street in 2015;
- Copy of survey provided to Kyle Anderson by property owner of 633 Lavoie Street in June 2016;
- Copy of aerial photos in the possession of Andre Guillot showing the properties prior to retaining wall being built;
- City records showing the history of ownership of 633 Lavoie Street since 1970;
- Copy of any surveys that the City has in their possession regarding the properties in question dating back as far as 1970;

INTRODUCTION

My name is [REDACTED]. I am co-owner of the property listed above.

Please accept this as a formal application to appeal the Order to Remedy contained in Case # 729526.

I have been charged under By-Law 2011-77, Part 2, Ss 2.10 (1) for “fail to ensure that all retaining walls, screen walls and ornamental walls are constructed of durable materials and maintained in a structurally sound condition.”

I have been ordered to “Remove and replace the retaining wall located in the interior side yard and back yard at the north side of the property along the lot line shared with 633 Lavoie St.”

In making this appeal I will provide evidence that will show that the retaining wall was originally built on the property of 633 Lavoie Street. The retaining wall was built by a previous owner of 633 Lavoie Street, and was intentionally built on [REDACTED] side of the property line because [REDACTED] was taking full ownership and responsibility of the retaining wall.

Therefore, since I had no part in building the retaining wall, and since the retaining wall was constructed for the benefit of the property at 633 Lavoie Street by a previous owner, and since the retaining wall was built on the 633 Lavoie Street side of the property line, I am asking the Property Standards Committee to rescind the Order to Remedy which was served on September 22, 2016 and received on September 28, 2016.

FACTS AND DETAILS SUPPORTING APPEAL

1. My [REDACTED] and I purchased our house at 1198 Rideau Street in March 1974.
2. At the time we purchased the house there was no house on the property at 633 Lavoie Street.
3. A [REDACTED] owned a house right beside us on the corner of Rideau Street.
4. Aerial photos that will be provided by Mr. Andre Guillot will show that the slope of the land from Lavoie Street to our property did not require any form of retaining wall for the benefit of our property prior to the house at 633 Lavoie Street being built.
5. Some time during 1975 [REDACTED] decided that [REDACTED] would like to raise the property at 633 Lavoie Street so that it was more even with the street level on Lavoie Street. [REDACTED] wanted to build a house to sell since [REDACTED] owned that property. In order to do this, [REDACTED] would require a retaining wall to hold the fill needed to bring the level up.
6. City records will show that the property at 633 Lavoie Street was built by a [REDACTED] in or around 1975
7. [REDACTED] had a survey done in 1975 which should be on record at City Hall since the survey would have had to be done in order to get a building permit for the house at 633 Lavoie Street.
8. I was present the day that the surveyor put in the stakes that you see in Figure 1 and Figure 2. That is how I found out that [REDACTED] was building a house. There was no retaining wall at the time the stakes were put in and there was no mention of a retaining wall being anticipated.
9. One day I came home and saw that [REDACTED] had laid the first two rows of a retaining wall that was being made out of old railway ties.
10. Upon seeing the first two rows of the retaining wall I went to the city to complain. My main complaint was with the material [REDACTED] was using for the retaining wall. The ties were full of tar and ran right along the side of my driveway. My [REDACTED] would end up getting full of tar from playing in the area.
11. I was told that as long as the retaining wall was being built on the 633 Lavoie Street side of the property line, it was permissible for the owner to use railway ties for the construction. And so the retaining wall was built with railway ties and the photos will show that not only were the ties used beside my property, they were tied back along the edge of the two other adjacent properties. This was permissible because the retaining wall was being constructed entirely on the property known as 633 Lavoie Street.
12. City records will show that with each subsequent change of ownership, the new owner would have assumed responsibility for the retaining wall. The property has changed ownership 4 or 5 times since 1975.
13. Some time in April 2015 I complained to the City about the retaining wall being in poor shape. It has pushed so much onto my side of the property line that I had difficulty getting my van through to the back yard. Your office can verify this.
14. Subsequent to receiving my complaint, By-Law Officer Melissa Laalo inspected the wall some time in May or June 2015 and issued an Order to the owner of 633 Lavoie Street to repair the retaining wall. The records will show that a member of Building Services was also on the site at that time and he identified safety concerns. My understanding is that the Building Services person was Andre Guillot.

15. Mr. Andre Guillot will be asked to confirm that he advised Melissa Laalo that there was no need to get a survey done since it was obvious who owned the retaining wall and that an order could be issued right away to the owner of 633 Lavoie Street.
16. I was not issued an Order to repair the wall because it was clear that the wall belonged to the property owner of 633 Lavoie Street.
17. I requested that Melissa Laalo be present at the appeal hearing so that she can testify that the owner of 633 Lavoie Street admitted to her that the retaining wall was her responsibility at the time she was given the Order.
18. The owner of 633 Lavoie Street did not appeal the Order, and in accordance with the Building Code Act 1992, Subsection 15.3 (2) an order that is not appealed within the allotted time line identified in the Order shall be deemed to be confirmation that the recipient of the Order is satisfied with the terms and conditions of the Order. Therefore, this must be seen as an admission by the owner of 633 Lavoie Street that she was responsible for complying with the Order.
19. Melissa Laalo will be able to testify that due to the size of the project and the seasonal weather the owner was not able to complete the work in 2015 and was permitted to postpone the work until the summer of 2016.
20. Melissa Laalo was assigned to a new position within the Department and By-Law Officer Kyle Anderson was assigned to the file in May 2016.
21. In June 2016, the property owner of 633 Lavoie Street delivered a land survey to Kyle Anderson. The land survey identified the retaining wall as being located on the property line shared by our two properties.
22. I contend that this was nothing more than an attempt by the owner of 633 Lavoie Street to have me share the cost of the repair to the retaining wall. I was not provided with a copy of the survey when it was presented to Mr. Anderson in June 2016 so I am not sure when the survey was done or who did the survey.
23. On September 16, 2016, Mr. Anderson showed me a copy of the survey, but there was no date on his copy. At the time I am writing this appeal, I have not been provided with disclosure of this survey. However, regardless of what is shown on the survey, I contend that the retaining wall was not built "on" the property line, but was rather built on the 633 Lavoie Street property.
24. Further, it is my recollection that the survey that is in the possession of Mr. Anderson shows the retaining wall on the diagram. However, the survey done by the original owner who constructed the retaining wall would not have shown the retaining wall because it would have been done before the retaining wall was constructed.

Figure 1



25. In Figure 1, you can see the survey peg that was put into the ground at one end of the retaining wall. That survey peg was put in when one of the previous owners took a survey so that ■ could put in a retaining wall because ■ wanted to bring the property at 633 Lavoie Street level with Lavoie Street. ■ needed the retaining wall to hold the fill that was needed to raise ■ property.
26. At the time I went to the City to complain about the ties being used, but the City told me that it was allowed as long as it was on ■ property.
27. The survey peg was used as a guide to make sure the wall was on the 633 Lavoie Street property.
28. If it would have been on any part of the line, I could have objected and the owner of 633 Lavoie Street would have had to move the retaining wall.

Figure 2



29. In Figure 2, you can see the survey peg near the other corner of the retaining wall. That peg clearly shows that the bottom railway tie is on the 633 Lavoie Street side of the peg. However, over time, the pressure of the soil and the pressure of the large tree that was planted near the wall, has pushed the upper levels of the retaining wall over the top of the survey peg, thus infringing on my property.
30. In Figure 2 (a) you can see how the retaining wall was pushed from the original location over the years resulting in the corner ties in Figure 2 to be pushed over the survey peg.
31. In Figure 3, you can see a tree stump at the top left hand side of the picture. That tree was very large and the roots helped to push the retaining wall over the property line. You can see how it has been pushed as you look along the wall from the end.
32. In Figure 3, you can also see how the corner of the retaining wall was tied-back towards the 633 Lavoie Street property. That is further evidence that the retaining wall was built by the previous owner of 633 Lavoie Street for the benefit of improving [REDACTED] own property.

Figure 2 (a)



Figure 3



Figure 4



33. In Figure 4, you can see the stump of the tree which ended up pushing the retaining wall towards my property. If you look at the bottom of the picture you can see one of the steel rods that was used to “shore up” the wall. See how much it has been pushed by the force of the wall encroaching on my property.

Figure 5



34. Figure 5 is another view of the steel rod that was being used to shore up the retaining wall. Look at how much it has been bent by the force of the fill and the tree trunks over the years. You can tell this is the same picture as in Figure 4 by looking at the vegetation in both photos.
35. Kyle Anderson indicated to me that the By-Law Department and Building Services were given direction from the City Solicitor's Office with respect to resolving issues relating to retaining walls located near property lines.
36. The solicitor informed Mr. Anderson that case law has been determined that both property owners have a shared responsibility for such a wall and if required the City must issue an Order to Comply to both of the affected property owners.
37. Since the survey that was provided to Mr. Anderson in June showed the retaining wall on the property line, Mr. Anderson advised myself and the owner of 633 Lavoie Street that we attempt to resolve the matter respectfully between us rather than have the matter end up in the court system.
38. I contend that the case law that was referred to by the City Solicitor would only apply if there was a dispute by two property owners over who was responsible for the retaining wall if the retaining wall was in fact built "on" a property line. Case law would only apply if there was no agreement over who was responsible for building the retaining wall and there was no evidence to show upon whose property the retaining wall was situated.

39. In this case, when the Order was issued in 2015, the owner of 633 Lavoie Street confirmed that [REDACTED] was satisfied with the order that [REDACTED] must repair or replace the retaining wall.
40. In this case, evidence has been shown that the retaining wall was originally built on the 633 Lavoie Street side of the property line, therefore, making it the responsibility of that owner and not my responsibility.
41. Further, it is clear that the retaining wall was built for the benefit of the property owners who have subsequently owned 633 Lavoie Street.
42. Therefore, I do not feel that I should have been issued the Order to Remedy that I am appealing at this time.
43. A meeting was held on my property on September 16, 2016. The meeting included Brendan Adair, Melissa Laalo, Kyle Anderson, Andre Guillot, Councillor Robert Kirwan, my [REDACTED] and myself. It was clear that there was no chance of a resolution between the two property owners because it has always been my position that the retaining wall is not my responsibility. The owner of 633 Lavoie Street was clearly the owner of the original retaining wall; [REDACTED] had admitted such to Melissa Laalo; evidence demonstrates clearly that the retaining wall was built for the benefit of 633 Lavoie Street; evidence clearly demonstrates that the retaining wall was built on the 633 Lavoie Street side of the property line; and the retaining wall was built after I had moved into my house back in 1974. In fact, Mr. Guillot will be asked to provide aerial photos of the property prior to the retaining wall being built.

Figure 6



44. Figure 6 shows a “tie-back” that is still in place from the original location of the retaining wall. You can see how much this part of the wall has been pushed out from the original position, evidence that the retaining wall was once on the 633 Lavoie Street side of the property line.

Figure 7



45. Figure 7 is taken at the far end of the retaining wall. If you look closely beside the bricks, near the centre of the bottom, you can see the tip of survey stake that is shown in Figure 1. You can tell that is the survey peg if you look at the formation of the bricks to the right of the peg and compare them in both Figures.
46. In Figure 7, you see a steel shoring rod that is bent slightly to the left, but otherwise it is fairly straight up. If you look in the centre of the photo you can see how the upper ties have moved slightly to the left as a result of pressure from the right, but also because the section to the left of this photo has been pushed towards my property because of two large trees with large trunks that were pushing on the retaining wall over the years. As the ties pushed towards my property, they pulled the ties at this corner in the same direction.
47. However, in Figure 7, it is clear that the retaining wall was on the 633 Lavoie Street property side when it was constructed based on the position of the survey peg.

Figure 8



48. Figure 8 is an older photo of the retaining wall showing how it looked when it was straight and not being pushed over onto my property. You can see at the top of the photo how the tree is still small at that time.

CONCLUSION

Since it is clear from all of the evidence that the retaining wall was built by a previous owner of 633 Lavoie Street, and that the retaining wall was built entirely on the 633 Lavoie Street side of the property line, the current owner of 633 Lavoie Street should be held responsible for maintaining the retaining wall in a structurally sound condition.

Whereas Andre Guillot of Building Services had indicated that the retaining wall is not in a structurally sound condition, I maintain that the owner of 633 Lavoie Street should be required to accept full financial responsibility for repairing or replacing the retaining wall.

And, whereas the current owner of 633 Lavoie Street was satisfied with the terms and conditions of the Order [REDACTED] received in 2015, it is not appropriate for the City to now issue me an Order to Remedy based on Case Law that would only be applicable if there was no conclusive evidence to demonstrate ownership of the retaining wall.

For these, and other reasons that may be presented at to the Property Standards Committee during an official hearing, I would ask that the Remedy to Order issued to me on September 22, 2016 be rescinded.

Signature of [REDACTED]

Signature of [REDACTED]

Date of Signature

Date of Signature