

✓ scanned

CO 11-23



APPLICATION FOR APPEAL

Saint Paul City Clerk

310 City Hall, 15 W. Kellogg Blvd.

Saint Paul, Minnesota 55102

Telephone: (651) 266-8560

RECEIVED

OCT 19 2011

CITY CLERK

The City Clerk needs the following to process your appeal:

- \$25 filing fee payable to the City of Saint Paul (if cash: receipt number _____)
- Copy of the City-issued orders or letter which are being appealed
- Attachments you may wish to include
- This appeal form completed
- Walk-In OR Mail-In

<p>YOUR HEARING Date and Time:</p> <p>Tuesday, 11-8-11</p> <p>Time 1:30</p> <p>Location of Hearing: Room 330 City Hall/Courthouse</p>
--

Address Being Appealed:

Number & Street: 410 Maple St City: St Paul State: MN Zip: 55106

Appellant/Applicant: Donald R Moschkau Email dmoschk1@fairview.org

Phone Numbers: Business _____ Residence 612-990-3044 Cell 612-990-3044

Signature: [Signature] Date: 10-17-11

Name of Owner (if other than Appellant): _____

Address (if not Appellant's): _____

Phone Numbers: Business _____ Residence _____ Cell _____

What Is Being Appealed and Why? Attachments Are Acceptable

- Vacate Order/Condemnation/Revocation of Fire C of O
- Summary/Vehicle Abatement
- Fire C of O Deficiency List
- Fire C of O: Only Egress Windows
- Code Enforcement Correction Notice
- Vacant Building Registration
- Other

The neighboring property was excavated to put in a parking lot requiring the need for a retaining wall. This wall fell and it states in federal law that I have the right to lateral support. (Please see attached) Attachment 2



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

364

Yog hais tias koj hais lus Hmoob thiab koj tsis to taub tsab ntawv no, hu rau tus txhais lus ntawm (651) 266-8989. Nws yog pab dawb zwb. Si necessita un traductor, por favor llamanos al (651) 266-8989. No costo.

October 10, 2011
Donald R Moschkau
410 Maple St
St Paul MN 55106-5010

CORRECTION NOTICE

RE: 410 MAPLE ST
File #: 11-284218

Dear Sir or Madam:

The City of Saint Paul, Department of Safety and Inspections has inspected the above referenced property on **October 10, 2011** and has determined that the following deficiencies exist in violation of the Saint Paul Legislative Code¹ (see footnote 1, below).

1. The wall on the North property line has fallen over. Repair/Replace the wall.

You are hereby notified to correct these deficiencies in accordance with the appropriate codes. The Enforcement Officer will reinspect these premises on or after **October 31, 2011**, by which date the violations noted must be corrected. **Failure to correct these deficiencies may result in the issuance of criminal charges²** and/or a civil lawsuit, and possible abatement/assessment by the City. All repairs and new installations must be made in accordance with the appropriate codes. Permits may be obtained by calling 651-266-8989.

You may file an appeal to this notice by contacting the City Clerk's Office at 651-266-8688. Any appeal must be made in writing within 10 days of this notice. (You must submit a copy of this Notice when you appeal, and pay a filing fee.)

If you have any questions or request additional information, please contact me. To arrange an appointment or request an extension of time to complete repairs, you will need to speak directly to me at 651-266-1916.

Sincerely,

Paula Seeley
Badge # 364
CODE ENFORCEMENT OFFICER

Footnotes:

Attachment 1 pg lots

October 10, 2011

410 MAPLE ST

Page 2

- ¹ To see the Legislative Code go to www.stpaul.gov on the internet, click on "Departments", then click on "Department of Safety and Inspections", scroll down the page for the "Codes". Most Correction Notices derive from Chapter 34.
- ² Criminal charges can be brought on the day the violation is observed, but generally we allow time to correct unless this is a repeat violation.

ps

WARNING Code inspection and enforcement trips cost the taxpayers money. If the violations are not corrected within the time period required in this notice, the city's costs in conducting a reinspection after the due date for compliance will be collected from the owner rather than being paid by the taxpayers of the city. If additional new violations are discovered within the next following 12 months, the city's costs in conducting additional inspections at this same location within such 12 months will be collected from the owner rather than being paid by the taxpayers of the city. Any such future costs will be collected by assessment against the real property and are in addition to any other fines or assessments which may be levied against you and your property.

cn60100 6/10

1 pg 2 of 2

Adjoining Landowners

West's Encyclopedia of American Law:

Adjoining Landowners

This entry contains information applicable to United States law only.

Those persons, such as next-door and backyard neighbors, who own lands that share common boundaries and therefore have mutual rights, duties, and liabilities.

The reciprocal rights and obligations of adjoining landowners existed at common law but have been modified by various state laws and court decisions.

Rights, Duties, and Liabilities

Landowners are expected to use their property reasonably without unduly interfering with the rights of the owners of contiguous land. Anything that a person does that appropriates adjoining land or substantially deprives an adjoining owner of the reasonable enjoyment of his or her property is an unlawful use of one's property. A man buys a house in a residentially zoned area and converts it into an office building. He paves the backyard for a parking lot, but encroaches two feet beyond his property into the lot of the adjoining landowner. His use of the property is unlawful for a number of reasons. He has appropriated his neighbor's land and substantially interfered with his neighbor's right to use it. His neighbor may sue him in a tort action for the nuisance created and, if successful, the neighbor will be awarded damages and an injunction to stop the unlawful use of the land. In addition, the purchaser has violated zoning laws by using residential property for commercial purposes without seeking a variance.

Property owners have the right to grade or change the level of their land or to build foundations or embankments as long as proper precautions are taken, such as building a retaining wall to prevent soil from spilling upon adjoining land. If permitted by law, landowners may blast on their own property but will be liable for damages caused by the flying debris thrown onto adjoining land.

Lateral Support

A landowner has a legally enforceable right to lateral support from an adjoining landowner. Lateral support is the right to have one's land in its natural condition held in place from the sides by the neighboring land so that it will not fall away. Land is considered in its natural condition if it has no artificial structures

Attachment 2 Pg 1 of 3

or buildings on it. A landowner can enforce the right to lateral support in court. A lawsuit for the removal of lateral support accrues when the damage occurs, not when the excavation is done.

An adjoining landowner who excavates close to his or her boundary line has a duty to prevent injury arising from the removal of the lateral support of a neighbor's property. Because the right to lateral support is considered an absolute property right, an adjoining landowner will be liable for damages to the natural condition of the land regardless of whether or not he or she acted negligently.

When, however, a landowner has erected buildings on the land, his or her right to recover for deprivation of the lateral support is different. Since additional weight has been placed on the land, thus increasing the burden on the lateral support, the landowner can be awarded damages for injuries to the building caused by excavation only if his or her neighbor has been negligent. Sometimes local ordinances require that persons planning to excavate on their own property give notice to neighboring adjoining landowners so that neighbors may take preventive measures to protect their property. The failure of landowners who receive notice to take precautions does not necessarily absolve the excavator of liability for negligence. If, however, the excavator does not notify neighboring landowners, courts have treated this failure as negligence, and the excavator will be responsible for damages even though the excavating itself was not done negligently.

When evidence establishes that an adjoining landowner has removed the lateral support of a neighbor's land, the neighbor will recover damages in the amount of either the cost of restoring the property to its value before its support was removed or the cost of restoring the land to its former condition, whichever is less. An injunction prohibiting further excavation may be granted if it poses a clear danger to contiguous lands and if it will cause irreparable damage.

Subjacent Support

A landowner is entitled to subjacent support, the absolute right to have one's land supported from beneath its surface. If one person owns the surface of the land while another owns the subjacent surface, the owner of the surface is entitled to have it remain in its natural condition without subsidence caused by the subsurface owner's withdrawal of subjacent materials. An adjoining landowner who, during excavation, taps a subterranean stream, causing the soil of the neighbor's land to subside, will be liable for any injuries that result. The surface owner's right to sue the subsurface owner for deprivation of subjacent support arises when the land actually subsides, not when the excavation is made.

The construction of buildings on the surface of the land does not lessen a person's right to subjacent support. It does, however, change the circumstances under which that person may recover

2 pg 2 of 3

for the removal of subsurface support. If such buildings are damaged, their owner must show that the removal of the support was done negligently.

Light, Air, and View

No landowner has an absolute right to light and air from or passing over adjoining property or to a view over adjoining lands. Zoning laws imposed by localities may, however, require that any construction undertaken by an individual not deprive an adjoining landowner of adequate air, light, and view. Similarly, many agreements such as restrictive covenants in deeds or easements affect a person's duty toward his or her next-door neighbor's right to air, light, and view. In the absence of zoning laws or agreements, therefore, a person may build on his or her own property without regard to the fact that he or she is depriving the next-door neighbor of the light, air, and view that was enjoyed before the building was erected. An exception is a structure that blocks air, light, and view for the sole purpose of injuring a neighbor — such as a "spite" fence — and which is of no beneficial use or pleasure to the owner. Courts will generally not permit such structures.

Encroachments

An encroachment is an intrusion upon the property of another without that person's permission. No person is legally entitled to construct buildings or other structures so that any part, regardless of size, extends beyond that person's property line and intrudes upon adjoining lands. An encroaching owner can be required to remove the eaves of a building that overhang an adjoining lot. If he or she refuses to do so, the owner of the contiguous lot may personally remove as much of the encroachment that deprives him or her of the complete enjoyment of his or her land, but if negligent, he or she will be liable for damages. Should any expenses be incurred in the removal of the encroachment from the adjoining land, the person whose property was encroached upon can sue the owner to recover damages.

The person whose property has been encroached upon may sue the encroacher under either the theory of nuisance or the theory of trespass to obtain monetary damages, or instead, may seek an injunction against continuation of the encroachment or to force its removal.

Trees and Shrubs

Landowners should not permit trees or hedges on their property to invade the rights of adjoining landowners. If an individual knows, for example, that a tree on his or her property is decayed and may fall and damage the property of another, that individual has a duty to eliminate the danger. A tree on the boundary line of contiguous land belongs to both adjoining landowners. Each owner has an interest identical with the portion standing on his or her land. Each can sever intruding tree branches or roots at the boundary line of his or her property, whether or not any injuries

2 pg 3 of 3