

MEETING MINUTES



MEETING	Property Standards Committee Meeting	
DATE	February 22, 2017	
LOCATION	Committee Room C	
TIME	7:00 PM	
PRESENT	Committee members	Douglas Smith, Ryan Gibson, Jon Hebden, Katharine Lammer, Bob Foster
	Supervisor Bylaw Compliance, Security and Licensing	Randy Berg
	Property Standards Inspector	Jason Lapier
	Deputy City Solicitor	Jeff Aitkens
	Secretary-Property Standards Committee	Rebecca Smith
	PSC-17-002 Appellant:	John Farley
	PSC-17-003 Appellant:	Absent – James Rattray

DISCUSSION ITEMS

ITEM #	DESCRIPTION
1	<p>Appointment of Chair Person:</p> <p>B. Foster appointed Chairperson</p>
2	<p>Disclosure of Pecuniary Interest:</p> <p>There were no declarations of pecuniary interest.</p>
3	<p>PSC 17-002 – 5 Gordon St</p> <p>Meeting called to order at 7:00 pm</p> <p>Introductions of the Committee, City Staff and the appellant of PSC-17-002 were made</p> <p>Chair (B. Foster) asked City to present its case.</p> <p><u>Background:</u></p> <p>J. Lapier - Inspection of the wall between 5 and 15-17 Gordon St was completed in September and December of 2016. The wall is a brick and stone rubble party wall along east side of 5 Gordon approximately 12-15 feet in length and 10-12 feet in height. There are voids, gaps and cracks in rubble and brick walls in various areas along length of wall including loose material. Although there are areas that appear to have been patched in the past, there is still loose stone and missing brick at the top of the wall and there are gaps and voids throughout the wall. (Pictures showing the wall were presented by Jason). The part of the issue that this Order is dealing with is the stone rubble wall.</p> <p>As the result of those inspections the order before you was issued to repair, repoint or</p>

reconstruct the stone rubble wall located along the east side of the property that appears to be on the property line and is part of the common wall shared with the 1 storey brick exterior building on the adjacent property at 15-17 Gordon St. Ensure the wall is maintained in good repair, free of defects that may allow the entry of water into the wall and maintained in a structurally sound condition at all times.

A similar Order was issued to the property owner(s) of 15-17 Gordon St. Each property owner is responsible to make sufficient repairs to their portion of the shared common (stone rubble) wall and shall make arrangements agreeable to both property owners should access to the adjacent property be required for said repairs. Cooperation from both property owners is necessary to ensure that the repairs are completed in a satisfactory time and manner.

This was issued on December 14, 2016 with a compliance date of February 1, 2017.

An inspection was completed on February 22, 2017 and the stone rubble wall remains in the same state.

The chair (B. Foster) asked the committee for questions for the City:

K. Lammer – Can you give us a better orientation of where the wall is in relation to the properties?

J. Lapier – These pictures were taken from 5 Gordon St. There is about a 3 foot walkway between the properties, where access is restricted. The parking lot at 5 Gordon St is about 4-5 feet higher than the walkway.

B. Foster – How many square feet of the wall needs repair? It's not the whole wall?

J. Lapier – No, the part that would be the most hazardous would be the top part, as well as some of the stone rubble throughout as it is loose.

Chair (B. Foster) asked the appellants to present their case:

J. Farley– Contracted the represent Wellington Standard Condominium Corporation 205, which was the original complainant for Property Standards for this wall. The reason why they made the complaint was to recognize some functional and structural issues with the 15-17 Gordon wall with regards to the wall assembly and drainage. They had an engineered report completed. That report there was not only for the rubble stone wall, but the poured concrete wall as it is pulling away and could cause damage to the underground parking structure and interrupt drainage.

Building first built in 1846 at which time there was five-three storey buildings, now there is only one-three storey building. The reason for this information is to present the definition of a party wall, which is in effect a building that was removed and that is a structural support. The new building does not abut up to 15-17 Gordon St, there is an eight inch gap and it goes off on an angle.

Picture shown of the poured concrete and rubble stone wall – the complaint was not just the rubble stone wall, but the poured concrete wall too. The poured concrete wall, which has no engineering, has tiebacks and there is a 2 ½ foot podium that goes beneath grade onto the 5 Gordon St property. Then there is the rubble stone wall, which is attached to the three storey building, with a basement, which is the start of the party wall.

Sept 21, 2006 – Property Standards officer gave order to 5 and 15-17 Gordon St to repair the rubble stone wall

Sept 28, 2006 – 5 Gordon St owner at the time allowed 15-17 Gordon access to the property to repair his wall, with access and risk at his own expense and that the property at 5 Gordon St was not to be altered in anyway.

Nov, 2006 – J. Farley believed that the wall should have just been steeled strapped, however the concrete wall was erected instead by Ron Martini without engineering drawings or permits on 5 Gordon.

Jan 15, 2016 – legal notice sent to owner of 15-17 Gordon St to ensure no legal acquisition or prescriptive rights of the wall could be claimed.

Sept 12, 2016 – Condo Corp filed property standard claim with the City, which included a fully stamped engineering and architectural report.

December 14, 2016 – an order to both parties to repair the rubble stone wall was issued with no mention of the concrete wall.

The concern is that we have an abutting concrete wall that should be part of the discussion and the whole goal of the complaint was to ensure that the whole wall was investigated by engineers on both sides. The concrete wall was built illegally on the property without a permit, without an engineering drawing.

The 2006 order was appeal by both parties and the committee never came to a final decision on it by the Committee. The concern is the rubble stone wall and the concrete wall. 5 Gordon does not recognize this nor is it legally described as a party wall.

The claim was to examine the whole wall with engineering reports as well as the drainage concerns.

In July 2007 – the owner of 5 Gordon St took 15-17 Gordon St to small claims court regarding the wall.

5 Gordon does not believe that they own the concrete or rubble stone wall as they are not party walls

The chair (B. Foster) asked the committee for questions for the Appellants:

B. Foster – Are you asking the Property Standards to tear down the concrete wall? That would be a civil matter that cannot be dealt with here.

J. Farley – The concrete wall is pulling away from the red brick wall and pulling it away from the building.

B. Foster – Did you have a professional engineer complete an assessment?

J. Farley – Yes, the report submitted to the City included a fully stamped engineering and architectural report

B. Foster – Where is the red brick pulling away?

J. Farley – At the back of the concrete, is red brick and it is pulling away at the top and at the sides.

K. Lammer – Are you saying the scope of the Order is not large enough and that is what you are asking us to consider?

J. Farley – Correct, Property Standards cannot deal with drainage, regarding eaves.

B. Foster – Property Standards is able to deal with drainage, but not property ownership and encroachments

J. Farley – Correct, the Condo Corp would like an engineering investigation done so that the drainage is being directed properly, so to deal with the whole issue of the wall assembly and drainage

K. Lammer – So the complaint to Property Standards was for the whole wall?

J. Farley – Yes, with an engineer's report.

K. Lammer – Did the City receive this report and was the whole wall inspected?

J. Lapier- Yes, and the whole wall was inspected. The issue we are dealing with on this property is for the rubble stone wall, any other issues that may have been dealt with on this wall may pertain to the other property.

B. Foster – What do you want seen done?

J. Farley – Ideally, would like all three parts dealt with, the rubble stone wall, the illegal concrete wall and the drainage concern.

B. Foster – Is the wall attached to a building or freestanding?

J. Lapier – Yes, it is attached 15-17 Gordon

J. Farley – The wall is not currently attached, it just sits there and is now pulling away.

K. Lammer – The crumbling wall, was it included in the original order?

J. Farley – Yes, the order in 2006 was to the repair the crumbling wall and the poured concrete was added

B. Foster – When the concrete wall was put in was it flush with the red brick wall?

J. Farley – Yes, but the Condo Corp was not involved until 2008 and the wall was built without an engineered report.

J. Hebden - If you look down the wall, is the wall on 5 Gordon or 15-17 Gordon?

J. Farley – The three storey wall is the party wall and the wall after is not the party wall. The property line does not follow the wall though. The rubble stone wall is completely inside the 15-17 Gordon property

J. Hebden – So the three storey wall is a party wall but the rubble stone wall is all on 15-

17 Gordon?

J. Farley – the rubble stone is approximately 5% on 5 Gordon and 95% on 15-17 Gordon, the concrete wall juts more than 5% onto 5 Gordon.

K. Lammer – The Order deals with the rubble wall, are you stating it is not on your property and you should not have to repair it?

J. Farley – Yes, it is not our wall, even if the small claims court says it was, it's not a party wall. If it is was our wall we will tear it down and steel strap it.

J. Aitkens – City Solicitor. Here to try to clarify some facts from a legal perspective and provide some legal advice for the City. In review of the file it appears that there was a building permit issued July 21, 1966 which indicates that the previous owner of what is now 5 Gordon tore the wall down and since that time there was a 1.5 foot overlap of the wall and it is in fact a common party wall. The source for this is from the small claims court judgement, which is a body of the superior court of justice and does have jurisdiction to deal with matters below \$25,000. This issue was dealt with in 2006 and both parties were required to fix the wall. The owner at 5 Gordon went and fixed the wall and then sued 15-17 Gordon for the repairs to that wall. During that case it was decided that it was a common party wall and the evidence based on that was a paragraph: "Mr. Prajapati indicated that when the property was purchased the Plaintiff was not aware that the wall was designated in any way as a party wall but in his testimony he candidly accepted, for the purposes of the lawsuit, that the survey for the property does show a 1.5 foot party wall existing for approximately 2/3rds of the depth of the lot line between the two properties (about 100 feet)." The decision demonstrates that the whole wall between the property is a common party wall, so if there is an addition of an additional wall then that too is covered by the definition of a common party wall.

J. Aitkens - I would like to point out on Page 4 paragraph 3, "I find that the Plaintiff and the defendant are tenants in common for the wall. I agree with the decision Jones V. Pritchard [1907] 1 Chancery, Ch. P. 680 where Parker J. states at page 640 that the burden should be the same on both owners to a party wall by "making each party responsible for his moiety of the wall" and not for keeping up his neighbour's side of the wall."

J. Aitkens - What I can confirm is that the small claims court does have jurisdiction to deal with these matters and we have a firm court order that rules that two owners are tenants in common of the wall. Property Standards has identified a serious issue with the wall. This hearing is an appeal of a specific order. The other concerns we've heard with drainage can be dealt with under a separate complaint. The committee at its discretion can choose to quash, modify or uphold the order. As both parties have appealed the order and one of the parties is not here tonight. Maybe as a procedural fairness matter you could hear from the other side prior to making a decision, but that is left up to the committee.

J. Farley – The other party is here

D. Carere - I am here to observe from the direction of my lawyer. There are some truths and some things said that are not true, but I will comment on those at my hearing, which was adjourned.

The chair (B. Foster) asked for anymore questions from the committee to any of the parties:

B. Foster – We have heard from staff and have heard from one appellant and are now getting clarification from staff. We will then ask for feedback.

R. Berg – If you are introducing Mr. Carere’s comments it is on this order, not the one that was given to him as that has been adjourned to a different time.

B. Foster – Are we able to defer to wait until we hear the appeal for the adjacent property?

J. Aitkens – Procedurally the committee may want to hear from both owners before making a decision, as this is appealable to the Superior Court of Justice. The committee could defer this appeal until you have heard the other.

J. Farley – Having this hearing in front of the appellant of the other property, is that not a legal conflict of interest?

J. Aitkens – Although there are similarities or overlaps in the orders they are separate orders.

B. Foster – My understanding of a party wall from a building code perspective is as long as the property line is somewhere within that wall it is a joint wall.

J. Farley –The only building being supported by tenants is the three storey, the rest is not, and the concrete wall was built illegally.

J. Aitkens – It appears as though the entire line of the wall has been judicially accepted that a 1.5 foot party wall exists.

B. Foster – are there any other questions to the committee or staff

K. Lammer – If this appeal gets differed to hear both properties involved, would the City be able to provide the Committee with diagrams from the Small Claims court file 09-310 for reference?

J. Aitkens – Yes, those can be provided.

J. Farley –Would like to make a complaint that the other appellant is present and that is a conflict of interest.

R. Gibson – This is a public meeting and anyone is permitted to attend.

B. Foster – Would anyone else like to make comments?

D. Carere – I will speak to the matter at the date of the appeal for my property.

The chair (B. Foster) closed the meeting and let the attendees know they were welcome to stay while the committee deliberated and reached a decision.

<p>4</p>	<p>DECISION PSC 17-002</p> <p>Motion by R. Gibson and seconded by K. Lammer, this decision was unanimous</p> <p>In the matter of the Appeal of the Order issued by the Property Standards Officer on December 14, 2016 regarding 5 Gordon Street, being PLAN 8 LOT 194 PT LOT 178 SUBJ TO ROW. It was determined by the Committee that a desicison regarding Order 16-8768 be deferred until the Committee has heard the appeal for the adjacent property at 15-17 Gordon Street.</p>
<p>5</p>	<p>PSC-17-002 Adjourned at 8:45 pm</p> <p>Chair (B. Foster) called a 5 minute recess.</p>
<p>6</p>	<p>PSC 17-003 – 24 Mason Court</p> <p>Meeting called to order at 8:50 pm</p> <p>Chair (B. Foster) asked City to present its case. <u>Background:</u></p> <p>J. Lapier – An inspection was completed with the owner of 24 Mason Court on Wednesday January 4, 2014 for a missing handrail in the basement and the lack of egress window in the basement. There are two windows in the basement one at the front in a storage room measuring 28.5 by 19 inches, with a sash that was not removable. The window in the bedroom measures 29.75 by 13.7 inches and based on these measurement was not deemed a proper egress. Additionally, the window is 7 feet 7 inches from the floor.</p> <p>As the result of that inspection the order before you was issued to provide / install an egress window or an exterior door having a minimum unobstructed openable area of 0.35 square metres (3.8 square feet) and a minimum dimension of 0.38 metres (15 inches) in the basement.</p> <p>It was noted that a minimum clearance of 0.55 metres (21.6 inches) is required between the foundation wall and the window well or between the window sash and the window well wall when the window is in the open position. Also, sleeping shall NOT occur in the basement until the work in this Order is complete and a building permit may be required for the installation of the egress window.</p> <p>A follow-up inspection was completed in February and substantial work had been completed on the handrail, but the egress window had not been addressed.</p> <p>The chair (B. Foster) asked the committee for questions for the City:</p> <p>K. Lammer – Just one of the windows need to meet the requirements?</p> <p>J. Lapier- Yes, just one of these need to meet the dimensions.</p> <p>R. Gibson – Are there tenants currently in the basement?</p> <p>J. Lapier- Upon my first inspection the bedroom in the basement had a dresser and bed set-up in it.</p>

	<p>D. Smith – Is the appellant looking for an extension?</p> <p>K. Lammer – As per the letter from the appellant they are requesting an extension until May 31, 2017 due to window delivery, contractor availability and students and it being exam time.</p> <p>J. Hebden – If no one was sleeping downstairs then he would be in compliance.</p> <p>The chair (B. Foster) closed the meeting and let the attendees know they were welcome to stay while the committee deliberated and reached a decision.</p>
7	<p>DECISION PSC 17-003</p> <p>Motion by K. Lammer and seconded by D. Smith, this decision was unanimous</p> <p>In the matter of the Appeal of the Order issued by the Property Standards Officer on January 5, 2017 regarding 24 Mason Court, being PLAN 672 PT LOT 9, it is the decision of the Committee that item #1 on Order 16-8937 CM be confirmed and the compliance date extended to May 31, 2017 and that item #2 has been substantially complied with.</p>
8	<p>Approval of Minutes:</p> <p>Moved by K. Lammer and seconded by D. Smith to approve minutes from November 15, 2016.</p>
9	<p>Meeting adjourned at 9:15 pm by motion of B. Foster and seconded by D. Smith</p>