

LO LAW FIRM

May Vang
Legal Assistant

ATTORNEYS AT LAW

3252 RICE STREET
ST. PAUL, MN 55126
(612) 354-6620 Office
(612) 435-0340 Fax
E-Mail: sialolaw@gmail.com

June 17, 2015

John M. Gearin
John M. Gearin, P.A.
8657 Eagle Pointe Boulevard, Suite 200
Lake Elmo, Minnesota 55042

RE: My Clients: Mr. and Mrs. Vang
Your File No.: 15-1266
Issue: Retaining Wall

Dear Mr. Gearin:

Please be advised that I have been retained to represent Mr. and Mrs. Vang in regards to their ongoing disputes with your clients about who built the failed retaining wall. I have also received your letter dated May 11, 2015 to my client and understand your position.

For your information, we are still currently investigating to find out who constructed the retaining wall. So far, we have not been able to find any documents in our file or the City as to which party built the retaining wall. Based on the current documents that we have been able to locate, your clients' garage was built in 1977-- the same year that my clients' house was built. Therefore, it is unclear who built the retaining wall. In addition, most of the main structures that hold the wall together are located on your client's property. Furthermore, your clients' garage needs this retaining wall in order to stay intact. It would be foolish for the builder of their garage to build it at its current location without constructing the proper retaining wall for support.

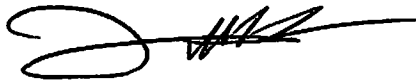
We have also retained the Genadek Landscaping and Excavating Inc. firm for an opinion. It is their professional opinion that your clients' garage was negligently constructed on its current location after the retaining wall has already been constructed. The deadmen support system for the timber retaining wall had to be in place prior to the slab getting poured for the garage. It is also their professional opinion that the retaining wall was not built to support a garage or any structure. Finally, it is their professional opinion that the weight of the garage along with the water that the garage roof directs toward the retaining wall caused it to fail.

If you have any documents that shows who constructed the retaining wall, please provide that information to me as soon as possible. In the meantime, based on the above documents

and our expert's opinion, my clients are not willing to fix the retaining wall. It is our position that your clients negligently built a garage and roof that caused the retaining wall to fail. It is also our position that, prior to building their garage, their builder constructed an improper retaining wall that could not withstand the weight of the garage. Thus, they are the responsible party to fix the retaining wall.

I look forward to amicably resolve this matter with you as soon as possible to avoid any unnecessary litigation costs to both of our clients. If you have any questions, please do not hesitate to contact me directly on my cell at 612-325-0796.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Sia Lo', with a long horizontal flourish extending to the right.

Sia Lo, Esq.

Enclosures

cc: City of St. Paul
Mr. and Mrs. Vang

**GENERAL BUILDING PERMIT
CITY OF SAINT PAUL**

DEPARTMENT

DEPARTMENT OF COMMUNITY SERVICES
DIVISION OF HOUSE AND BUILDING
CODE ENFORCEMENT

PERMIT NO. 34025

PLAN NO. _____

GARAGE DESCRIPTION OF PROJECT ST. CODE _____

DATE JULY 11-77 OWNER MARLOW BLASING

OWNERS ADDRESS 2157 BEECH

OLD
 NEW TYPE CONST. V.N. OCCUPANCY J

BUILD AND EXC. STUCCO OR PLASTER DRYWALL FENCE

ADDITION ALTER REPAIR MOVE WRECK

NUMBER	STREET	SIDE	CROSS STREETS
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<u>2157</u>	<u>BEECH</u>	<u>N</u>	<u>WINTHROP</u>
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WARD	LOT	BLOCK	ADDITION OR TRACT
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<u>E 200</u>	<u>1</u>	<u>Robert Ware Eastern</u>	
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LOT	WIDTH	DEPTH	SIDE LOT CLEARANCE	BUILDING LINE	
				FRONT	REAR

	<u>62.14</u>	<u>157.44</u>	<u>3.0</u>	<u>3'-0"</u>	
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STRUC-TURE	WIDTH	LENGTH	HEIGHT	STORIES
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	<u>22</u>	<u>24</u>		
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ESTIMATED VALUE	BASEMENT	TOTAL FLOOR AREA
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<u>2400</u>	<input type="checkbox"/> YES <input type="checkbox"/> NO	SQ. FT. <u>528</u> INCLUDE BASEMENT
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DETAILS & REMARKS:

62.14 x 2 1/2' 6" ± rear yard

ARCHITECT _____ REG. NO. _____

CONTRACTOR Lussell LICENCE NO. _____

MASONRY: owner ADDRESS _____

PERMIT FEE	<u>2800</u>	STATE VALUATION	<u>3407.20</u>
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PLAN CHECK		CASHIERS USE ONLY	
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DRY WALL		\$.00 TAX ON\$.00
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STATE SURCHARGE	<u>\$1.95</u>	\$ 29.95 CTTLTRAN#42521
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TOTAL FEE	<u>2995</u>	000000 CLKA 07/11/77
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WHEN VALIDATED THIS IS YOUR PERMIT

APPLICANT CERTIFIES THAT ALL INFORMATION IS CORRECT AND THAT ALL PERTINENT STATE REGULATIONS AND CITY ORDINANCES WILL BE COMPLIED WITH IN PERFORMING THE WORK FOR WHICH THIS PERMIT IS ISSUED.

L. Verne Moore

(*) Blum Brothers Landscaping, INC
651-227-2584
- expert retaining wall -

(*) - expert
GENADEK Landscaping & Excavating
Stan -
612-369-4698

651-645-0331
- No Record

ADVANCE SURVEYING & ENGINEERING CO.
5300 Highway 101 Minnetonka, MN 55345 Phone (952) 474 7964 www.advsur.com

Wednesday, September 23, 2014

Ms. Chee Xiong
651- 214-3587
xiongchee10@yahoo.com

Job Address:
2153 Beech St, St Paul, MN 55119

Scope of work:
To establish and/or re-establish the property corners of said parcel.

At your request, we verified existing monuments and/or replaced them, as necessary, at the corners you specified of the property above. The scope of our services did not include preparation of a drawing or locating improvements and/or encroachments, if any, on the property.

This is to certify that this work was done by me or under my direct supervision and that I am a licensed Professional Land Surveyor under the Laws of the State of Minnesota.

Thank you for using our firm.

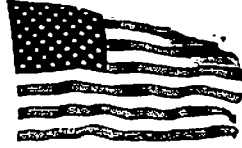
Sincerely,

James H. Parker

James H. Parker P.E. & P.L.S. No. 9235, President

GENADEK

LANDSCAPING AND EXCAVATING INC.



Phone# 612-369-4698

Fax# 651-552-2066

RETAINING WALLS

DEMOLITION

EXCAVATION

Incorporating courtesy, dependability and integrity into everything we do.

6-11-2015

Work to be performed: Retaining Walls

Project description:

Install Versa Lok Modular block retaining walls to rebuild the failed system. Total wall square footage based on measurements taken on site to replace with the same design. Estimated wall quantity is 264 s.f. Estimate includes removal of the old wall, rebuilding at least 8 feet from the existing garage and driveway. Haul away and dispose of old walls, excavate for new base and drainage aggregate. Import 26 tons of ¾ clear drainage and base aggregate \$15,970

It is my conclusion that the wall sits on the property of the corner house and was in place prior to the garage construction of the upper house. The deadmen support system for the timber retaining wall had to be in place prior to the slab getting poured for the garage. But the retaining wall was not built to support a garage or any structure. It is not the corner houses responsibility to build a retaining wall to with stand a surcharge (building weight) to support the neighbors garage. In my opinion the weight of the garage along with the water that the garage roof directs toward the retaining wall was partially to blame for its failure along with old age.

I suggest that both homeowners split the repair cost.

Proposal includes:

*Excavation, grading, Installation of new wall, disposing of the old walls,

Proposal does not include:

- *Handling of Hazardous Materials, permit fees, surveying, dewatering,
- *soil correction. No driveway or sidewalk repair replacement.
- *Finish landscape plantings, sod or seed, sprinkler repair, fence installation,
- * Moving utilities or hand excavation around utilities, engineering fee

Notice of Pre-Lien

This notice is to advise you of your rights under the Minnesota Law in connection with the improvement to your property. Any person or company supplying labor or materials for this improvement may file a lien against your property if that person or company has not been paid for the contributions. Under Minnesota Law, you have the right to pay persons who supplied labor or materials for this improvement directly and deduct this amount from our contract price or withhold the amounts due them from us until 120 days after completion of the improvement unless we give you a lien waiver signed by persons who supplied any labor or materials for the improvement and who gave you a timely notice.

\$100 to schedule the project. ½ due at start and balance on completion. If you have any questions please call Stan at 612-369-4698.

Signature of Acceptance: _____





JOHN M. GEARIN P.A.

Attorney at Law, MBA

JOHN M. GEARIN*

Paralegal:

JOANNE C. VANGUILDER

8657 Eagle Pointe Boulevard, Suite 200
Lake Elmo, Minnesota 55042

651-209-0888 Fax 651-209-0889
gearinlaw.com john@gearinlaw.com
*also licensed in Wisconsin

May 11, 2015

Ying Vang
Chee Xiong
2153 Beech Street East
St. Paul, MN 55119

Re: My Clients: Thomas and Carole Brace
My File No.: 15-1266

Dear Ying Vang and Chee Xiong:

Please be advised that I represent Thomas and Carole Brace in regards to an ongoing issue with the retaining wall which is located on the north end of your property line on 2153 Beech Street East, St. Paul, Minnesota 55119; such retaining wall is placed completely on your property but has collapsed, causing damages to my clients' property which is located adjacent at 2157 Beech Street East, St. Paul, Minnesota 55119.

My clients are owed a duty of lateral support of their land from any injuries they may have as a result of the alteration of your lot from its natural condition. For your information, your lot was graded by the builder prior to placing your home on the site and the north end of your lot was altered by cutting into the natural bank which existed between my clients' property and yours.

In Minnesota, the right of lateral support of land from the adjacent soil is an absolute right of property, and the right to recover for injuries to the land by reason of removal of such support does not depend on negligence, but upon the violation of the right of property. *Schultz v. Bower*, 57 Minn. 493 (1894). Therefore, the law in Minnesota is that my clients have a right of property such that when the lateral support of their land is jeopardized by construction or alteration on your lot, it violates their right of property.

I have reviewed photographs from my clients which show the collapse of your wall and they have indicated to me that their driveway is sinking, causing cracks and other damage to their property. I understand that you have had numerous discussions with my clients in effort to resolve this matter and a survey was completed to place the property line.

Unfortunately, these discussions have not led to an agreement to resolve the problem. The Braces have indicated to me that they will force the issue of repair and/or compensation if you choose not to act to rectify the problem which is causing damage to their property. The best

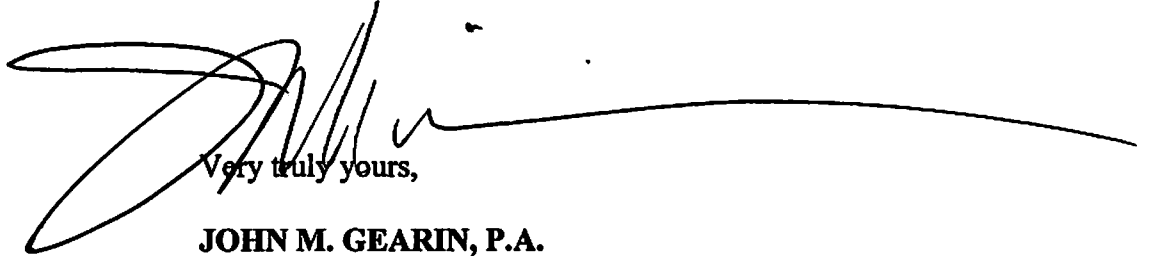
solution, of course, is the repair of the retaining wall and I would hope that you would promptly replace the wall in order to avoid any further problems.

The condition of your retaining wall is also in violation of the City of St. Paul codes and may result on an Order to repair. (Codes enclosed).

I am sure you would like to avoid a lawsuit and I would ask that you or your representative respond to me immediately but in no case more than ten (10) days after receipt of this letter. If I do not hear from you, I will assume that you do not wish to resolve this matter outside of litigation and we will then proceed accordingly.

Thank you for your prompt attention to this matter.

May I immediately hear from you?



Very truly yours,
JOHN M. GEARIN, P.A.

John M. Gearin
Attorney at Law

JMG/jv

cc: Thomas and Carole Brace (via email only)