



RLH CO 11-2
APPLICATION FOR APPEAL

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RECEIVED
APR 28 2011
CITY CLERK

Saint Paul City Clerk
310 City Hall, 15 W. Kellogg Blvd.
Saint Paul, Minnesota 55102
Telephone: (651) 266-8560

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

YOUR HEARING Date and Time:
Tuesday, <u>5-10-11</u>
Time <u>1:30</u>
Location of Hearing:
<u>Room 330 City Hall/Courthouse</u>

WALK-IN

Address Being Appealed:

Number & Street: 260 SUMMIT AVE City: ST. PAUL State: MIN Zip: 55102

Appellant/Applicant: RICHARD H. NICHOLSON Email RHNE DRAFTCO.NET

Phone Numbers: Business 651-290-0549 Residence _____ Cell _____

Signature: RH Nicholson Date: 4/28/2011

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 SEE ATTACHED.
- Other _____
- Other _____

RICHARD H. NICHOLSON
6 WEST FIFTH STREET, SUITE 200
SAINT PAUL, MINNESOTA 55102-1490

TELEPHONE 651-290-0549
FACSIMILE 651-290-0719

April 28, 2011

Mr. Joel Essling
Saint Paul City Clerk
310 City Hall, 15 W. Kellogg Blvd.
Saint Paul, MN 55102

Re: Correction Notice File #11-127250

Dear Mr. Essling,

This letter is in response to the above referenced Correction Notice dated April 18, 2011 regarding repairs to the Walnut Staircase retaining wall.

I have submitted an Application for Appeal regarding this Correction Notice. I do not intend to pay any additional costs related to the repair of the stairway unless there is either a reasonable agreement with the City regarding an appropriate allocation of costs, or a court determination as to who has the responsibility for maintaining this public improvement.

Enclosed is a letter dated February 17, 2009 addressed to Mayor Chris Coleman outlining the history of this issue.

Sincerely,

Richard Nicholson / RHN

Richard H. Nicholson

RHN:kj

cc: Michael Fleming



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

322

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.

April 18, 2011
Richard H Nicholson
6 5th St W Ste 200
St Paul MN 55102-1490

CORRECTION NOTICE

RE: 260 SUMMIT AVE
File #: 11-127250

Dear Sir or Madam:

The City of Saint Paul, Department of Safety and Inspections has inspected the above referenced property on **April 07, 2011** and has determined that the following deficiencies exist in violation of the Saint Paul Legislative Code¹ (see footnote 1, below).

1. **RETAINING WALL:** Portions of the retaining wall along the public sidewalk that runs from Summit Ave to Pleasant Ave are deteriorated. Repair or replace in a professional manner as needed. Permit may be required for replacement.

Please contact me with any questions or for further information.

You are hereby notified to correct these deficiencies in accordance with the appropriate codes. The Enforcement Officer will reinspect these premises on or after

August 01, 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 651-266-1904.

Sincerely,

Joel Essling
Badge # 322
CODE ENFORCEMENT OFFICER

Footnotes:

- 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.

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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

LAW OFFICE OF MICHAEL C. FLEMING

4524 Highway 61
White Bear Lake, MN 55110

Phone: (651) 429-3323
Fax: (651) 429-2387

COPY

February 17, 2009

Honorable Chris Coleman
Mayor – City of St. Paul
15 W. Kellogg Blvd – Room 390
St. Paul, MN 55102

RE: 260 Summit Avenue
My Clients: Richard and Nancy Nicholson

Dear Mayor Coleman:

On behalf of my clients, I want to thank you and your staff for taking the time to meet with us to discuss responsibility for repairs to the historic Hill Stairway, which were completed in 2008.

We had hoped through these discussions to come to an agreement as to the manner in which repairs to the stairway and wall could be allocated between my clients and the City of St. Paul. It has not been possible to reach an agreement.

When Walnut Street was vacated on August 17, 1901, the City reserved a perpetual easement for the benefit of the public along the northeasterly ten feet of 260 Summit Avenue. The Hill family was required to build a "suitable stairway" for use **by the public** within the easement according to plans approved by the City of St. Paul at that time. Under basic principals of law, the City has the responsibility to repair and maintain a public improvement located upon an easement. It is hard to deny that the stairway is a "public improvement", that the wall is an integral part of the stairway, and that it was approved as such by the City of St. Paul at the time it was constructed. Accordingly, the basic obligation to repair the wall and stairway should rest with the City.

The City is taking the position that their obligation to repair and maintain this improvement is *limited solely to the step portion* of the stairway and not the wall. We do not believe this is a reasonable interpretation given the manner in which the improvement was constructed and historical facts which indicate that the City of St. Paul has maintained both the stairway and wall in the past. As an example of past City maintenance, we are attaching a summary of maintenance, prepared by St. Paul Public Works, which details City maintenance of the wall and stairway during the years 1990 - 2008.

Upon the recent collapse of the wall, Mr. Nicholson, responding to City letters threatening a citation, and in the interest of having the repairs completed to "dress up the City" prior to the arrival of the RNC, retained a contractor to make repairs to the stairway and wall under the assumption that there would be reasonable contribution by the City for the cost of repairs. The contractor, Mr. Nicholson's architect, and staff from St. Paul Public Works worked together on this project. Mr. Nicholson acknowledges that the City contributed labor to the repairs, having a value of approximately \$47,000, including work for removal of debris from the collapsed wall and replacement of sidewalk. The total

cost of the repair work completed by the contractor (exclusive of City work) was \$182,687 and Mr. Nicholson assumed that the City would pay a greater portion of this work to the extent it was a benefit to the existing public improvement. The City continues to maintain that it has no responsibility for the wall and that the City is precluded from paying for the repair work under the theory that such payment, without prior legislative approval of the project, would infringe upon appropriate City legislative process.

Mr. Nicholson has made payment to the contractor for the recent repairs based upon his contractual payment obligation incurred as a result of initiating this project. This payment is not an acknowledgement of any responsibility for these or future repairs, or an assumption of the City's legal obligation to maintain and repair the stairway as a public improvement. Mr. Nicholson hereby places the City of St. Paul on notice that he reserves the right to seek contribution for his expenditure and that he will pay no additional costs related to the repair of the stairway unless there is either a reasonable agreement between the City and the Nicholsons regarding the appropriate allocation of costs, or court determination as to responsibility for maintaining this public improvement.

Yours truly,


Michael C. Fleming

MCF:kb

Cc: Client
Lisa Veith - St. Paul City Attorney's Office
Kevin Nelson - St. Paul Public Works

Walnut Stairway Maintenance Cost Summary

Year	Maintenance Projects	Cleaning and Snow	Description of Work
1990	\$ 120,355	\$ 650	Repair of the upper stairway and wall at Summit, Repair of fencing at lower portion at Irvine
1991	\$ 7,992	\$ 650	Stairway tread repair
1992	\$ 346	\$ 650	Clean Stairway
1993	\$ 6,567	\$ 650	Graffiti lower portion at Irvine
1994	\$ 1,701	\$ 650	Brushing and Cleaning
1995	\$ 3,723	\$ 650	Graffiti mostly and cleaning
1996	\$ 2,051	\$ 650	Graffiti and masonry repair
1997	\$ 2,029	\$ 650	Graffiti and cleaning
1998	\$ 1,152	\$ 650	Graffiti and cleaning
1999	\$ 1,567	\$ 650	Graffiti
2000	\$ 806	\$ 650	Graffiti
2001	\$ 2,866	\$ 650	Graffiti and concrete stair tread repairs
2002	\$ 13,715	\$ 650	Graffiti, cleaning, brushing, erosion control, stair tread repairs
2003	\$ 1,533	\$ 650	Repairs and cleaning
2004	\$ 6,866	\$ 650	Stairway tread repair
2005	\$ -	\$ 650	No special work
2006	\$ 2,447	\$ 650	Brushing and Graffiti
2007	\$ -	\$ 650	No special work
2008	\$ 58,184	\$ 650	Remove masonry debris, Repair stair treads, replace sidewalk on Summit, reset stone curbing on Summit, overlay driveway apron.

\$ 233,900 \$ 12,350 Subtotal

\$246,250 Total Maintenance Costs 1990 - 2008 (in 2008\$)

\$ 12,961 Average Annual Maint in (2008\$)

Note: All costs in 2008\$. Annual inflation computed at 2.79% based on billing wage rates.

prepared by Kevin L Nelson, PE
November 26, 2008