

FILE: 2017-03

IN THE MATTER OF AN APPEAL pursuant to section 190.01(2) of the *Municipalities Act*, R.S.N.B., 1973, c.M-22 and pursuant to section 26(1) of the *Saint John Minimum Property Standards By-Law*, No. M-14

BETWEEN:

LANG LEE & ILIR LOKA

Appellants

– and –

THE CITY OF SAINT JOHN

Respondent

**DECISION OF THE SAINT JOHN
SUBSTANDARD PROPERTIES APPEAL COMMITTEE**

Parcel Identifier Number: 00000604

Parcel Address: 149 Broad Street, Saint John, New Brunswick

Registered Owners: Lang Lee & Ilir Loka

Hearing date: Friday, 29 September 2017

The Parties

1. The Appellants, Lang Lee and Ilir Loka, (the “**Appellants**”) were the registered owners of a property located at 149 Broad Street in Saint John, New Brunswick (the “**Property**”), having the Property Identification Number of 00000604. As a result of a property transfer registered on 20 September 2017, Mr. Lee is the sole remaining registered owner of the Property. However, both individuals appeared in person at the hearing and made submissions.
2. The Respondent, the City of Saint John, was represented by Rachel Van Wart, EIT, a Technical Services Officer, and Amy Poffenroth, P. Eng., a By-law Enforcement Officer (together, the “**City Officers**”).

The Property

3. Pursuant to subsection 190.01(3) of the New Brunswick *Municipalities Act*, R.S.N.B. 1973, c. M-22, as amended, (the “**Act**”), a Notice to Comply was issued by the Municipal Officer of the City of Saint John on 15 August 2017 (the “**Notice to Comply**”). The Notice to Comply indicated that the Property was in contravention of the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-Law*, By-law number M-30 (the “**By-Law**”), and subsections 190.01(1), 190.01(1.1) and 190.01(2) of the *Act*.
4. The Notice to Comply was accompanied by an Inspection Report prepared by Ms. Van Wart, which was reviewed and concurred in by Ms. Poffenroth (the “**Inspection Report**”).
5. The Inspection Report details a number of issues with the Property that bring it in contravention of the By-Law and the *Act*. The Property houses one large building (the “**Building**”) and one shed. In general, those issues were:

- An accumulation of junk, rubbish and refuse on the property;
- Fallen, cracked, loose and spalling bricks on the Building's exterior;
- Deteriorated and, in one section, fallen, roof fasciae;
- A dilapidated shed on the Property;
- One failed retaining wall; and
- Numerous issues with the Building's interior which include, but are not limited to, extensive water damage, crumbled wall and ceiling plaster, a sloping and partially dropped floor, mould and fungi growth on the walls and ceilings, and areas which have been vandalized.

The Appeal

The Appellant's Submissions

6. The Appellants were served with the Notice to Comply by posting it on the exterior of the Building on 17 August 2017, and also by personal service on 22 August 2017. As the Appellants attended at the hearing, service is not at issue.
7. The Appellants filed a Notice of Appeal on 1 September 2017. Their grounds of appeal were that they required more time in order to complete the plan they had for the Property.
8. A Notice of Appeal was issued on 11 September 2017. The Appeal was scheduled for 10:00 a.m. on 29 September 2017, at the City Hall Building. Again, service is not at issue as all parties attended the hearing.
9. As required by Section G, paragraph 4 of the *Provisions Governing the Procedure and Operation of the Saint John Substandard Properties Appeal Committee*, I confirmed with the Appellants that the Notice to Comply was indeed that which the Appellants sought to appeal.

10. The Appellants made their representations first. They indicated that they were in the process of finalizing their business plan in relation to the Property. Their plan is to convert the existing Building – constructed, according to the Appellants, in 1878 – into a Nursing Home. This, they submit, they can accomplish with financing (which, they submit, they are securing), an architect’s plan (which, they submit, they are obtaining) and some additional time from the City in which to complete their endeavour.
11. The Appellants accepted all of the findings contained in the Inspection Report, with the exception of the finding that the Building is structurally unsound.
12. The Appellants concluded by indicating that they had discussed their building plan with the City and contend that they had come to an agreement with regard to the execution of that plan.

The Respondent’s Submissions

13. The Respondent was represented by the City Officers. Ms. Van Wart presented a detailed file, in 12 sections, outlining the procedural history of the Appeal as well as the findings made by the Respondent over the course of its examination of the Property.
14. Ms. Van Wart presented a number of photographs which support the findings made in the Inspection Report. The Building looks to be in quite a dilapidated state.
15. As to the issue of structural soundness, the Inspection Report details that the Building is structurally unsound for the following reasons (set out on page 4 of the Inspection Report):

1. *The brickwork on the exterior of the Building is structurally unsound and causing other elements of the Building to fail. Loose bricks are visible near the main entrance where a large section of the roof has already fallen onto the front staircase and landing. Falling pieces of brick or other elements of the Building could cause serious damage to anyone on the property as well as pedestrians passing by on the sidewalk. The stairs leading to the main entrance of the Building are anchored to exterior brick that shows signs of stress and could also cause failure.*
2. *The stairs leading to the front, left, and rear entrances of the Building are rusted and structurally unsound. Missing stair treads, rust and deterioration of the bricks where the stairs are anchored to the Building illustrate that the stairs are not safe for travel.*
3. *The retaining walls on the property are structurally unsound and hazardous to the public. The concrete retaining wall to the left of the Building is leaning and has failed with sections of concrete and cinder blocks piled near the public sidewalk. There are unsecure stones dislodging from the stone wall at the front of the property. These stones and broken cinder blocks pose a tripping hazard to individuals entering the property and pedestrians using the sidewalk in the high density urban area.*
4. *The interior of the Building is structurally unsound, specifically the front room that has failed and caved into the basement. Extensive water damage throughout the Building to key structural members contributes to the structural unsoundness of the Building. The flooring in the basement is soft and deflects under load indicating improper structural support.*
16. The Appellants, in their submissions, disputed the Inspection Report and contended that the Building is sound. They offered nothing additional in support of their contention other than a commentary on some of the internal wall framing.
17. Where the evidence of the Respondent differs from that of the Appellants on the issue of the Building's structural soundness, I prefer the evidence of the Respondent.
18. The Respondent confirmed the Appellants' contention that it had come to an agreement regarding the execution of the Appellants' plan for the property. However, the Respondent indicated that it would only do so subject to a certain number of conditions.

19. The Respondent outlined its conditions as follows:

- The permit application and repair plan are to be submitted by the Appellants and approved by 31 January 2018;
- The Building is to remain secure at all times;
- In the event the Building sustains a fire, break-ins or other acts of vandalism, the City reserves the right to take enforcement action as necessary; and
- In the event the Building significantly deteriorates further, the City reserves the right to take enforcement action as necessary.

20. Furthermore, the Respondent set out two deadlines:

- 31 January 2018: the date by which the Appellants were to have their permit application and repair plan both submitted and approved (the “**First Deadline**”); and
- 31 January 2019: the date by which the Appellants are to have their repair-related remedies completed (the “**Second Deadline**”).

21. In the event these deadlines are not met, the Respondent reserved the right to proceed with enforcement action.

22. Finally, the Respondent indicated that:

- between the time of the hearing and the First Deadline, it required monthly progress updates from the Appellants; and
- once the permit is issued, it required quarterly progress updates from the Appellants until the Second Deadline.

23. As indicated, the parties appeared to agree on this course of action.

Decision and Order

24. The Notice to Comply set out two remedial actions available to the Appellants, and the dates by which either of those options was to occur:

- the demolition of the Building, clean-up of the property and related remedies must be complete, or plans and permit applications for repair-related remedies, must be submitted within 60 days of being served with the Notice to Comply; and
- the repair-related remedies must be complete within 180 days of being served with the Notice to Comply.

25. However, as indicated above, the Parties have agreed upon an alternate course of action, accompanied by alternate time frames.

26. Additionally, as Mr. Loka is no longer a registered owner of the Property, I will refer only to Mr. Lee as the Appellant, and the order shall apply to whomsoever is the registered owner of the Property.

27. These proceedings are governed by *A By-Law Respecting Standards for Maintenance and Occupancy of Buildings and Premises*, By-law number M-14 of the City of Saint John. Subsection 26(4) of that By-law reads as follows:

26(4) On an appeal, the committee of council may confirm, modify or rescind the notice or extend the time for complying with the notice.

28. In light of the agreement between the Parties, I will modify the Notice to Comply, extend the time for complying with the Notice to Comply, and issue the following Decision:

- a) The Appellant shall submit his permit application and repair plan in sufficient time to allow for approval by the City by 31 January 2018;
- b) The Appellant shall provide monthly progress updates to the City, on the last day of each calendar month, from the date of this Decision until the permit application and repair plan are approved by the City, or until 31 January 2018, whichever is later;
- c) The Appellant shall complete all repair-related remedies by 31 January 2019;
- d) Between the date of approval of the permit application and repair plan, and the completion of all repair-related remedies on or before 31 January 2019, the Appellant shall provide progress updates to the City on the following dates:
 - i. 30 April 2018;
 - ii. 31 July 2018;
 - iii. 31 October 2018; and
 - iv. 31 January 2019
- e) From the date of this decision until the completion of all repair-related remedies, the Building is to remain secure at all times;
- f) From the date of this decision until the completion of all repair-related remedies, in the event the Building sustains a fire, break-ins or other acts of vandalism, the City shall have the right to take enforcement action as necessary; and

- g) In the event the Building significantly deteriorates any further, the City shall have the right to take enforcement action as necessary.
29. The Notice to Comply is therefore modified as set out above and otherwise remains in full force and effect.

DATED at Saint John, New Brunswick this 29th day of September 2017.

Brian Maude
Chairperson
Saint John Substandard Properties Appeal Committee