



*Office of the Auditor General / Bureau du vérificateur général*

**AUDIT OF THE BUILDING CODE SERVICES PROCESS  
FOR 215 PRESTON STREET**

**2008**

**VÉRIFICATION DU PROCESSUS DES SERVICES  
DU CODE DU BÂTIMENT POUR LE 215, RUE PRESTON**



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## TABLE OF CONTENTS

Executive Summary .....	i
Résumé .....	xv
1 Background.....	1
2 Audit Objectives and Criteria .....	3
3 Audit Scope .....	4
4 FINDINGS .....	5
4.1 Summary of Project Chronology .....	5
4.2 Audit Objective No. 1 - Examine and evaluate the processes and methodologies used for the review and approval of the demolition and building permits.....	9
4.3 Audit Objective No. 2 - Examine the demolition, building, and occupancy permits to determine if they are consistent with relevant policies, procedures, legislation, and regulations.....	11
4.4 Audit Objective No. 3 - Examine the methods and procedures used for the inspections by the City during demolition and renovation construction .....	15
4.5 Audit Objective No. 4 - Examine the methods used by the City to enforce the Ontario Building Code during demolition and renovation construction .....	19
4.6 Audit Objective No. 5 - Examine the issue of one of the owners of the business being a City employee.....	26
5 CONCLUSION.....	26
6 ACKNOWLEDGEMENT .....	27
Appendix A- Detailed Project Chronology .....	28



## **Executive Summary**

### ***Introduction***

This audit was conducted as a result of a report to the Fraud and Waste Hotline. It was not originally identified in the 2008 Audit Plan that was presented to Council.

### ***Audit Objectives***

**Audit Objective No. 1** - Examine and evaluate the processes and methodologies used for the review and approval of the demolition and building permits

Criteria:

- Completeness of reports and drawings.
- Appropriate reviews were conducted to ensure all design documents, reports and drawings were in compliance with the Building Code.

**Audit Objective No. 2** - Examine the demolition, building, and occupancy permits to determine if they are consistent with relevant policies, procedures, legislation, and regulations

Criteria:

- Demolition permit issued based on appropriate drawings and submissions.
- Building permit issued based on appropriate drawings and submissions.
- Occupancy permit issued appropriately.

**Audit Objective No. 3** - Examine the methods and procedures used for the inspections by the City during demolition and renovation construction

Criteria:

- Inspections were completed at appropriate times.
- Inspection reports were completed and relevant observations were adequately recorded.
- Appropriate engineering and consultant reports regarding structural inspections.

**Audit Objective No. 4** - Examine the methods used by the City to enforce the Ontario Building Code during demolition and renovation construction

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**Criteria:**

- Methods available by legislation.
- Methods used by the City staff for enforcement.
- Effectiveness of methods of enforcement.

**Audit Objective No. 5** – Examine the issue of one of the owners of the business being a City employee

**Criteria:**

- Confirm whether this assertion is true.
- If the assertion is true, review the property owner's involvement in the process.

***Audit Scope***

The Audit Scope encompassed the City's building permit process for the demolition, building, inspection and occupancy for a specific building. The Audit comprised the following tasks:

- Review legislative framework;
- Review background data;
- Conduct interviews with individuals involved in the project;
- Conduct a site visit, if possible;
- Prepare Draft Report for fact verification; and,
- Conduct additional interviews for confirmation of issues, if necessary.

The audit began by reviewing the legislative framework for the project, to confirm the requirements that should have been followed. Collection and review of the background information were undertaken in light of the Audit Objectives and Criteria. The results of the review are an evaluation of the recommendations to determine whether the interests, including exposure to risk, of the City were adequately considered and protected.

***Summary of Key Findings***

Based on the reviews undertaken to date it is concluded that:

1. The Owner proceeded with demolition and the renovations without the appropriate demolition and building permits. The application for a permit to construct or demolish was submitted after the fact, together with a sketch prepared by the Architect of Record.

2. Responding to complaints, the Building Code Services Branch (BCSB) issued an Order to Comply with respect to the demolition without a permit. Subsequently, the BCSB Inspector found that the renovation work was also proceeding without a permit and issued an Order to Comply and subsequently a Stop Work Order. In response to these, the Owner submitted the required applications for demolition and building permits.
3. The Owner continued construction of the renovations without a permit after he submitted the building permit application. Two days after the application submission, the City Inspector found that the Owner was doing work without a permit and issued a Stop Work Order. After this event, the City Inspector did not monitor the site. The next time the City Inspector went to the site was a month and a half later, when construction was completed.
4. During the time from the last Stop Work Order to May 24, 2006, the City Inspector did not monitor the site. The City Inspector should have monitored the site after the permit applications were submitted. The Act gives the Inspector sufficient powers to enter and inspect the site once the application is submitted.
5. The Architect, who was the original building designer in 1985, was involved as Architect of Record in the entire demolition and renovation period.
6. The Architect was involved throughout the entire period when demolition and the renovations were done without the corresponding permits. The Architect should have done what he could to stop these actions by the Owner, including notifying the City; he did not. This is contrary to the requirements of The Architects Act.
7. The BCSB has indicated in the response to the draft of this report submitted for fact verification that in fact the BCSB was fully aware that construction was proceeding during this time. The BCSB had the duty to enforce the requirements of the Act, but did not.
8. The BCSB allowed the Architect to act outside of the requirements of the Building Code Act and The Architects Act. The BCSB could and should have put the architect on notice that the BCSB was aware of the actions by the Owner and the Architect was aiding, abetting, or acquiescing in those actions, including earlier notification to the Ontario Association of Architects (OAA).
9. The information provided with the application for demolition permit was not complete, as it was missing the description of the structure and the methods of demolition prepared by a structural engineer, in accordance with the Ontario Building Code (OBC). The City should have requested the required missing information before issuing a demolition permit. Failure to request the required information in effect constitutes a reward to the Owner for carrying out the demolition without a permit.
10. The information provided with the application for building permit was complete, and the City review of the building permit application was done appropriately.

11. The fees charged for review were calculated based on the construction estimate provided by the Owner in the application for building permit. Based on information provided by the Owner during this audit, the amount of the estimate is more than 50% lower than the estimate provided by the Architect to the Owner and less than 25% of the actual construction costs.
12. The permit fee was charged as required by City by-law. In addition to the basic fee and development charges, an additional fee was charged (as prescribed by the City) for the project where the Owner proceeded with work without a permit. The fee required to be levied was based on \$13.50 per \$1,000 of project value. The Owner indicated in the application that the project value was \$180,000. It is normal to rely on the Owner or permit applicant to provide the project value. The correct fee of \$2,430 was charged. An additional fee of 50% of the permit fee, \$1,215, was charged due to the Owner's work with no permit, in accordance with the Building By-law.
13. It is noted that in the interview the Owner stated that the original budget given to him by the Architect was \$400,000, and that the budget had been exceeded by more than 100%; the final cost, according to the Owner, was \$900,000. This discrepancy in construction cost appears to have resulted in permit fees that were too low. It is noted that if the Architect's budget of \$400,000 had been applied the resulting fee would have been \$8,100, including the additional fee of 50% of the permit fee; if the resulting cost of \$900,000 is used the resulting fee is \$18,225, or \$14,580 more than the fee collected. The fine that was eventually paid by the Owner is less than the fee that would have been charged based on the actual cost.
14. On this basis, it is concluded that independent confirmation of construction value may result in higher permit fees to the City.
15. The City issued a Partial Occupancy Permit without having received all the required professional engineer and architect reports.
16. No Final Occupancy Permit has been issued, but the Owner is using the facility as if he already had the final permit. The Owner is using an area of the building not covered by the Partial Occupancy Permit.
17. The original design structural engineer was not involved during the construction reviews because the building construction was proceeding without a building permit. The letter report provided by a second structural engineer retained by the Owner to provide the consultant report required by the City is not sufficient given the complexity of the structure and that the required construction review was carried out after the structure was covered and not during construction. There are concerns with respect to the extent of verification and testing done to provide the letter, as the engineer visual inspection did not cover the entire structure and was limited by the building finishes. It is our opinion that the City should not have accepted the second structural engineer's letter as a valid engineering report.

18. The City Inspector has the authority to demand the structural engineer report, as he did. The Inspector also has the authority to determine whether the structural engineer report is sufficient. Based on the fact that the field inspection done by the second structural engineer and the letter that was provided in this case does not meet the required level of detail, and that the inspector nevertheless accepted it and relied on it, we believe that in this case and similar cases, the City's Structural Review Engineer should be the person who determines the sufficiency of the structural engineer report.
19. The City used some of the methods available to have the Owner comply. However, given that the BCSB was fully aware that construction was proceeding without a permit, we consider that the BCSB should have used stricter methods to prevent what appears to be blatant disregard for the Code, the Building By-law and the requirements of the Policies, Guidelines and Standards.
20. The BCSB indicated the following:  
"It should be noted, the Ontario Building Code Act is a permissive legislation rather than a punitive one. The Branch is the centre of expertise in the interpretation and enforcement of the Act and the Code and thus the Branch must assume a role that facilitates and ensures Code compliant construction (thus meeting the minimum standards for public health and fire, fire protection, structural sufficiency, accessibility, conservation and environmental integrity) while not unnecessarily impeding the economic engine of the construction industry, nor increasing construction costs that would stymie the private sector."

However, the Building Code Act (section 1.1) indicates the following regarding the roles of the Chief Building Official and the Inspectors:

***Role of chief building officials***

- (6) *It is the role of a chief building official,*
- (a) to establish operational policies for the enforcement of this Act and the building code within the applicable jurisdiction;*
  - (b) to co-ordinate and oversee the enforcement of this Act and the building code within the applicable jurisdiction;*
  - (c) to exercise powers and perform the other duties assigned to him or her under this Act and the building code; and*
  - (d) to exercise powers and perform duties in accordance with the standards established by the applicable code of conduct. 2002, c. 9, s. 3.*

***Role of inspectors***

- (7) *It is the role of an inspector,*

- (a) *to exercise powers and perform duties under this Act and the building code in connection with reviewing plans, inspecting construction, conducting maintenance inspections and issuing orders in accordance with this Act and the building code;*
- (b) *to exercise powers and perform duties in respect of only those matters for which he or she has the qualifications required by this Act and the building code; and*
- (c) *to exercise powers and perform duties in accordance with the standards established by the applicable code of conduct. 2002, c. 9, s. 3; 2006, c. 22, s. 112 (2).*

The main requirement in both cases is for enforcement of the Act and the Code.

21. In the same response to the draft for fact verification, the BCSB indicated that: “The Branch must regulate construction of buildings first through leadership, education and collaboration, then if these approaches fail to obtain compliance, through enforcement, including prosecution, etc. Council and the public’s expectations, as stated in our Branch’s objectives, are that we *assist the property owner, builder, contractor, architect or engineer by providing direction in the application and interpretation of the Building Code Act, the Building Code, and applicable law to ensure construction meets the performance and safety standards.* The Province’s training guides encourage new building officials to first encourage owners and their agents to comply through the powers of persuasion before enlisting the more formal enforcement tools.”

We could not find in the Act or the Ontario Building Code any reference to the Building Official having to provide direction to owners, architects, or engineers. It is the professional responsibility of the architect or engineer to comply with the Act; the Building Official is responsible for enforcing the Act and the Building Code. If the architect or engineer is not meeting their responsibilities, the BCSB should report them to their respective associations for disciplinary action.

22. One of the owners of the property was at one time an employee of the City, but he had ceased to be one at the time of the events subject of this audit.

## ***Recommendations and Management Responses***

### **Recommendation 1**

**That the Building Code Services Branch (BCSB) ensure the documentation received with the Application For a Permit to Construct or Demolish is complete in all cases, as we found in this case the documentation provided with the application for demolition was not complete.**

### **Management Response**

Management does not agree with the recommendation.

Management does not agree that there were procedural omissions with regard to the applications for demolition and construction at 215 Preston Street. Building Code Services (BCS) did receive sufficiently detailed documentation to ensure that the proposed demolition and construction was reasonable and could be carried out in accordance with the Building Code.

It is the role of the Chief Building Official (CBO) to determine the sufficiency of information supporting an application based on the unique set of circumstances and conditions of each project and the CBO's interpretation of the requirements and standards as they apply to the application. In this instance, the submissions were deemed sufficient for the purpose of issuing the permits.

### **Recommendation 2**

**That the BCSB advise property owners that the Branch reserves the right to verify the actual construction cost and to adjust the fees accordingly. If this cannot be done, that the BCSB implements a database of cost per unit area to permit it to verify the budget estimates provided with the application.**

### **Management Response**

Management does not agree with the recommendation.

In the absence of legislative authority, there is no basis for verifying the actual construction costs and adjusting the fees after the permit has been issued and the construction completed. The process of verification of estimated value of construction and adjusting undervalued fees prior to the issuance of the permit is already in place. This is a standard practice of municipalities that assess fees based on the value of construction.

While the branch maintains a database of cost per unit area for new construction, it is too difficult to obtain a cost per unit area for renovations due to the nature of this construction activity (too many variables and unknowns).

The building permit fee is based on "assessed valuation of the work", which is not the same as the "actual construction costs". An "Architect's estimate of costs" may include many elements, which do not form part of the "assessed valuation of the work", and which may vary greatly from the "actual construction costs", due to many unquantifiable factors.

Finally, the Building Code Act and Building Code prevent the permit fees collected from exceeding the cost of providing the service, along with reasonable reserves to offset liability and construction fluctuations. The Chief Building Official is legislatively required to provide an annual report on these matters, and any request for increases are subject to consultation with the industry and public.

**Recommendation 3**

**That the BCSB ensure all files are properly documented and complete, including a complete record of telephone conversations, for future reference and possible litigation.**

**Management Response**

Management does not agree with the recommendation.

It is the current practice for staff to document observations and key discussions, particularly where conflict and/or litigation is anticipated. However, it is not possible, from a time-management perspective, to document all communications. Each Building Official must make a subjective assessment of the relevance of the communication and the degree of recording based on the circumstances at the time of the communication. Further, a requirement that all files include a record of all telephone conversations would require significant additional resources and investment in technology, for the few occasions where conflict arises.

**Recommendation 4**

**That Occupancy Permits be issued only when all the construction review reports by all professionals have been received to the satisfaction of the City.**

**Management Response**

Management does not agree with the recommendation.

In 2002, the branch established an operational policy that requires all required construction review reports to be submitted prior to the issuance of the "partial occupancy permit"; although the OBC only requires this threshold to be met prior to the "final occupancy permit" being issued. As a best practice, BCS moved this threshold to an earlier stage because once a building is occupied it becomes more difficult to address outstanding deficiencies.

In this instance, based on the Architect's assurance that the reports would be submitted in short order and relying on the professional integrity accorded an Architect and their legal responsibilities under the Architect Act, the Inspector issued the partial occupancy permit.

The Architect subsequently notified the City that he and the Structural Engineer of Record would not produce the reports due to a dispute with their client, which has yet to be resolved. The Architect alleged there were welding deficiencies, and on this basis, an occupancy permit should not have been issued. As they are lawfully entitled to, the owners engaged the services of two other engineering firms, one specialized in welding, to carry out the reviews and provide the required reports. These reports confirmed the structural adequacy of the welds and the structure; therefore, the partial occupancy permit was allowed to stand as the requirements for partial occupancy had been met.

Finally, it is noted that there are no areas of the building being used that are prohibited from use and occupancy, although the final occupancy permit has not been issued (only the partial) and the permit file remains open.

### **Recommendation 5**

**That Inspectors be instructed to actively monitor sites for which an application for building permit has been submitted, including access to the site if necessary.**

#### **Management Response**

Management does not agree with the recommendation.

Such inspections would serve only to document the fact that illegal construction or demolition is continuing. As well, caution must be taken to ensure that any inspections, prior to the issuance of a permit, not be for the purpose of reviewing the illegal construction for Code compliance, nor appear to do so, as this would encourage illegal construction to continue. The implementation of this recommendation will require additional resources to integrate these inspections in addition to the mandatory inspections, which form the basis of the City's existing program and service delivery levels. This recommendation will be explored when the branch's Strategic Branch Review is undertaken in Q2 2009, as this review will be an appropriate forum to consider higher service delivery levels.

In this instance, the Inspector was well aware of the on-going illegal construction activities, had issued the requisite Orders and a court action had commenced. Any additional inspections after the Stop Work Order was issued and prior to the completion of the construction (a 7 week period) would have confirmed only that illegal construction was continuing, which was already known to staff and sufficiently documented for purposes of the court case. Additional resources would have been required to monitor the site more frequently.

### **Recommendation 6**

**That the CBO review the file to determine if the Owner should be required to uncover areas of the roof structure to allow more detailed and thorough inspection and testing of the structural steel.**

#### **Management Response**

Management agrees with the recommendation.

The CBO has carefully considered this recommendation, consulted with Legal Services and has determined that there is no legal basis for the owner to uncover areas of the roof structure for this purpose.

There are certain pre-conditions that must exist for a CBO to consider issuing an Order to Uncover. These are:

- The CBO must have reason to believe that the construction is not in accordance with the Code and permit drawings. In this instance, the belief

that the construction was not compliant was that of the Architect in regard to the welding. The welding and surrounding construction were reviewed by two structural engineers, one of who was a welding engineer and a level III welding inspector. Both found the welding work to be Code compliant. Thus, there was no remaining reason to believe there was non-compliance; and

- The Order must be issued prior to the issuance of the partial occupancy permit. In this instance, the partial occupancy permit had been issued.

### **Recommendation 7**

**That the City require that structural review letters be reviewed by the City's Structural Review Engineer in cases similar to the subject project.**

#### **Management Response**

Management does not agree with the recommendation.

Building Officials (Plans Examiners and Building Inspectors) are qualified by the Province of Ontario to review structural review letters. In addition, the branch provides Building Officials valuable in-house training to sufficiently equip them to review the reports and render a decision as to adequacy. The Building Officials do consult with the branch's Building Code Engineers in cases where they do not feel that the review letters are adequate or where the issues are of such complexity as to require additional review.

In this case, the reports submitted by the engineering consultant were considered sufficient for purposes of determining compliance.

### **Recommendation 8**

**That the City consider pursuing a complaint with the appropriate professional architectural and engineering associations regarding the professionals identified in this report.**

#### **Management Response**

Management agrees with the recommendation.

Although, the City is not the regulatory authority of engineers and architects, where the conduct of these professionals undermine the Building Code Act and the OBC or the Chief Building Official's ability to enforce the Act and Code, referrals are made to the governing body to review, investigate and determine corrective action, if any. The Chief Building Official will assist the OAA in the investigation should the OAA request such.

### **Recommendation 9**

**That in future similar situations where an architect, engineer, or other professional regulated by a professional regulatory body, appears to have engaged in conduct unbecoming the standards expected by such a professional and/or where the public**

interest demands, the City pursue complaints to the OAA, or other such professional body as the case may be.

**Management Response**

Management agrees with the recommendation.

However, in order to effectively implement this recommendation, additional specialized resources (1 FTE, vehicle, equipment, training and qualification and work space - minimum \$125K) would be required to investigate, document and refer complaints to the governing bodies where the actions or omissions of the professionals have undermined the Building Code Act and the OBC or the CBO's ability to enforce the legislations. This will be explored when the branch's Strategic Branch Review is undertaken in Q2 2009, as this review will consider changes to program and service delivery levels.

**Recommendation 10**

**That the City develop a policy by which the BCSB can request an injunction or restraining order to ensure that the Owner complies in cases of disregard for the rules, such as this example.**

**Management Response**

Management does not agree with the recommendation.

Each case must be evaluated on its own merits and the option to seek an injunction is already available in the Building Code Act and has been resorted to in the past, as circumstances have warranted. In addition, the seeking of injunctions requires considerable resource allocation, on the part of both BCS and Legal Services. Additional resources would be required to implement a more aggressive enforcement strategy. Whether injunctions are obtained is a determination of the Court and they are only granted in extraordinary circumstances.

In this instance, BCS did undertake the necessary inspections, did issue the required Orders and did successfully prosecute the owners of 215 Preston Street. Once the owners obtained the requisite planning approvals, a permit was issued, construction was inspected and it was determined to meet the minimum OBC standards.

**Recommendation 11**

**That the BCSB ensure compliance with the Building Code Act and not try to balance the BCSB enforcement obligations and requirements with the business objectives of the Owner.**

**Management Response**

Management does not agree with the recommendation.

BCS did escalate enforcement action when the owners failed to comply with the Orders and successfully prosecuted the owners. Once the owners had obtained the

requisite planning approvals, a permit was issued, construction was inspected and it was determined to meet the minimum OBC standards.

The Act is written in terms of imperative “shall” and permissive “may” statements. While the CBO and Building Inspectors “shall” enforce the Code, they “may” issue Orders, and “may” prosecute. The reason for this disparity, in language, is that the legislators recognize that enforcement is achieved when there is compliance. This is usually arrived at without the necessity of either Orders or prosecutions and is usually in response to an incremental escalation of enforcement options.

In addition, the CBO is a *persona designata* deriving authority from the Building Code Act, with responsibilities defined by, not only the Act and the OBC, but also by the Building By-law, Ministry rulings, the Building Code Commission and the Building Materials Evaluation Commission rulings or decisions, and more importantly, by the judicial system (court decisions and common law principles). How the Act and Code are interpreted and implemented is very much couched or formulated from best practices, legal principles and actual court case precedents. In fact, there are only three entities that can determine Code compliance: the Chief Building Official, the Building Code Commission (for sufficiency only) and the Courts.

The Courts have held that the Act is “a complex piece of legislation which is, in general terms, aimed at setting and enforcing standards for all manner of construction and building projects in Ontario.” In this regard, the complexity and technical nature of the Act require flexibility and balancing of various factors. There is an expected degree of reasonableness and flexibility to account for other variables, including business and practical realities of the property owner and the building industry. Thus, the branch mandate refers to the regulation of construction of buildings, first through leadership, education and collaboration. If these approaches fail in obtaining compliance, then through enforcement, including prosecution, etc. This was the approach adopted for this particular case and although orders, court prosecution, etc., were required, the construction was made compliant and the occupancy permit was eventually issued.

If the CBO does not have discretion or flexibility in the administration or enforcement of the OBC, this could lead to unintended and undesirable results of increased Code non-compliance and may force aspects of the building industry “underground”. Diversion of this nature would defeat the objectives of the Act which seeks to ensure minimum standards for building construction in Ontario.

Finally, there is misapprehension as to what BCS is attempting to balance. It is not the needs of an individual business owner. Rather, it is recognition of the realities of a fast-paced development construction industry and the benefits to the broader public. The objective is to ensure that the construction will achieve Code compliance and that there is a sufficient discipline within the industry to enable this to occur.

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**Recommendation 12**

**That the CBO review the file for the specific building to ensure that all possible options for enforcement have been reviewed with Legal Services.**

**Management Response**

Management agrees with the recommendation.

The CBO has and will take whatever action is considered necessary to obtain compliance. BCS did undertake the necessary inspections, did issue the required Orders and did successfully prosecute the owners of 215 Preston Street. Once the owners had obtained the requisite planning approvals, a permit was issued, construction was inspected and it was determined to meet the minimum OBC standards. There are no further options for enforcement.

**Conclusion**

The audit revealed that City staff complied with some of the requirements of the Building Code Act. Staff were faced with a difficult and un-cooperative owner who carried on with work regardless of Orders or other legislated obligations. At the same time, the Owner made small efforts to comply, suggesting that further compliance was forthcoming. Even though the BCSB was aware that construction was proceeding without a permit, the City did not pursue more forceful action that could have led to additional prosecution.

Staff tried to balance the Code compliance requirements with the objective of making reasonable demands from the Owner. Based on the BCSB responses to the draft of this report, the BCSB considers that their role is to facilitate construction, without affecting the economic engine of the City. The role of the BCSB should be to ensure compliance, by enforcing the City's By-law and the Building Code and not to adjust the compliance requirements to the business objectives of the Owner.

The owner proceeded with demolition and construction without a permit and delayed compliance. Other enforcement avenues or limitations to the business may be required to force timely compliance. In addition, the architect appears to have been involved in abetting or otherwise acquiescing in the illegal construction and should be reported to the professional association.

For this classification of building, the Inspection Division will usually rely on field review by the engineer of record identified in the building permit application. In the case of this project, the structural design professional engaged by the Architect to review the work as required in the permit application did not carry out the required review visits and examinations. The owner subsequently engaged a different structural professional after the construction was completed, who was afforded a very limited review. It is concluded that the structural review letter is not sufficiently thorough for the complexity of the structure, and further review is recommended. The Chief

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Building Official has the legal tool to compel this inspection through an Order to Uncover.

***Acknowledgement***

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management and staff.

## Résumé

### **Introduction**

Cette vérification donne suite à un cas signalé au vérificateur par le biais de la Ligne directe de fraude et d'abus. Elle ne figurait pas à l'origine dans le Plan de vérification 2008 présenté au Conseil.

### **Objectifs de la vérification**

**Objectif de vérification n° 1** - Examiner et évaluer les processus et méthodologies utilisés pour l'examen et l'approbation des permis de construire et de démolir.

#### **Critères :**

- Le dossier était-il complet au chapitre des rapports et dessins?
- Les examens appropriés ont-ils été effectués pour s'assurer que tous les documents, rapports et dessins relatifs à la conception du bâtiment étaient conformes aux exigences du Code du bâtiment?

**Objectif de vérification n° 2** - Examiner le permis de démolir, le permis de construire et le permis d'occuper, pour vérifier s'ils étaient conformes aux politiques, procédures, lois et règlements pertinents.

#### **Critères :**

- La délivrance du permis de démolir était-elle fondée sur le dépôt des dessins et documents appropriés?
- La délivrance du permis de construire était-elle fondée sur le dépôt des dessins et documents appropriés?
- Le permis d'occuper a-t-il été délivré de façon appropriée?

**Objectif de vérification n° 3** - Examiner les méthodes et procédures appliquées par la Ville en matière des inspections effectuées au cours des travaux de démolition et de rénovation.

#### **Critères :**

- Les inspections ont-elles été effectuées aux moments appropriés?
- Les rapports d'inspection ont-ils été complétés, et les observations pertinentes consignées comme il se doit?
- Des rapports appropriés, en matière des inspections structurales (rapports techniques et rapports de consultants) ont-ils été reçus?

**Objectif de vérification n° 4** - Examiner les méthodes employées par la Ville pour faire respecter le Code du bâtiment de l'Ontario (le CBO ou le Code) au cours des travaux de démolition et de rénovation.

**Critères :**

- Méthodes autorisées par la loi et les réglementations.
- Méthodes utilisées par le personnel de la Ville pour assurer l'observation du règlement.
- Efficacité de ces méthodes.

**Objectif de vérification n° 5** – Examiner l'allégation voulant que l'un des propriétaires soit un employé de la Ville d'Ottawa.

**Critères :**

- Confirmer ou infirmer cette affirmation.
- Si l'affirmation est véridique, examiner le rôle joué par ce propriétaire dans le dossier.

**Portée de la vérification**

La portée de la présente vérification recouvrait les processus appliqués par la Ville en ce qui a trait aux permis relatifs à la démolition, à la construction, à l'inspection et à l'occupation, pour un bâtiment donné. La vérification comportait les tâches suivantes :

- Examiner le cadre législatif.
- Examiner les données de base.
- Réaliser des entrevues avec des particuliers liés au projet.
- Effectuer si possible une inspection des lieux.
- Rédiger un rapport préliminaire pour permettre la vérification des faits.
- Réaliser au besoin des entrevues supplémentaires pour confirmer certaines affirmations.

La vérification a débuté par un examen du cadre législatif du projet, afin de confirmer les exigences qui s'y appliquaient. La collecte et l'examen des données de base ont été guidés par les objectifs et critères de la vérification. Les résultats de l'examen consistent en une évaluation des recommandations en vue de déterminer si les intérêts de la Ville, y compris l'exposition au risque, ont été pris en compte et protégés comme il convient.

**Sommaire des principales constatations**

Nos conclusions, qui se fondent sur les examens entrepris à ce jour, sont les suivantes :

1. Le propriétaire a entrepris les travaux de démolition et de rénovation sans détenir les permis de construire et de démolir appropriés. La demande de permis de construire ou de démolir n'a été déposée qu'une fois les travaux commencés, accompagnés d'un dessin préparé par l'architecte responsable de projet.

2. En réponse à des plaintes exprimées, la Direction des services du bâtiment (la DSB) a émis un ordre de se conformer, en matière de la démolition sans permis. Par la suite, l'inspecteur de la DSB a découvert que des travaux de rénovation se poursuivaient également sans permis, et a émis un ordre de se conformer, suivi d'un ordre de suspendre les travaux. En réponse à ces ordonnances, le propriétaire a déposé les demandes de permis de construire et de démolir nécessaires.
3. Le propriétaire a poursuivi, sans permis, les travaux de rénovation après le simple dépôt d'une demande de permis de construire. Deux jours après ce dépôt, l'inspecteur de la Ville a découvert que le propriétaire effectuait des travaux sans permis et a émis un ordre de suspendre les travaux. Suite à cela, l'inspecteur de la Ville n'a plus surveillé le site. La prochaine visite du site de l'inspecteur de la Ville a eu lieu un mois et demi plus tard, quand la construction était achevée.
4. Entre le moment du dernier ordre de suspendre les travaux et le 24 mai 2006, l'inspecteur de la Ville n'a pas surveillé le site. L'inspecteur de la Ville aurait dû surveiller le site après le dépôt des demandes de permis. La *Loi sur le code du bâtiment* (la Loi) accorde aux inspecteurs l'autorisation de pénétrer sur le site et de l'inspecter, une fois la demande déposée.
5. L'architecte, qui avait été en 1985 le concepteur initial du bâtiment, figurait en tant qu'architecte responsable de projet tout au long de la période de démolition et de rénovation.
6. L'architecte a participé au projet tout au long de la période où s'effectuaient, sans les permis exigés, la démolition et les rénovations. L'architecte aurait dû faire ce qui était en son pouvoir pour faire cesser ces actions du propriétaire, y compris les signaler à la Ville; il ne l'a pas fait, ce qui constitue une infraction aux articles de la *Loi sur les architectes*.
7. Dans sa réponse à la version préliminaire du présent rapport, présenté pour vérification des faits, la DSB a reconnu avoir été parfaitement au courant du fait que la construction se poursuivait pendant cette période. Il était du devoir de la DSB de faire respecter les exigences de la Loi; elle ne l'a pas fait.
8. La DSB a permis à l'architecte d'agir sans tenir compte des exigences de la *Loi sur le code du bâtiment* et de la *Loi sur les architectes*. La DSB aurait pu et aurait dû prévenir l'architecte que la DSB était au courant des actions du propriétaire et qu'il se rendait complice en acquiesçant à ces actions, et aurait dû signaler plus tôt le cas à l'Ordre des architectes de l'Ontario.
9. L'information accompagnant la demande du permis de démolir n'était pas complète; il y manquait la description de la structure et des méthodes de démolition, exigée par le Code du bâtiment de l'Ontario (le CBO ou le Code), et qui doit être préparée par un ingénieur en structures. La Ville aurait dû réclamer les informations manquantes exigibles avant de délivrer le permis de démolir. Le fait de ne pas

réclamer les informations exigibles revient à récompenser le propriétaire pour avoir effectué une démolition sans permis.

10. Les informations accompagnant la demande de permis de construire étaient complètes, et l'examen par la Ville de la demande de permis de construire a été effectué de façon appropriée.
11. Les droits d'examen exigibles ont été calculés d'après l'estimation des coûts de construction fournie par le propriétaire dans sa demande de permis de construire. D'après les informations fournies par le propriétaire au cours de la présente vérification, cette estimation est inférieure de plus de 50 % à l'estimation que lui avait fournie l'architecte, et s'élève à moins de 25 % des coûts réels de la construction.
12. Les droits de permis ont été demandés comme l'exige le Règlement de la Ville. En plus du tarif de base et des redevances d'aménagement, une somme supplémentaire a été exigée, comme la Ville le prescrit dans le cas de projets où le propriétaire effectue des travaux sans permis. Les droits à percevoir s'élevaient à 13,50 \$ par tranche de 1 000 \$ de la valeur du projet. Dans sa demande, le propriétaire établissait la valeur du projet à 180 000 \$. Il est habituel de se fier, pour la valeur du projet, aux déclarations du propriétaire ou du demandeur de permis. Des droits de 2 430 \$ ont donc été perçus, comme il se devait. Conformément au Règlement municipal sur le bâtiment, un supplément de 1 215 \$, soit 50 % des droits de permis, a été ajouté parce que le propriétaire avait effectué les travaux sans avoir obtenu un permis.
13. Il convient de signaler qu'au cours de l'entrevue, le propriétaire a affirmé que le budget initial présenté par l'architecte s'élevait à 400 000 \$, et que ce budget avait plus que doublé; le coût final, selon le propriétaire, avait atteint 900 000 \$. Cet écart entre les coûts déclarés et les coûts réels semble avoir eu pour résultat la perception de droits de permis inférieurs à ce qu'ils auraient dû être. Il convient de signaler que si le budget initial de l'architecte (soit 400 000 \$) avait servi de base au calcul, les droits se seraient élevés à 8 100 \$, quand on inclut la pénalité de 50 % des droits de permis; et si on se base sur le budget final (soit 900 000 \$) les droits se seraient élevés à 18 225 \$, ce qui revient à 14 580 \$ de plus que les droits effectivement perçus par la Ville. L'amende payée ensuite par le propriétaire est inférieure aux droits qui auraient été perçus si le calcul s'était fondé sur les coûts réels.
14. Cet écart nous mène à conclure qu'une confirmation indépendante des coûts de construction donnerait peut-être lieu à des droits de permis plus élevés.
15. La Ville a délivré un permis d'occuper partiel sans avoir reçu tous les rapports professionnels exigés de l'ingénieur et de l'architecte.
16. Bien qu'aucun permis d'occuper final n'ait été délivré, le propriétaire utilise l'emplacement comme s'il détenait déjà les permis finaux. Le propriétaire utilise une surface du bâtiment qui n'est pas couverte par le permis d'occuper partiel.

17. L'ingénieur concepteur de structures initial n'a pas participé aux examens des travaux de construction, parce que la construction du bâtiment se poursuivait sans permis de construire. Le rapport (sous forme de lettre) présenté par un second ingénieur en structures, engagé par le propriétaire pour fournir le rapport de consultant exigé par la Ville, est insuffisant, étant donné la complexité de la structure et étant donné aussi que l'examen des travaux de construction exigé a été effectué après que la structure a été couverte, et non en cours de construction. On s'interroge également sur l'étendue de la vérification et des tests menés pour les fins de la lettre, car l'inspection visuelle de l'ingénieur ne couvrait pas la structure dans son entier et était limitée par la présence des parements extérieurs. Nous sommes d'avis que la Ville n'aurait pas dû accepter comme constituant un rapport technique valide la lettre du second ingénieur en structures.
18. L'inspecteur de la Ville détient l'autorité nécessaire pour réclamer, comme il l'a fait, le rapport de l'ingénieur en structures. L'inspecteur détient également l'autorité de décider si un tel rapport est suffisant. Puisque l'inspection effectuée sur place par le second ingénieur en structures, et la lettre qui en faisait état, ne satisfont pas les exigences en matière du niveau de détail exigible, et que l'inspecteur a néanmoins accepté la lettre et s'est appuyé sur elle, nous sommes d'avis que dans ce cas et dans les cas semblables, c'est l'ingénieur en inspection des structures de la Ville qui devrait être chargé de déclarer que le rapport de l'ingénieur en structures est ou non suffisant.
19. La Ville a appliqué certaines des méthodes dont elle disposait pour que le propriétaire se conforme au règlement. Cependant, étant donné que la DSB était parfaitement au courant du fait que la construction se poursuivait sans permis, nous sommes d'avis que la DSB aurait dû appliquer des méthodes plus strictes pour empêcher ce qui semble une non-observation flagrante du Code, du Règlement municipal sur le bâtiment et des exigences fixées par les politiques, les directives et les normes.
20. La DSB a signalé ce qui suit : Il convient de souligner que la *Loi sur le code du bâtiment* de l'Ontario est une législation dite permissive, plutôt qu'une législation dite punitive. La Direction constitue le centre d'expertise en matière d'interprétation et d'application de la Loi et du Code, et ainsi la Direction doit endosser un rôle de facilitateur, et faire en sorte que les constructions soient conformes au code (c'est-à-dire qu'elles respectent les normes minimales touchant la santé publique et incendie, la prévention des incendies, la suffisance des structures, l'accessibilité, la conservation et l'intégrité de l'environnement) sans toutefois entraver démesurément le moteur économique de l'industrie de la construction, ni augmenter les coûts de construction au point d'étouffer le secteur privé.

Cependant, la *Loi sur le code du bâtiment* (article 1.1) précise ce qui suit, touchant le rôle du Chef du service du bâtiment et des inspecteurs :

**Rôle du chef du service du bâtiment**

(6) Il appartient au chef du service du bâtiment de faire ce qui suit :

- (a) établir des politiques opérationnelles pour l'exécution de la présente loi et du code du bâtiment dans le territoire de compétence pertinent;
- (b) coordonner et superviser l'exécution de la présente loi et du code du bâtiment dans le territoire de compétence pertinent;
- (c) exercer les pouvoirs et les autres fonctions que lui attribuent la présente loi et le code du bâtiment;
- (d) exercer les pouvoirs et les fonctions conformément aux normes établies par le code de conduite applicable. 2002, chap. 9, art. 3.

**Rôle de l'inspecteur**

(7) Il appartient à l'inspecteur de faire ce qui suit :

- (a) exercer les pouvoirs et les fonctions que lui attribuent la présente loi et le code du bâtiment pour ce qui est d'examiner des plans, d'inspecter des travaux de construction et de donner des ordres conformément à la présente loi et au code du bâtiment;
- (b) n'exercer les pouvoirs et les fonctions que relativement aux questions à l'égard desquelles il possède les qualités qu'exigent la présente loi et le code du bâtiment;
- (c) exercer les pouvoirs et les fonctions conformément aux normes établies par le code de conduite applicable. 2002, chap. 9, art. 3; 2006, chap. 22, art. 112 (2).

L'obligation principale, dans les deux cas, relève de l'exécution de la Loi et du Code.

21. Toujours dans sa réponse à la version préliminaire visant à effectuer une vérification des faits, la DSB a signalé ceci :

« La Direction se doit de réglementer la construction de bâtiments en premier lieu par le leadership, l'éducation et la collaboration; ce n'est que si ces approches échouent que l'on tentera d'obtenir la conformité par l'exécution de la loi, y compris des poursuites judiciaires, etc. Tant le public que le Conseil s'attend, comme le formulent les objectifs de notre Direction, à ce que nous aidions le propriétaire, le constructeur, l'entrepreneur, l'architecte ou l'ingénieur en lui servant de guide pour ce qui est de l'application et de l'interprétation du Code du bâtiment, de la Loi sur le code du bâtiment, et des autres lois applicables, afin de faire en sorte que la construction respecte les normes de performance et de sécurité. Les guides de formation provinciaux encouragent les nouveaux agents du service du bâtiment à encourager d'abord les propriétaires et leurs agents à se conformer par la persuasion, avant de faire appel aux outils plus formels d'exécution de la loi. »

Nulle part dans la Loi ni le Code du bâtiment de l'Ontario n'avons-nous trouvé mention de l'obligation qu'aurait l'agent du service du bâtiment de fournir des

directives aux propriétaires, aux architectes, ou aux ingénieurs. Il relève de la responsabilité professionnelle de l'architecte ou de l'ingénieur de se conformer à la Loi; l'agent du service du bâtiment est chargé de faire respecter la Loi et le Code du bâtiment. Si l'architecte ou l'ingénieur se dérobe à ses responsabilités, la DSB devrait le signaler à leur ordre professionnel en vue de mesures disciplinaires.

22. L'un des propriétaires avait, dans le passé, travaillé pour la Ville, mais avait cessé de le faire à l'époque des événements qui faisaient l'objet de la présente vérification.

## ***Recommandations et réponses de la direction***

### **Recommandation 1**

**Que la Direction des services du bâtiment (DSB) s'assure dans tous les cas que la documentation accompagnant une demande de permis de construire ou de démolir soit complète, puisque nous avons dans le présent cas trouvé que la documentation accompagnant la demande de démolition ne l'était pas.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

La direction n'est pas d'accord pour dire qu'il y a eu des omissions administratives en ce qui concerne les demandes de permis de démolir et de construire au 215 de la rue Preston. La DSB a reçu des documents suffisamment détaillés pour décider que la démolition et la construction proposées étaient raisonnables et pouvaient être effectuées en conformité avec le Code du bâtiment.

C'est au chef du service du bâtiment (CSB) qu'il revient de déclarer suffisantes ou non les informations appuyant une demande, d'après les circonstances et conditions particulières à chaque projet et de l'interprétation qu'il fait des exigences et des normes telles qu'elles s'appliquent à la demande. Dans le cas présent, les documents soumis ont été jugés suffisants pour que soient délivrés les permis.

### **Recommandation 2**

**Que la DSB avise tout propriétaire que la Direction se réserve le droit de vérifier les coûts réels de construction et d'ajuster les droits en conséquence. Si cela s'avérait impossible, que la DSB mette sur pied une base de données des coûts unitaires par mètre carré de surface, pour lui permettre de vérifier les prévisions budgétaires accompagnant la demande.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

En l'absence d'autorité législative, rien ne justifie, une fois le permis délivré et la construction achevée, une vérification des coûts réels de construction ni un ajustement des droits. Un processus est déjà en place qui sert à vérifier, avant que ne soit délivré un permis, la valeur estimative de la construction et à ajuster des droits

sous-évalués. Il s'agit d'une pratique courante, dans les municipalités qui calculent les droits exigibles à partir des coûts de construction.

Bien que la Direction dispose d'une base de données des coûts unitaires par mètre carré de surface pour les constructions nouvelles, il est extrêmement difficile, dans le cas de rénovations, d'établir les coûts unitaires par mètre carré de surface, à cause de la nature de cette activité de construction, qui comporte trop de variables et d'inconnues.

Les droits d'un permis de construire sont basés sur une « valeur estimée des travaux », ce qui n'est pas la même chose que les « coûts réels de construction ». L'« estimé des coûts » de l'architecte pourra inclure de nombreux éléments qui ne font pas partie de la « valeur estimée des travaux », et les estimations pourront diverger considérablement des « coûts réels de construction », à cause d'un grand nombre de facteurs impossibles à chiffrer avec précision.

Enfin, le Code du bâtiment et la *Loi sur le code du bâtiment* interdisent que les droits de permis perçus dépassent le coût de la prestation du service, y compris des réserves raisonnables pour compenser la responsabilité et les variations en matière de construction. Le chef du service du bâtiment est tenu par la loi de présenter un rapport annuel sur ces questions; toute demande d'augmentation est soumise à une consultation auprès de l'industrie de la construction et du public.

### **Recommandation 3**

**Que la DSB s'assure que tous les dossiers sont convenablement documentés et complets, y compris un registre complet des conversations téléphoniques, pour consultation future et en prévision d'éventuels litiges.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

Dans les usages établis, le personnel note ses observations et documente les discussions clés, en particulier si on anticipe un conflit ou un litige. Il n'est pas possible, cependant, en termes de gestion du temps, de documenter toutes les communications. Chaque agent du service du bâtiment doit évaluer de manière subjective la pertinence d'une communication et l'étendue des notes à consigner, d'après les circonstances qui ont cours au moment où a lieu cette communication. En outre, l'obligation de consigner dans tous les dossiers toutes les conversations téléphoniques exigerait des ressources supplémentaires et des investissements technologiques excessifs, vu le petit nombre de cas qui sont sujets à conflits.

### **Recommandation 4**

**Que les permis d'occuper ne soient délivrés qu'une fois reçus et examinés par la Ville tous les rapports d'examen des travaux de construction rédigés par tous les professionnels.**

### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

En 2002, la Direction a mis en place une politique opérationnelle exigeant que tous les rapports d'examen des travaux de construction exigibles soient déposés avant que ne soit délivré le « permis d'occuper partiel », alors que le Code ne fait peser cette exigence que sur la délivrance du « permis d'occuper final ». La DSB a mis en place cette pratique exemplaire plus exigeante parce qu'il est difficile, une fois qu'un bâtiment est occupé, de régler les problèmes qui demeurent.

Dans le présent cas, en se fondant sur la promesse de l'architecte disant que les rapports seraient déposés sous peu, et en s'appuyant sur l'intégrité professionnelle qu'on reconnaît à un architecte ainsi que sur ses responsabilités légales en vertu de la *Loi sur les architectes*, l'inspecteur a délivré le permis d'occuper partiel.

L'architecte a subséquemment avisé la Ville qu'étant donné un différend entre le propriétaire et eux, l'ingénieur en structures responsable de projet et lui-même ne rédigerait pas les rapports; ce différend n'est pas résolu à ce jour. L'architecte a allégué que la structure comportait des faiblesses au chapitre des soudures, et pour cette raison, le permis d'occuper n'aurait pas dû être délivré. Comme la loi les y autorise, les propriétaires ont retenu les services de deux autres firmes d'ingénierie, dont l'une spécialisée en soudure, afin qu'elles effectuent les examens et rédigent les rapports exigés. Ces rapports ont confirmé la suffisance structurale des soudures et de la structure elle-même; le permis d'occuper partiel a donc été maintenu, puisque les exigences touchant l'occupation partielle avaient été satisfaites.

Finalement, il convient de signaler qu'aucune des zones présentement utilisées n'est interdite d'usage ni d'occupation, bien que seul un permis d'occuper partiel, et non le permis d'occuper final, ait été délivré et que le dossier du permis demeure ouvert.

### **Recommandation 5**

**Qu'on donne aux inspecteurs la consigne d'exercer une surveillance active des sites pour lesquels une demande de permis de construire a été déposée, y compris l'accès au site si besoin est.**

### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

De telles inspections ne serviraient qu'à documenter le fait que se poursuivent des travaux de construction ou de démolition contrevenant à la loi. Il convient aussi de veiller à ce qu'aucune inspection se déroulant avant que ne soit délivré un permis n'ait pour but d'examiner les travaux en vue de vérifier, ou même de sembler vérifier, leur conformité au Code, car ceci encouragerait la poursuite des activités de construction illégales. La mise en œuvre de cette recommandation exigerait des ressources supplémentaires en vue d'ajouter ces inspections aux inspections obligatoires qui forment la base du programme et de la prestation de services actuels

de la Ville. Cette recommandation sera examinée au moment de l'Examen stratégique de la Direction qui débutera au deuxième trimestre de 2009, puisque cet examen doit envisager d'augmenter le niveau de prestation de services.

Dans le présent cas, l'inspecteur était parfaitement au courant du fait que la construction se poursuivait dans l'illégalité; il avait émis les ordonnances nécessaires, et une poursuite en justice avait été lancée. Toute inspection supplémentaire, après l'émission de l'ordre de suspendre les travaux et avant l'achèvement de la construction (une période de 7 semaines) n'aurait servi qu'à confirmer le fait que se poursuivait une construction illégale, ce qui était connu du personnel et suffisamment documenté pour les fins du procès. Des ressources supplémentaires auraient été nécessaires pour surveiller le site de manière plus soutenue.

### **Recommandation 6**

**Que le CSB examine le dossier en vue de décider si on devrait exiger du propriétaire qu'il découvre certaines parties de la structure du toit afin de permettre une inspection et des tests plus détaillés et complets de l'acier des structures.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Le CSB a étudié avec soin cette recommandation, a consulté les services juridiques de la Ville et a déterminé qu'il n'y a aucun fondement juridique pour réclamer que le propriétaire découvre des surfaces de la structure du toit à cette fin.

Certaines conditions doivent être en place avant que le CSB n'envisage d'émettre un ordre de découvrir un bâtiment. Les voici :

- Le CSB doit avoir une raison de croire que la construction n'est pas conforme au Code ou aux dessins accompagnant la demande de permis. Dans le présent cas, l'allégation de l'architecte, voulant que la construction ne soit pas conforme, faisait référence aux travaux de soudure. Le travail de soudure et la construction avoisinante ont été examinés par deux ingénieurs en structures, l'un d'entre eux étant un ingénieur en soudage et un inspecteur en soudure de niveau III. Les deux ont déclaré les travaux de soudure conformes au Code. Ainsi, il n'y avait plus de raison de croire à la non-conformité; et
- l'ordonnance doit être émise avant que ne soit délivré le permis d'occuper partiel. Dans le présent cas, le permis d'occuper partiel avait déjà été délivré.

### **Recommandation 7**

**Que dans les cas semblables au projet sous examen, la Ville exige que les lettres touchant l'examen des structures soient examinées par l'ingénieur en inspection des structures de la Ville.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

Les agents du service du bâtiment (les examinateurs des plans et les inspecteurs en bâtiments) sont habilités par la province d'Ontario à examiner les lettres d'examen structural. De plus, la Direction offre aux agents du service du bâtiment une formation à l'interne extrêmement utile qui les habilite à examiner les rapports et à rendre une décision quant à leur suffisance. Dans les cas où ils doutent du bien-fondé des lettres d'examen, ou alors quand les problèmes sont d'une complexité qui exige un examen supplémentaire, les agents du service du bâtiment consultent les ingénieurs en Code du bâtiment de la Direction.

Dans le présent cas, les rapports déposés par l'ingénieur-conseil ont été jugés suffisants pour décider de la conformité.

### **Recommandation 8**

**Que la Ville envisage de déposer une plainte auprès des ordres professionnels d'architecture et d'ingénierie concernant les professionnels nommés dans le présent rapport.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Bien que la Ville ne constitue pas l'organisme de réglementation des ingénieurs et des architectes, quand le comportement de ces professionnels porte atteinte au Code ou à la *Loi sur le code du bâtiment*, ou encore à la capacité du Chef du service du bâtiment à faire respecter la Loi et le Code, il convient de s'adresser aux organismes dirigeants afin qu'ils examinent, enquêtent et se prononcent sur une éventuelle mesure corrective. Si l'Ordre des architectes de l'Ontario en fait la demande, le Chef du service du bâtiment l'aidera dans son enquête.

### **Recommandation 9**

**Que si se présentent à l'avenir des situations semblables, où un architecte, un ingénieur ou tout autre professionnel régi par un ordre professionnel semble avoir adopté un comportement indigne des normes qu'on est en droit d'attendre d'un tel professionnel, ou si l'intérêt public l'exige, la Ville dépose une plainte auprès de l'Ordre des architectes de l'Ontario, ou auprès de tout autre ordre ou association professionnelle en cause.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Cependant, la mise en œuvre efficace de cette recommandation exigerait des ressources spécialisées supplémentaires (1 ETP, un véhicule, de l'équipement, de la formation, un processus de qualification et de l'espace de travail—au minimum 125 k\$) afin d'enquêter, de documenter et de soumettre des plaintes aux instances en cause, dans les cas où les actions ou les omissions des professionnels auraient miné le Code, la *Loi sur le code du bâtiment* ou la capacité du CSB d'appliquer la loi. Cette recommandation sera examinée au moment de l'Examen stratégique de la Direction

qui débutera au deuxième trimestre de 2009, puisque cet examen doit envisager des modifications aux niveaux de prestation de services et de programmes.

### **Recommandation 10**

**Que la Ville établisse une politique grâce à laquelle la DSB peut demander une injonction ou une ordonnance restrictive pour s'assurer que le propriétaire se conforme aux prescriptions, dans les cas de non-respect du règlement comme celui qui nous occupe.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

Il convient d'examiner le bien-fondé de chaque cas en soi; de plus, le pouvoir de demander une injonction existe déjà, en vertu de la *Loi sur le code du bâtiment*, et a été utilisé dans le passé, quand les circonstances l'exigeaient. En outre, une demande d'injonction mobilise des ressources considérables, tant chez la DSB qu'aux Services juridiques. La mise en œuvre d'une stratégie d'application plus agressive de la loi exigerait des ressources supplémentaires. C'est au tribunal de décider si une injonction sera accordée ou pas; elles ne sont accordées que dans des circonstances extraordinaires.

Dans le présent cas, la DSB a bien effectué les inspections nécessaires, a bien émis les ordonnances nécessaires et a poursuivi avec succès les propriétaires du 215 de la rue Preston en justice. Une fois que les propriétaires eurent obtenu les approbations de demandes exigibles, un permis a été délivré, la construction a été inspectée et l'on a établi qu'elle respectait les normes minimales du CBO.

### **Recommandation 11**

**Que la DSB assure la conformité avec la *Loi sur le code du bâtiment*, sans tenter d'équilibrer ses obligations et exigences en matière d'application de la loi avec les objectifs opérationnels des propriétaires.**

#### **Réponse de la direction**

La direction n'est pas d'accord avec cette recommandation.

La DSB a intensifié graduellement les actions en matière d'application du règlement, quand les propriétaires ont refusé de se conformer aux ordonnances émises, et a poursuivi avec succès les propriétaires en justice. Une fois que les propriétaires ont obtenu les approbations liées à leurs demandes, un permis a été délivré, la construction a été inspectée et l'on a établi qu'elle respectait les normes minimales du CBO.

La Loi utilise tantôt des formulations impératives (« devront ») et tantôt des formes permissives « pourront »). Même si le CSB et les inspecteurs en bâtiments « devront » appliquer le Code, ils « pourront » émettre des ordonnances, et « pourront » poursuivre en justice. Ces différences d'expression naissent du fait que les

législateurs reconnaissent que l'observation de la loi est atteinte quand il y a conformité. On réussit en général à obtenir la conformité sans que l'on soit forcé d'émettre des ordonnances ou de lancer des actions en justice, en général grâce à une intensification graduelle des options en matière d'application de la loi.

De plus, le CSB est une *persona designata* qui détient son autorité en vertu de la *Loi sur le code du bâtiment*, et dont les responsabilités sont définies non seulement par la Loi et le Code, mais aussi par le Règlement municipal sur le bâtiment, par des arrêtés du ministère, par les jugements ou les décisions de la Commission du code du bâtiment et de la Commission d'évaluation des matériaux de construction, et qui plus est, par l'appareil judiciaire (décisions de tribunaux et principes de droit commun). La manière d'interpréter et d'appliquer la Loi et le Code est fortement tributaire des pratiques exemplaires et des principes et précédents juridiques. À vrai dire, seules trois entités sont autorisées à se prononcer sur la conformité au Code : le chef du service du bâtiment, la Commission du code du bâtiment (exclusivement pour ce qui est de la notion de suffisance) et les tribunaux.

Les tribunaux ont maintenu que la *Loi sur le code du bâtiment* est « un ensemble complexe de lois qui vise, en gros, à établir et à appliquer les normes pour toutes les catégories de bâtiments et de projets de construction en Ontario. » [traduction] À cet égard, la complexité de la Loi et ses aspects techniques exigent une certaine flexibilité et l'équilibre de divers facteurs. On s'attend à un certain niveau de raisonabilité et de flexibilité, afin de tenir compte de diverses autres variables, notamment les réalités commerciales et pratiques des propriétaires et de l'industrie de la construction. C'est pourquoi le mandat de la Direction parle de réglementer la construction de bâtiments, d'abord par le leadership, l'éducation et la collaboration. Si ces approches ne réussissent pas à obtenir la conformité, on applique alors des mesures pour faire observer la loi, dont des poursuites judiciaires, etc. C'est l'approche qui a été adoptée dans le présent dossier, et bien qu'il ait fallu des ordonnances et une poursuite judiciaire, etc., le bâtiment a atteint la conformité et le permis d'occuper a pu être délivré.

Si le CSB était privé de flexibilité et de tout pouvoir discrétionnaire en matière d'administration ou d'application du Code, cela pourrait entraîner des conséquences non voulues et indésirables, par exemple une augmentation de non-conformité à l'égard du Code, et pourrait forcer certains des aspects de l'industrie de la construction à travailler « sous la table ». De tels effets iraient à l'encontre des objectifs de la Loi, qui visent à assurer que soient respectées les normes minimales pour la construction en Ontario.

Enfin, il semble y avoir une méprise quant à ce que tente « d'équilibrer » la DSB. Il ne s'agit pas de mettre dans la balance les besoins d'un homme d'affaires en particulier. Il s'agit, plutôt, de reconnaître les réalités du développement rapide d'une industrie de la construction, et les retombées positives pour le grand public. L'objectif est de voir à ce que la construction devienne conforme au Code, et que règne dans

l'industrie de la construction une discipline suffisante pour permettre que cela se produise.

### **Recommandation 12**

**Que le CSB examine le dossier du bâtiment en cause, pour s'assurer que toutes les options disponibles en matière d'application de la loi ont été passées en revue par les Services juridiques.**

#### **Réponse de la direction**

La direction est d'accord avec cette recommandation.

Le CSB a pris et prendra toutes les actions jugées nécessaires pour faire atteindre la conformité. La DSB a effectué les inspections exigées, a émis les ordonnances nécessaires et a poursuivi avec succès les propriétaires du 215 de la rue Preston en justice. Une fois que les propriétaires ont obtenu toutes les approbations de demandes exigibles, un permis a été délivré, la construction a été inspectée et l'on a établi qu'elle respectait les normes minimales du CBO. Il n'existe pas d'étapes plus poussées, en matière d'exécution de la loi.

### ***Conclusion***

La vérification a révélé que le personnel de la Ville s'est conformé à certaines des exigences de la *Loi sur le code du bâtiment*. Le personnel avait affaire à un propriétaire difficile et récalcitrant, qui a poursuivi les travaux en dépit des ordonnances ou des autres obligations établies par la loi. Au même moment, le propriétaire a fait de petits gestes en direction de la conformité, ce qui portait à croire qu'un niveau de conformité plus élevé suivrait. Bien que la DSB ait été au courant du fait que la construction se poursuivait sans permis, la Ville n'a pas entrepris d'actions plus robustes, qui auraient pu conduire à d'autres poursuites judiciaires.

Le personnel a tenté d'équilibrer, d'une part, les exigences relatives à la conformité au Code et, d'autre part, l'objectif d'imposer au propriétaire des contraintes raisonnables. La réponse faite par la DSB à la version préliminaire du présent rapport nous indique qu'elle considère que son rôle est de faciliter la construction, sans entraver le moteur économique de la Ville. Le rôle de la DSB devrait être d'assurer la conformité, en faisant respecter le Règlement de la Ville et le Code du bâtiment, et non pas d'adapter les exigences en matière de conformité aux objectifs opérationnels d'un propriétaire.

Le propriétaire a poursuivi les travaux de démolition et de construction sans détenir les permis nécessaires, et a tardé à se conformer en la matière. D'autres moyens d'application, ou des limites imposées au propriétaire, peuvent s'avérer nécessaires pour contraindre la conformité en temps opportun. De plus, l'architecte semble avoir fait preuve de complicité ou au moins avoir acquiescé à la construction illégale, et devrait faire l'objet d'une plainte auprès de son ordre professionnel.

Pour un bâtiment de cette catégorie, la Division de l'inspection se fie, règle générale, à la vérification effectuée sur place par l'ingénieur responsable de projet nommé dans la demande de permis de construire. Dans le présent dossier, le professionnel en conception de structures retenu par l'architecte pour examiner les travaux comme l'exige la demande de permis n'a pas effectué les visites et examens exigés. Le propriétaire a subséquemment, et une fois la construction achevée, engagé un autre professionnel en structures, qui n'a pu effectuer qu'un examen fort limité. On en conclut que la lettre d'examen structural est insuffisamment détaillée, vu la complexité de la structure, et l'on recommande un examen plus poussé. Le chef du service du bâtiment dispose de l'outil légal pour contraindre cette inspection, par le biais d'un ordre de découvrir.

### **Remerciements**

Nous tenons à exprimer notre appréciation pour la collaboration et l'aide apportées à l'équipe de vérification par la direction et le personnel.

# 1 Background

## 1.1 *Audit*

This audit was conducted as a result of a report to the Fraud and Waste Hotline. It was not originally identified in the 2008 Audit Plan that was presented to Council.

The Office of the Auditor General received information via the Fraud and Waste Hotline regarding the renovations that took place at Sala San Marco Hall, located at 215 Preston Street. The information received covered a number of issues, as listed below:

- Main issue brought up in the fraud and waste report is the lack of oversight with respect to the welds of the new roof trusses.
- Allegation that health and safety concerns were not being addressed.
- Building owner carried out partial demolition without a permit.
- Building owner started work on the renovations before the building permit application was complete and a building permit was issued.
- Building was completed before a building permit was issued.
- Partial occupancy permit was issued.
- Work on continuous welds was covered before inspection.
- Allegation that the kitchen was renovated without a permit.
- Allegation that changes to occupancy does not meet Code.

In the course of reviewing the background documentation to the project, a letter of complaint in the file stated that one of the building owners is a City employee.

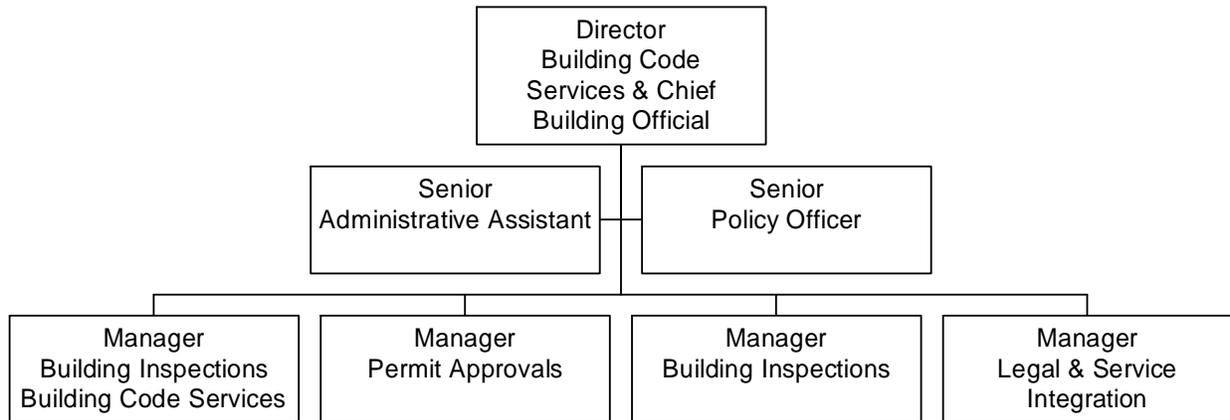
## 1.2 *Background Information*

This audit used as background information the 2006 Audit of the Building Services Branch (former name of the Building Code Services Branch). The organization chart for the Building Code Services Branch is included in the next page.

Building Code Services Branch (BCSB) is one of seven branches under the responsibility of the Deputy City Manager, Infrastructure Services & Community Sustainability. It is responsible for ensuring that new construction meets the health, safety and structural sufficiency requirements of the Ontario Building Code (OBC) and other applicable laws, and to effectively manage the risks inherent in administering and enforcing the OBC. For 2006, BCSB had an establishment of 175.25 employees, of which 166 were full-time employees and 9.25 temporary (summer students). Of the 166 FTEs, 42 were vacant at the time of that audit. The majority of BCSB employees are located at Ben Franklin

Place, with the others co-located with Client Service Centres staff primarily at 110 Laurier, the Kanata and Cumberland offices and periodically at the other three rural Client Service Centres.

### Building Code Services Branch



The three primary organizational units of the Branch are:

- (i) Building Permits – Plan Reviews and Approvals;
- (ii) Building Permits – Inspections and Enforcement; and,
- (iii) Legal and Service Integration.

The overall objectives of BCSB are to:

- Assist property owners and the development industry to ensure that building construction meets the health, safety, and structure sufficiency requirements of the OBC and other applicable laws;
- Review pool enclosure applications, issue permits, and undertake safety inspections;
- Review and approve applications for permanent signs on private property;
- Assign civic addresses; and,
- Provide accurate and timely compliance reports, agency letters of approval, release of development agreements, and access to building permit records and documents.

Recent legislation has significantly changed the role of the BCSB and its clients, and established new requirements for the operation of the Branch. Key changes include requirements for the establishment of operational policies for Building Officials, certification requirements for BCSB staff, prescribed timeframes within which decisions

must be made on issuing building permits, and mandatory notices and inspections at key construction stages.

## 2 Audit Objectives and Criteria

Following a review of the background information available from the City, the scope of the audit was synthesized in the Audit Objectives. The Criteria attached to each Audit Objective explain the scope of the review.

**Audit Objective No. 1** - Examine and evaluate the processes and methodologies used for the review and approval of the demolition and building permits

Criteria:

- Completeness of reports and drawings.
- Appropriate reviews were conducted to ensure all design documents, reports and drawings were in compliance with the Building Code.

**Audit Objective No. 2** - Examine the demolition, building, and occupancy permits to determine if they are consistent with relevant policies, procedures, legislation, and regulations

Criteria:

- Demolition permit issued based on appropriate drawings and submissions.
- Building permit issued based on appropriate drawings and submissions.
- Occupancy permit issued appropriately.

**Audit Objective No. 3** - Examine the methods and procedures used for the inspections by the City during demolition and renovation construction

Criteria:

- Inspections were completed at appropriate times.
- Inspection reports were completed and relevant observations were adequately recorded.
- Appropriate engineering and consultant reports regarding structural inspections.

**Audit Objective No. 4** - Examine the methods used by the City to enforce the Ontario Building Code during demolition and renovation construction

Criteria:

- Methods available by legislation.
- Methods used by the City staff for enforcement.
- Effectiveness of methods of enforcement.

**Audit Objective No. 5** – Examine the issue of one of the owners of the business being a City employee

Criteria:

- Confirm whether this assertion is true. (Note that at present a search of City staff directory was negative.)
- If the assertion is true, review the property owner's involvement in the process.

### **3 Audit Scope**

The Audit Scope encompassed the City's building permit process for the demolition, building, inspection and occupancy for a specific building. The Audit comprised the following tasks:

- Review legislative framework;
- Review background data;
- Conduct interviews with individuals involved in the project;
- Conduct a site visit, if possible;
- Prepare Draft Report for fact verification;
- Conduct additional interviews for confirmation of issues, if necessary; and,
- Submit Draft Report for Management Review.

The audit began by reviewing the legislative framework for the project, to confirm the requirements that should have been followed. Collection and review of the background information were undertaken in light of the Audit Objectives and Criteria. The results of the review are an evaluation of the recommendations to determine whether the interests, including exposure to risk, of the City were adequately considered and protected.

#### **3.1 Review Legislative Framework**

This review is largely governed by the Building Code Act, 1992, Statutes of Ontario 1992, Chapter 23, as amended to 2006, and the requirements of the Ontario Building

Code, Ontario Regulation 389/05, made under the Building Code Act. In addition, we reviewed the requirements of The Architects Act and The Professional Engineers Act.

### **3.2 Interviews**

Interviews were held with City staff involved in the various components of the project to review the same and to obtain copies of documentation and other background data where available. The Owner, the Architect (Architect of Record), Structural Engineer of Record, and the Structural Engineer who submitted the structural review were also interviewed regarding their knowledge and involvement in the project.

### **3.3 Review Background Data**

Background data available from the City was collected and reviewed. This included the project drawings, building branch files, and building inspection reports related to the project. Relevant sections of the Building Code Act and the Ontario Building Code (Code) were reviewed as they pertain to the audit.

### **3.4 Correspondence Reviewed**

The correspondence files for the project maintained by the City were reviewed in detail, including the demolition permit file and working file, the building permit file and working file and the prosecution file. In addition, a number of complaints received by the City were reviewed.

### **3.5 Documents Examined**

The audit included a review of the drawings prepared by the Architect of Record and Engineer of Record and submitted as part of the Building Permit application, together with the review notes and related correspondence.

## **4 Findings**

The results of the analysis and the findings of the audit are presented in this section following the Audit Objectives. For ease of reference, the Audit Objectives and the Criteria used are repeated here and the findings are discussed in relation to the criteria.

### **4.1 Summary of Project Chronology**

The project files maintained by the City were reviewed and are summarized in **Appendix A - Detailed Project Chronology**. The following paragraphs discuss the key aspects of the Project Chronology.

City staff became aware of construction activity at the site via a complaint that was called in due to the removal of three trees that were planted as part of a site plan agreement. When the City Inspector visited the site on February 9, 2006, he found that the property owner was demolishing a small, attached building on the north side of the main building, without a Demolition Permit. The Inspector issued an Order to Comply

and an Order to Stop Work. The application for demolition was submitted less than a week later. However, the Owner continued with the demolition, without the required permit.

The City Inspector returned on March 9, 2006 and found that construction of the renovations was starting without a permit. He issued an Order to Comply. The application for building permit for the renovations, including removal and raising of the roof and construction of two small additions, was submitted on April 3, 2006.

The City started to process the Building Permit application, including the internal circulations. As a result of the Zoning and Development By-law review, comments from the public were requested. The Site Plan was approved in July 2006, subject to letter of undertaking and conditions.

The Owner continued construction of the building renovations from April 3 to May 24, 2006, while the application for building permit was being processed by the City [the building permit was issued on December 19, 2006]. From the correspondence and the interviews, the Architect was involved in the construction reviews during this time. The foundations, mechanical, and electrical engineers performed construction reviews for their respective disciplines during this period. During the period between April 7, 2006 and May 24, 2006, the City Inspector did not perform any inspections or attended the site. Given the fact that the Owner commenced work without a Demolition Permit and subsequently started the building renovations without a Building Permit, it would have been appropriate for the City Inspector to have monitored the site for further illegal activities.

On May 24, 2006, the Owner called the City to request an inspection and the Occupancy Permit. The City Inspector issued an Order to Comply for occupancy without a permit, noting that "work appears completed". The Order to Comply required that the Owner submit the Professional Reports.

The City prosecuted the owners, who pleaded guilty and were fined a total of \$10,000. Once the prosecution process and all the planning requirements were completed, the City issued the Demolition and Building Permits on December 19, 2006.

From the documentation available, it appears that nothing of note occurred from December 19, 2006 to June 18, 2007. The City Inspector stated during the interview that he had stayed in contact with the Architect by telephone or during interaction in other projects. However, there is no written record of any of these conversations. Telephone conversations should be documented.

The Architect sent a letter on June 18, 2007 in which he noted a number of concerns regarding the building structure and changes to the building that did not meet the Code

requirements and that were made without a permit in further contravention of the Code.

On June 19, 2007 the City issued a Partial Occupancy Permit, and requested the professional reports.

A site meeting was held on July 6, 2007 as a result of the letter from the Architect of June 18, 2007; the meeting was attended by the Owner, the Architect, the City’s Inspector, and the City’s BCSB Program Manager, Central West. At that time the Owner was instructed by the City to provide by July 13 a letter of review sealed by an engineer regarding the structure. On July 13 the City issued an Order Requiring Tests and Samples, requesting structural review and certification of the steel, welding, foundations and final review letters for architectural, mechanical, and electrical components.

The City received letters from the engineers responsible for the construction review of the foundations, mechanical, and electrical components. No letters were provided by the Architect and the Structural Engineer.

A second structural engineering firm provided a letter of review on November 26, 2007, indicating that they had undertaken a limited review of the structure and were satisfied that the structural work was completed in general conformance with the structural drawings and construction practices.

In his letter dated June 18, 2007, the Architect raised a number of concerns regarding modifications made by the Owner to parts of the building that were not covered under the December 2006 Building Permit. The City Inspector inspected the site and issued an Order to Comply. During the interview in May 2008, the Inspector indicated that the Owner has done the required modifications to comply with the Code.

At the present time, the building is occupied based on a Partial Occupancy permit. The Final Occupancy Permit has not been issued.

The main actions by the Owner and the City are summarized in the following table, based on Appendix A – Project Chronology.

<b>Date</b>	<b>Action by Owner</b>	<b>Action by City</b>
February 2006	Starts demolition without a permit	
February 9, 2006		Stop Work Order
February 14, 2006	Application to Demolish	

Date	Action by Owner	Action by City
	Owner continues demolition and starts construction	
March 9, 2006		Order to Comply
April 3, 2006	Application for Permit to Construct or Demolish for Renovations	
April 4, 2006		Note indicating no change on site
April 7, 2006		Inspection report – note that work on roof, interior and steel erection being done Stop Work Order
April 11 to May 23, 2006	Continues demolition and construction	Receives complaints indicating that construction is being done without a permit (April 11, 12) No inspections by City
May 24, 2006	Begins using the building for its intended purpose	Inspection Report Order to Comply
July 13, 2006		Inspection Report – notes no change in site
August 16, 2006		Confirms that it will proceed with prosecution
December 21, 2006		Court fines Owner
December 19, 2006		Demolition and Building Permits are issued
June 19, 2007	Requests Occupancy Permit	Inspection of building Issues Partial Occupancy Permit Requests Professional Reports
July 13, 2007		Order Requesting Reports and Tests
October 2007	Provides construction review letters from foundations, mechanical and electrical engineers	

Date	Action by Owner	Action by City
November 26, 2007	Provides letters from Second Structural Engineer and Connection Design Engineer	
December 19, 2007		Inspection report regarding changes to basement done without a permit.
January 25, 2008		Accepts letters from second structural engineer and lifts Order to Comply

**4.2 Audit Objective No. 1** - Examine and evaluate the processes and methodologies used for the review and approval of the demolition and building permits.

**4.2.1 Criteria:**

- Completeness of reports and drawings.
- Appropriate reviews were conducted to ensure all design documents; reports and drawings were in compliance with the Building Code.

**4.2.1.1 Completeness of Reports and Drawings**

**4.2.1.1.1 Demolition Permit**

The property Owner proceeded with demolition without obtaining a demolition permit. The Application for a Permit to Construct or Demolish was submitted after the fact, together with a sketch prepared by the Architect of Record.

The Code requires in section 2.3.2.3 (1) (c) that an applicant for a permit respecting the demolition of a building shall retain a professional engineer to undertake the general review of the project during demolition for buildings where the demolition will extend below the level of the footings of any adjacent building and occur within the angle of repose of the soil, drawn from the bottom of such footings. The Code requires in section 2.4.1.1 (2) that descriptions of the structural design characteristics of the building and the method of demolitions shall be included in the application to demolish the building. The application as submitted only contained a sketch showing the building demolished in plan, with no description of the building or the method of demolition.

The Application should have been sent back and the City should have demanded the additional information. Failure to request the required information constitutes in effect a reward to the Owner for carrying out the demolition without a permit, since by

submitting information after the fact he is not required to submit all the required information.

#### **4.2.1.1.2 Building Permit**

The Owner proceeded with construction without obtaining a permit. The City issued Orders to Comply followed by Stop Work Orders; as a result, the Owner submitted a building permit application on April 3, 2006. In spite of the Orders, the Owner continued with construction, substantially completing the work by May 24, 2006.

Available documentation indicates that the building permit application was complete, and appropriate reviews by City staff were conducted. The project had a significant structural component, and the City Structural Review Engineer was included in the review.

The Architect noted in his letter of June 18, 2007 that the Owner had made changes to the building, in a part not subject to the building permit application, without a building permit; furthermore, those changes were not in accordance with the Code. In this regard it is noted that those changes were not shown on the Architect's drawings submitted with the application for permit. It is not possible to determine if the Architect was aware of these changes at the time that he submitted the permit drawings.

#### **4.2.1.2 Reviews**

##### **4.2.1.2.1 Demolition Permit**

The fact that the Owner proceeded with demolition without obtaining a demolition permit affected the remainder of the review process. Following an Order to Comply and a Stop Work Order, the application for a permit to demolish was submitted to bring the process into compliance. However, by then the demolition was all but completed. The review of the application by BCSB followed the required steps, including the review by planning and others within the City.

The documentation submitted with the demolition application was not complete, as it was missing the description of the structure and the methods of demolition prepared by a structural engineer, in accordance with the Code. The City should have requested the required missing information before issuing a Demolition Permit. Given that the demolition was finished by the time that the application was submitted, the review was carried out together with the building permit application.

##### **4.2.1.2.2 Building Permit**

Available documentation indicates that the building permit application was complete, and City staff conducted the appropriate reviews. The project had a significant

structural component, and the City Structural Review Engineer was included in the review.

### **Recommendation 1**

**That the Building Code Services Branch (BCSB) ensure the documentation received with the Application For a Permit to Construct or Demolish is complete in all cases, as we found in this case the documentation provided with the application for demolition was not complete.**

### **Management Response**

Management does not agree with the recommendation.

Management does not agree that there were procedural omissions with regard to the applications for demolition and construction at 215 Preston Street. Building Code Services (BCS) did receive sufficiently detailed documentation to ensure that the proposed demolition and construction was reasonable and could be carried out in accordance with the Building Code.

It is the role of the Chief Building Official (CBO) to determine the sufficiency of information supporting an application based on the unique set of circumstances and conditions of each project and the CBO's interpretation of the requirements and standards as they apply to the application. In this instance, the submissions were deemed sufficient for the purpose of issuing the permits.

## **4.3 Audit Objective No. 2 - Examine the demolition, building, and occupancy permits to determine if they are consistent with relevant policies, procedures, legislation, and regulations**

### **4.3.1 Criteria:**

- Demolition permit issued based on appropriate drawings and submissions.
- Building permit issued based on appropriate drawings and submissions.
- Occupancy permit issued appropriately.

#### **4.3.1.1 Demolition Permit drawings and submissions**

The documentation that accompanied the demolition permit application was not complete relative to the expected level of documentation. Typical demolition applications would include a drawing, and structural procedure detailing the methods of removal of portions of the structure while ensuring the remainder is stable. The usual criteria, however, is not relevant to this application since the Owner had completed the demolition before the permit application was made. Nevertheless, the City should require that the Owner submit the required documentation. Failure to insist that the Owner submits the complete documentation in effect rewards the Owner for not following the rules.

#### **4.3.1.2 Building Permit drawings and submissions**

The building permit application included appropriate drawings, which were sealed by the respective design professional. A review of the drawings indicates that they are complete as required for the permit application.

The permit application included the forms required from design professionals and the Owner, including the Application form, Confirmation of Commitment by Owner Schedule 1: Designer Information from Ovidio Sbrissa, Architect; Durham Engineering, Structural; Khemani and Associates, Mechanical and Guerin and Associates, Electrical.

The permit fee was charged as required by City by-law. In addition to the basic fee and development charges, an additional fee was charged (as prescribed by the City) for the project where the Owner proceeded with work without a permit. The fee required to be levied was based on \$13.50 per \$1,000 of project value. The Owner indicated in the application that the project value was \$180,000. It is normal to rely on the Owner or permit applicant to provide the project value. The correct fee of \$2,430 was charged. An optional additional fee of 50% of the permit fee, \$1,215, was charged due to the Owner's work with no permit. Fees were found to meet the City's requirements.

It is noted that in the interview the Owner stated that the original budget given to him by the Architect was \$400,000, and that the budget had been exceeded by more than 100%; the final cost, according to the Owner, was \$900,000. This discrepancy in construction cost appears to have resulted in fees that were too low. It is noted that if the Architect's budget of \$400,000 had been applied the resulting fee would have been \$8,100, including the additional fee of 50% of the permit fee; if the resulting cost of \$900,000 is used the resulting fee is \$18,225, or \$14,580 more than the fee collected. The fine that was eventually paid by the Owner is less than the fee that would have been charged based on the actual cost.

#### **Recommendation 2**

**That the BCSB advise property owners that the Branch reserves the right to verify the actual construction cost and to adjust the fees accordingly. If this cannot be done, that the BCSB implements a database of cost per unit area to permit it to verify the budget estimates provided with the application.**

#### **Management Response**

Management does not agree with the recommendation.

In the absence of legislative authority, there is no basis for verifying the actual construction costs and adjusting the fees after the permit has been issued and the construction completed. The process of verification of estimated value of construction and adjusting undervalued fees prior to the issuance of the permit is already in place. This is a standard practice of municipalities that assess fees based on the value of construction.

While the branch maintains a database of cost per unit area for new construction, it is too difficult to obtain a cost per unit area for renovations due to the nature of this construction activity (too many variables and unknowns).

The building permit fee is based on "assessed valuation of the work", which is not the same as the "actual construction costs". An "Architect's estimate of costs" may include many elements, which do not form part of the "assessed valuation of the work", and which may vary greatly from the "actual construction costs", due to many unquantifiable factors.

Finally, the Building Code Act and Building Code prevent the permit fees collected from exceeding the cost of providing the service, along with reasonable reserves to offset liability and construction fluctuations. The Chief Building Official is legislatively required to provide an annual report on these matters, and any request for increases are subject to consultation with the industry and public.

#### **4.3.1.3 Occupancy Permit**

The City issues Occupancy Permits in accordance with the Building By-law No. 2005-303. From the City's website: "A Partial Occupancy Permit is issued where the permit holder wishes to allow occupancy in an unfinished building. A Final Occupancy Permit is issued when construction is complete and all outstanding deficiencies as listed in Inspection Reports have been addressed."

As noted in the Project Chronology, there was a significant period between the Building Permit and the request for an Occupancy Permit by the Owner. During this time, there were no other inspections by the City, and the available correspondence indicates that no further action was taken until the City received the June 18, 2007 letter from the Architect. In this regard, it is noted that the City Inspector discussed the project on a number of occasions with the Architect, but there is no record in the file of these conversations. It is very important that the City keeps a record of telephone conversations where the status of the project is discussed.

The City issued an Order to Comply requiring a variety of professional reports on the construction. Reports were received from geotechnical, structural, electrical and mechanical design professionals. The outstanding report is from the Architect. There are still outstanding reports required of the Owner (architectural) that are not submitted. The City gave a Partial Occupancy Permit although not all the submission requirements had been met by the Owner. The Final Occupancy Permit has not been issued by the City.

We consider that the Partial Occupancy permit should only be issued after all the review reports are received. In fact, the BCSB Manager, Building Inspections directed in an email to the BCSB Program Manager, Central West and the Building Inspector to ensure that this procedure not be repeated. We agree with this direction, which should be considered to form part of the City's procedures.

**Recommendation 3**

**That the BCSB ensure all are files properly documented and complete, including a complete record of telephone conversations, for future reference and possible litigation.**

**Management Response**

Management does not agree with the recommendation.

It is the current practice for staff to document observations and key discussions, particularly where conflict and/or litigation is anticipated. However, it is not possible, from a time-management perspective, to document all communications. Each Building Official must make a subjective assessment of the relevance of the communication and the degree of recording based on the circumstances at the time of the communication. Further, a requirement that all files include a record of all telephone conversations would require significant additional resources and investment in technology, for the few occasions where conflict arises.

**Recommendation 4**

**That Occupancy Permits be issued only when all the construction review reports by all professionals have been received to the satisfaction of the City.**

**Management Response**

Management does not agree with the recommendation.

In 2002, the branch established an operational policy that requires all required construction review reports to be submitted prior to the issuance of the “partial occupancy permit”; although the OBC only requires this threshold to be met prior to the “final occupancy permit” being issued. As a best practice, BCS moved this threshold to an earlier stage because once a building is occupied it becomes more difficult to address outstanding deficiencies.

In this instance, based on the Architect’s assurance that the reports would be submitted in short order and relying on the professional integrity accorded an Architect and their legal responsibilities under the Architect Act, the Inspector issued the partial occupancy permit.

The Architect subsequently notified the City that he and the Structural Engineer of Record would not produce the reports due to a dispute with their client, which has yet to be resolved. The Architect alleged there were welding deficiencies, and on this basis, an occupancy permit should not have been issued. As they are lawfully entitled to, the owners engaged the services of two other engineering firms, one specialized in welding, to carry out the reviews and provide the required reports. These reports confirmed the structural adequacy of the welds and the structure; therefore, the partial occupancy permit was allowed to stand as the requirements for partial occupancy had been met.

#### **4.4 Audit Objective No. 3** - Examine the methods and procedures used for the inspections by the City during demolition and renovation construction

##### **4.4.1 Criteria:**

- Inspections were completed at appropriate times.
- Inspection reports were completed and relevant observations were adequately recorded.
- Appropriate engineering and consultant reports regarding structural inspections.

##### **4.4.1.1 Inspection Times**

Throughout the demolition and construction, the Owner had proceeded with work prior to obtaining permits. The usual schedule and staging of inspections could not be followed by City staff. Inspections also require notice of the stage of work by the Owner, and no notification of the work, at any stage, was provided by the Owner.

It is noted that the Inspector issued a Stop Work Order on April 6, 2006, two days after the application for building permit was submitted to the City. It appears reasonable for the Inspector to expect that the order will be obeyed. However, we note also that there was a period of seven weeks from the Stop Work Order issued on April 6 to the subsequent inspection on May 24, during which no inspections were made.

During this period, the Architect was aware that construction was proceeding without a permit, but did not inform the City. During an interview, the Inspector indicated that the Architect had advised him that he (the Architect) would be carrying out the required inspections of the work. The fact that the foundations, mechanical and electrical engineers carried out the corresponding construction reviews indicates that the Architect was coordinating the required site visits. It is noted that the Architects Act and the Professional Engineers Act require that the Architect and the Engineers do not provide construction reviews on projects being constructed without a permit, as those projects are being constructed illegally. Both Acts impose a “duty to inform” on the Architect and the Engineers.

We note that the Building Code Act permits the Inspector access to the site when an application for building permit has been received. The Building Code Act provides regarding Inspection of the Building Site as follows:

*12. (1) An inspector may enter upon land and into buildings at any reasonable time without a warrant for the purpose of inspecting the building or site in respect of which a permit is issued or an application for a permit is made.*

*12 (2) – Order – An inspector who finds a contravention of this Act or the Building Code may make an order direction compliance with this Act or the Building Code and may*

*require the order to be carried out immediately or within such time as is specified in the order.*

*Order to uncover*

*(6) A CBO who has reason to believe that part of building that is covered or enclosed has not been constructed in accordance with the Act or Building Code, may order to uncover.*

Given that the Owner had proceeded with demolition without a permit and also had started construction without a permit, it would have been appropriate for the City Inspector to monitor the site for illegal activity, including access to the site during the mentioned seven-week period. The Building Code Act gives the Inspector the right to enter the site for inspection. In this case the City did not monitor the site adequately.

The BCSB has indicated in the response to the draft of this report submitted for fact verification that in fact the BCSB was fully aware that construction was proceeding during this time. It is our opinion that the City should have used all the enforcement methods at its disposal to enforce the Code. The BCSB had the duty to enforce the requirements of the Act and the Code, but did not.

During construction, no structural inspections were made by City staff, and no structural inspection reports are on file from the design professional. When contacted during this audit the structural consultant indicated that they had not been to the site at all during construction because the renovations were constructed without a permit. During the interview, the Architect indicated that he had made structural observations during the construction period, and reported these verbally to the Owner. No documentation of these inspections is available at this time.

### **Recommendation 5**

**That Inspectors be instructed to actively monitor sites for which an application for building permit has been submitted, including access to the site if necessary.**

#### **Management Response**

Management does not agree with the recommendation.

Such inspections would serve only to document the fact that illegal construction or demolition is continuing. As well, caution must be taken to ensure that any inspections, prior to the issuance of a permit, not be for the purpose of reviewing the illegal construction for Code compliance, nor appear to do so, as this would encourage illegal construction to continue. The implementation of this recommendation will require additional resources to integrate these inspections in addition to the mandatory inspections, which form the basis of the City's existing program and service delivery levels. This recommendation will be explored when

the branch's Strategic Branch Review is undertaken in Q2 2009, as this review will be an appropriate forum to consider higher service delivery levels.

In this instance, the Inspector was well aware of the on-going illegal construction activities, had issued the requisite Orders and a court action had commenced. Any additional inspections after the Stop Work Order was issued and prior to the completion of the construction (a 7 week period) would have confirmed only that illegal construction was continuing, which was already known to staff and sufficiently documented for purposes of the court case. Additional resources would have been required to monitor the site more frequently.

#### **4.4.1.2 Inspections Reports**

Where inspections were made, they were usually at the initiative of the Inspector, or in response to complaints received regarding work proceeding without a permit. When inspections were made, the proper City forms were completed and are available for review on file. No concern with the completeness of the inspections forms was noted during the review. The Inspector could not complete inspections in accordance with Inspection Guidelines and Standards, dated June 2005 prepared by the City of Ottawa. Work was covered before the Inspector, or design professionals, could review it.

In this regard we noted that the Foundations Engineer, Mechanical Engineer, and Electrical Engineer submitted letters confirming that they carried out construction review. The only professionals who did not provide their letters are the Architect and the structural engineer. The Architect has indicated in his correspondence that he undertook the construction review, but refuses to submit the corresponding letter until the Owner pays his fees. The Structural Engineer indicated during a telephone conversation that he did no construction review.

The Architect has the obligation of delivering the inspection records and his letter of construction review to the City. The Code requires that the Site Review Reports be submitted to the Chief Building Official in Section 2.3.2.1.

#### **4.4.1.3 Engineering and Consultant Reports on Structural Inspections.**

At the time of issuing the Partial Occupancy permit, the City requested a structural engineering report on the completed work. As noted in a previous section, those reports should have been received by the City before the Partial Occupancy Permit was issued.

The Owner did, after some delay, engage a second structural consultant to review the structure; this structural consultant provided a letter indicating that he had inspected the structure and that he was satisfied that the structure had been constructed in general conformance with the design. The second structural engineer consulted with the engineer who designed the structural connections for the sub-contractor responsible for fabrication and erection of the structural steel. The letter report and the letter from

the connection design engineer are on file with the City, and the City staff has relied on these letters as sufficient to satisfy structural review requirements.

The structural review letter indicates that limited access to the roof and ceiling space was made by removal of some of the finishes to permit observation of the structural elements. In addition, the letter references discussions with the contractor's site foreman, and connection design engineer. The conclusions in the letter rely to a large extent on the review by the engineer who designed the connections. No indications of inspections or reviews of the site fabrication are made, with the exception of the one test opening. For a project of this size and structural complexity, however, a more rigorous review is appropriate. The structural steel work included reinforcing of existing steel columns, modifications to existing connections and strengthening of roof joists. This would have required significant field welding that is prone to variations in quality. No quality review inspection of this work has been demonstrated. It is our opinion that the field inspection done by the second structural engineer and the letter that was provided in this case does not meet the required level of detail.

During the interviews it was noted that the Inspector has the power to demand the structural review letter (as he did) and also the authority to decide the sufficiency of the letter. Based on the fact that the field inspection done by the second structural engineer and the letter that was provided in this case does not meet the required level of detail, and that the Inspector nevertheless accepted it and relied on it, it is our opinion that this procedure should be modified to require that the City's Structural Review Engineer is the person responsible for determining the sufficiency of the structural review letter.

### **Recommendation 6**

**That the CBO review the file to determine if the Owner should be required to uncover areas of the roof structure to allow more detailed and thorough inspection and testing of the structural steel.**

### **Management Response**

Management agrees with the recommendation.

The CBO has carefully considered this recommendation, consulted with Legal Services and has determined that there is no legal basis for the owner to uncover areas of the roof structure for this purpose.

There are certain pre-conditions that must exist for a CBO to consider issuing an Order to Uncover. These are:

- The CBO must have reason to believe that the construction is not in accordance with the Code and permit drawings. In this instance, the belief that the construction was not compliant was that of the Architect in regard to the welding. The welding and surrounding construction were reviewed by two structural engineers, one of who was a welding engineer and a level III

welding inspector. Both found the welding work to be Code compliant. Thus, there was no remaining reason to believe there was non-compliance; and

- The Order must be issued prior to the issuance of the partial occupancy permit. In this instance, the partial occupancy permit had been issued.

### **Recommendation 7**

**That the City require that structural review letters be reviewed by the City's Structural Review Engineer in cases similar to the subject project.**

#### **Management Response**

Management does not agree with the recommendation.

Building Officials (Plans Examiners and Building Inspectors) are qualified by the Province of Ontario to review structural review letters. In addition, the branch provides Building Officials valuable in-house training to sufficiently equip them to review the reports and render a decision as to adequacy. The Building Officials do consult with the branch's Building Code Engineers in cases where they do not feel that the review letters are adequate or where the issues are of such complexity as to require additional review.

In this case, the reports submitted by the engineering consultant were considered sufficient for purposes of determining compliance.

### **4.5 Audit Objective No. 4 - Examine the methods used by the City to enforce the Ontario Building Code during demolition and renovation construction**

#### **4.5.1 Criteria:**

- Methods available by legislation.
- Methods used by the City staff for enforcement.
- Effectiveness of methods of enforcement.

##### **4.5.1.1 Methods Available By Legislation**

The legislative tools available to the City's BCSB range from the basic legislative obligations of the Owner outlined in the Building Code Act and Regulations, to more severe Orders that can be followed up with legal action.

The Building Code Act, 1992 provides the following penalties:

#### **Penalties**

[\(3\)](#) A person who is convicted of an offence is liable to a fine of not more than \$50,000 for a first offence and to a fine of not more than \$100,000 for a subsequent offence.

#### **Subsequent offence**

(5) For the purposes of subsections (3) and (4), an offence is a subsequent offence if there has been a previous conviction under this Act.

### **Continuing offence**

(6) Every person who fails to comply with an order made by a chief building official under subsection 14 (1) or clause 15.9 (6) (a) is guilty of an offence and on conviction, in addition to the penalties mentioned in subsections (3) and (4), is liable to a fine of not more than \$10,000 per day for every day the offence continues after the time given for complying with the order has expired.

### **Power to restrain**

(7) If this Act or the regulations are contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by this Act, the court in which the conviction is entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

In addition, the Building Code allows a number of Orders, including the Order to Uncover, which could be used to permit review of construction after the fact.

In addition, The Architects Act and the Professional Engineers Act have provisions that require the architect and the engineer to inform the Building Official in a case of construction without a permit. In addition, both architects and engineers are prohibited by their respective code of ethics and acts from providing services where construction is proceeding illegally, such as in this project.

The BCSB should have notified the Ontario Association of Architects sooner of the apparent breaches of duty by the Architect, as there is sufficient ground to submit a complaint to the OAA. If similar situations occur in the future, the BCSB should with the consultation of Legal Services, submit a complaint to the OAA or other professional body, as the case may be.

#### **4.5.1.2 Methods Used By the City Staff For Enforcement**

In this project, the Owner was served with several Orders to Comply. When these had limited effect, Stop Work Orders were issued. It would appear from the file information that these Orders had no effect in achieving their purpose, except that they provided the justification for the prosecution of the Owner.

Following the Orders to Comply and Stop Work Orders, the City prosecuted the owners, who pleaded guilty and were fined \$10,000. Based on the construction cost indicated in the application for building permit, this constitutes 5% of the value of construction; based on the budget indicated by the Owner during the interview, the fine represents less than 3% of the value of the project. As noted previously, this fine is

approximately equal to the fee the Owner would paid if the higher construction cost estimate provided by him during this audit would have been used.

It is our opinion that the City used some of the available methods of enforcement of the City's Orders to Comply and Stop Work Orders. However, given that the BCSB was fully aware that construction was proceeding without a permit, we consider that the BCSB should have used more strict methods to prevent what appears in all lights to be a blatant disregard for the Act, the Code, the Building By-law and the requirements of the Policies, Guidelines and Standards. Short of a court injunction, the City exhausted the methods that it could reasonably apply to force the Owner to comply with the Code during construction. The main problem in this case was that the Owner decided to risk the consequences and proceed with the work. Exacerbating this situation was a reluctance on the part of the BCSB to apply all the available methods of enforcement.

The BCSB indicated the following: It should be noted, the Ontario Building Code Act is a **permissive** legislation rather than a punitive one. The Branch is the centre of expertise in the interpretation and enforcement of the Act and the Code and thus the Branch must assume a role that **facilitates** and ensures Code compliant construction (thus meeting the minimum standards for public health and fire, fire protection, structural sufficiency, accessibility, conservation and environmental integrity) while not unnecessarily impeding the economic engine of the construction industry, nor increasing construction costs that would stymie the private sector.

However, the Building Code Act (section 1.1) indicates the following regarding the roles of the Chief Building Official and the Inspectors:

***Role of chief building officials***

***(6)*** *It is the role of a chief building official,*

- (a) to establish operational policies for the enforcement of this Act and the building code within the applicable jurisdiction;*
- (b) to co-ordinate and oversee the enforcement of this Act and the building code within the applicable jurisdiction;*
- (c) to exercise powers and perform the other duties assigned to him or her under this Act and the building code; and*
- (d) to exercise powers and perform duties in accordance with the standards established by the applicable code of conduct. 2002, c. 9, s. 3.*

***Role of inspectors***

***(7)*** *It is the role of an inspector,*

- (a) to exercise powers and perform duties under this Act and the building code in connection with reviewing plans, inspecting construction,*

*conducting maintenance inspections and issuing orders in accordance with this Act and the building code;*

*(b) to exercise powers and perform duties in respect of only those matters for which he or she has the qualifications required by this Act and the building code; and*

*(c) to exercise powers and perform duties in accordance with the standards established by the applicable code of conduct. 2002, c. 9, s. 3; 2006, c. 22, s. 112 (2).*

The main requirement in both cases is for enforcement of the Act and the Code.

In addition, the Building Code Act states that the designer is expected to design and the builder is expected to construct a building that meets all the requirements of the Building Code. Essentially everyone has to meet the Code requirements.

In the same response to the draft for fact verification, the BCSB indicated that: "The Branch must regulate construction of buildings first through leadership, education and collaboration, then if these approaches fail to obtain compliance, through enforcement, including prosecution, etc. Council and the public's expectations, as stated in our Branch's objectives, are that we "assist the property owner, builder, contractor, architect or engineer by providing direction in the application and interpretation of the Building Code Act, the Building Code, and applicable law to ensure construction meets the performance and safety standards." The Province's training guides encourage new building officials to first encourage owners and their agents to comply through the powers of persuasion before enlisting the more formal enforcement tools."

We could not find in the Building Code Act or the Ontario Building Code any reference to the Building Official having to provide direction to owners, architects, or engineers. It is the professional responsibility of the architect or engineer to comply with the Act; the Building Official is responsible for enforcing the Act and the Building Code. If the architect or engineer is not meeting their responsibilities, the BCSB should report them to their respective associations for disciplinary action.

Furthermore, once the prosecution was completed, there was no further pressure on the Owner to comply with the remaining submissions. There was a six-month period from the date of the Building Permit to the site visit carried out to review for occupancy. There were no inspections during that time.

### **Recommendation 8**

**That the City consider pursuing a complaint with the appropriate professional architectural and engineering associations regarding the professionals identified in this report.**

**Management Response**

Management agrees with the recommendation.

Although, the City is not the regulatory authority of engineers and architects, where the conduct of these professionals undermine the Building Code Act and the OBC or the Chief Building Official's ability to enforce the Act and Code, referrals are made to the governing body to review, investigate and determine corrective action, if any. The Chief Building Official will assist the OAA in the investigation should the OAA request such.

**Recommendation 9**

**That in future similar situations where an architect, engineer, or other professional regulated by a professional regulatory body, appears to have engaged in conduct unbecoming the standards expected by such a professional and/or where the public interest demands, the City pursue complaints to the OAA, or other such professional body as the case may be.**

**Management Response**

Management agrees with the recommendation.

However, in order to effectively implement this recommendation, additional specialized resources (1 FTE, vehicle, equipment, training and qualification and work space - minimum \$125K) would be required to investigate, document and refer complaints to the governing bodies where the actions or omissions of the professionals have undermined the Building Code Act and the OBC or the CBO's ability to enforce the legislations. This will be explored when the branch's Strategic Branch Review is undertaken in Q2 2009, as this review will consider changes to program and service delivery levels.

**Recommendation 10**

**That the City develop a policy by which the Building Services Branch can request an injunction or restraining order to ensure that the Owner complies in cases of disregard for the rules, such as this example.**

**Management Response**

Management does not agree with the recommendation.

Each case must be evaluated on its own merits and the option to seek an injunction is already available in the Building Code Act and has been resorted to in the past, as circumstances have warranted. In addition, the seeking of injunctions requires considerable resource allocation, on the part of both BCS and Legal Services. Additional resources would be required to implement a more aggressive enforcement strategy. Whether injunctions are obtained is a determination of the Court and they are only granted in extraordinary circumstances.

In this instance, BCS did undertake the necessary inspections, did issue the required Orders and did successfully prosecute the owners of 215 Preston Street. Once the owners obtained the requisite planning approvals, a permit was issued, construction was inspected and it was determined to meet the minimum OBC standards.

### **Recommendation 11**

**That the Building Services Branch ensure compliance with the Building Code Act and not try to balance the compliance requirements with the business objectives of the Owner.**

#### **Management Response**

Management does not agree with the recommendation.

BCS did escalate enforcement action when the owners failed to comply with the Orders and successfully prosecuted the owners. Once the owners had obtained the requisite planning approvals, a permit was issued, construction was inspected and it was determined to meet the minimum OBC standards.

The Act is written in terms of imperative “shall” and permissive “may” statements. While the CBO and Building Inspectors “shall” enforce the Code, they “may” issue Orders, and “may” prosecute. The reason for this disparity, in language, is that the legislators recognize that enforcement is achieved when there is compliance. This is usually arrived at without the necessity of either Orders or prosecutions and is usually in response to an incremental escalation of enforcement options.

In addition, the CBO is a persona designata deriving authority from the Building Code Act, with responsibilities defined by, not only the Act and the OBC, but also by the Building By-law, Ministry rulings, the Building Code Commission and the Building Materials Evaluation Commission rulings or decisions, and more importantly, by the judicial system (court decisions and common law principles). How the Act and Code are interpreted and implemented is very much couched or formulated from best practices, legal principles and actual court case precedents. In fact, there are only three entities that can determine Code compliance: the Chief Building Official, the Building Code Commission (for sufficiency only) and the Courts.

The Courts have held that the Act is “a complex piece of legislation which is, in general terms, aimed at setting and enforcing standards for all manner of construction and building projects in Ontario.” In this regard, the complexity and technical nature of the Act, require flexibility and balancing of various factors. There is an expected degree of reasonableness and flexibility to account for other variables, including business and practical realities of the property owner and the building industry. Thus, the branch mandate refers to the regulation of construction of buildings, first through leadership, education and collaboration. If these approaches fail in obtaining compliance, then through enforcement, including prosecution, etc. This was the approach adopted for this particular case and although orders, court

prosecution, etc., were required, the construction was made compliant and the occupancy permit was eventually issued.

If the CBO does not have discretion or flexibility in the administration or enforcement of the OBC, this could lead to unintended and undesirable results of increased Code non-compliance and may force aspects of the building industry "underground". Diversion of this nature would defeat the objectives of the Act which seeks to ensure minimum standards for building construction in Ontario.

Finally, there is misapprehension as to what BCS is attempting to balance. It is not the needs of an individual business owner. Rather, it is recognition of the realities of a fast-paced development construction industry and the benefits to the broader public. The objective is to ensure that the construction will achieve Code compliance and that there is a sufficient discipline within the industry to enable this to occur.

#### **4.5.1.3 Effectiveness of Methods of Enforcement**

Although limited in their effect, the Owner did start to take steps to comply with the various orders. For example, the building permit application on April 3, 2006 was a result of a previous Order to Comply. A further Order to Comply was issued May 24, 2006 requiring professional inspection reports to be submitted prior to issuing Occupancy Permit. The Owner did initiate the preparation of the reports, however he continued to use the facility without limitations.

A further tool of the City is legal prosecution and fines. This was done by the City, and the Owner was charged with fines for failure to comply with the Orders issued by the City.

The fact that the Owner was able to perform the construction of the work and subsequently use the facility unhindered allowed him to submit the applications and documentation on his terms indicates that there is not sufficient deterrent in the process. Even though the Owner does not have a Final Occupancy Permit, he is able to carry on business as if he had one. It would appear that the only enforcement mechanism available would be one that prevents the Owner from carrying on business.

At this time, the City has not issued a Final Occupancy Permit. Further information has been requested of the Owner (architect reports) and if needed, additional information can be requested. One option available to the City allowed in the legislation is an Order to Uncover. This order can be used to require an owner to remove finishes to allow inspection where the City deems that the inspection is needed. We recommend that the City use these provisions to obtain the required construction review reports.

#### **Recommendation 12**

**That the CBO review the file for the specific building to ensure that all possible options for enforcement have been reviewed with Legal Services.**

### **Management Response**

Management agrees with the recommendation.

The CBO has and will take whatever action is considered necessary to obtain compliance. BCS did undertake the necessary inspections, did issue the required Orders and did successfully prosecute the owners of 215 Preston Street. Once the owners had obtained the requisite planning approvals, a permit was issued, construction was inspected and it was determined to meet the minimum OBC standards. There are no further options for enforcement.

#### **4.6 Audit Objective No. 5** - Examine the issue of one of the owners of the business being a City employee

##### **4.6.1 Criteria**

- Confirm whether this assertion is true. (Note that at present a search of City staff directory was negative.)
- If the assertion is true, review the property owner's involvement in the process

From the information provided during the interviews, we understand that one of the owners was a City employee in the Planning Branch until 2002. He is no longer a City employee and was not an employee during the events that were the subject of this audit.

## **5 CONCLUSION**

The audit revealed that City staff complied with some of the requirements of the Building Code Act. Staff were faced with a difficult and un-cooperative Owner who carried on with work regardless of Orders or other legislated obligations. At the same time, the Owner made small efforts to comply, suggesting that further compliance was forthcoming. Even though the BCSB was aware that construction was proceeding without a permit, the City did not pursue more forceful action that could have led to additional prosecution.

Staff tried to balance the Code compliance requirements with the objective of making reasonable demands from the Owner. Based on the BCSB responses to the draft of this report, the BCSB considers that their role is to facilitate construction, without affecting the economic engine of the City. The role of the BCSB must be to ensure compliance, by enforcing the City's By-law and the Building Code and not to adjust the compliance requirements to the business objectives of the Owner.

The Owner proceeded with demolition and construction without a permit and delayed compliance. Other enforcement avenues or limitations to the business may be required to force timely compliance. In addition, the architect appears to have been involved in

abetting or otherwise acquiescing in the illegal construction and should be reported to the professional association.

For this classification of building, the Inspection Division will usually rely on field review by the engineer of record identified in the building permit application. In the case of this project, the structural design professional engaged by the Architect to review the work as required in the permit application did not carry out the required review visits and examinations, because construction proceeded without a permit. The Owner subsequently engaged a different structural professional after the construction was completed, who was afforded a very limited review. It is concluded that the structural review letter is not sufficiently thorough for the complexity of the structure, and further review is recommended. The City has the legal tool to compel this inspection through an Order to Uncover.

## **6 ACKNOWLEDGEMENT**

We wish to express our appreciation for the cooperation and assistance afforded the audit team by management and staff.

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***Appendix A– Detailed Project Chronology***

The Detailed Project Chronology is provided in the following pages.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
Feb 9/06	Stop Work Order	Form	Order issued to stop work.
Feb. 14/06	Application to Demolish	Form Drawings	
Mar 9/06	OTC	Form	Building Official III issued to Owner. Construction with no permit.
March 21/06	F: Councillor's Assistant - Ward 14 T: Manager, Building Inspections	Email	Requesting confirmation of building permit and demolition permit resulting from resident complaint to Councillor Holmes.
March 22/06	Building Official III inspection report	Form	No further work on side addition noted. Building permit application promised by O. Sbrissa by Mar 27.
March 29/06	F: Manager, Building Inspections T: Building Official III	Email	Requesting Building Official III contact Councillor's Assistant - Ward 14 with respect to recent inspection.
Mar 31/06	F: Building Official III T: Manager, Building Inspections with copies to others requesting the information.	Email	<ul style="list-style-type: none"> <li>- Outlined status of project.</li> <li>- On site Mar 30 and saw concrete slab placed.</li> <li>- OTC issued Mar 9</li> <li>- Demolition permit applied for Feb 14.</li> <li>- Site Plan approval pending.</li> <li>- Verbal discussion with Architect O. Sbrissa that Bldg Permit application later on Mar 31.</li> </ul>
April 3/06	Application to Construct or Demolish	Form	Application to construct raised roof and two small additions. Application by Luigi Aprile.
April 3/06	Schedule 1- Designer Information	Form	Signed by Ovidio Sbrissa for architectural, and another form signed by Eldon Hung for structural. Mechanical Schedule 1 signed by Manohar (Manu) Khemani on March 6, 2006. Electrical Schedule 1 signed by Martin Guerin on March 6/06.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
April 4/06	Note on March 22 report by Building Official III	Note	No change on site.
April 4/06	Complaint report	Form	Complaint from resident, work on site with no permit.
April 7/06	Inspection report	Form	Building Official III on site to issue stop work order. Noted that work on main roof, interior removals and steel erection being done. Work was continued at enclosing walls at exterior north side addition.
April 11	Complaint report	Form	Resident complained that work proceeding with no permit.
April 11	Complaint report	Form	Resident complained work proceeding, site not secure, no permit. Note on form dated April 13; left message and April 19; talked with resident who stated "no complaint made".
April 12/06	Permit Application Approval Checklist	Form	Development Control/Zoning signed off Dec. 18, 2006. Building Code approval signed off by Building Official II, July 11/06.
April 12/06	Zoning and Development By-Law Plan Examination Summary	Form	Comments requested by Zoning Plan Examiner.
April 24	Complaint report	Form	Resident called again to complain that they had not made previous complaint, and was concerned someone using their name. Call returned by Program Manager, Building Inspection, and no further action required.
May 8/06	F: Law Clerk T: Planner II	Email	Confirming that cash in lieu of parking payment was received, and conditions 1 and 2 of approval can be signed off.
May 16/06	Building Code Plan Examination Summary	Form	Request by Building Official II, for additional information to be provided.
May 24/06	Inspection report	Form	City informed banquet hall occupied. Issued Order to Comply for occupancy with no permit, left order on site at office. Note indicates that "work appears completed".

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
May 24/06	Order to Comply	Form	Order issued. Required Building Permit, Inspections, Occupancy Permit and Professional Reports.
June 6/06	F: Ovidio Sbrissa T: Zoning Plan Examiner	Email	Attached files regarding parking.
June 6/06	F: Zoning Plan Examiner T: Ovidio Sbrissa	Email	Requesting clarification on parking spaces.
July 12/06	F: Planner II T: Zoning Plan Examiner	Email	Site plan control application has been approved.
July 12/06	F: Program Manager, Permit Approvals T: Ovidio Sbrissa	Email	Clarifying parking spaces.
July 13/06	Inspection report	Form	No change on site noted, no change in permit status.
July 14/06	F: Ovidio Sbrissa T: Program Manager, Permit Approvals	Email	Further clarifications regarding parking spaces.
July 17/06	F: Program Manager, Permit Approvals T: Ovidio Sbrissa	Email	Requesting drawing with 51 parking spaces.
July 17/06	F: Planner II T: Joseph Zaccone and Luigi Aprile	Letter	Site plan control application approved subject to letter of undertaking and conditions.
Aug 16/06	F: Manager, Business Integration Inspections T: Manager, Litigation and Employment	Memo	Recommend continuation of prosecution of the action at 215 Preston St. Date set for Sept 28.
Sept 1/06	F: Councillor's Assistant - Ward 14 T: Manager, Building Inspections	Email	Query whether City pursuing legal action.

**CITY OF OTTAWA**  
**AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
Sept 1/06	F: Manager, Building Inspections T: Building Official III/Program Manager, Building Inspection	Email	Request for status of OTC.
Sept 5/06	F: Program Manager, Compliance and Enforcement T: Manager, Building Inspections	Email	Further to request to Building Official III and Program Manager, Building Inspection, advised that prosecution proceeding to trial Sept 28.
Sept 5/06	F: Manager, Building Inspections T: Councillor's Assistant - Ward 14	Email	Advised that legal action was initiated (date set for Sept 28)
Sept 28/06	F: Articling Law Student T: Building Code Enforcement Officers	Email	Confirming that legal trial adjourned to Nov. 9
Sept 29/06	F: Building Code Enforcement Officer T: Building Official III	Email	Confirming that legal trial adjourned to Nov. 9.
Sept 29/06	F: Building Code Enforcement Officer T: Chief Building Official/Planner II	Email	Report on conversation with complainant.
Sept 29/06	F: Articling Law Student T: Chief Building Official / Building Code Enforcement Officer / Planner II	Email	Further report on conversation with complainant.
Sept 29/06	F: Chief Building Official T: Manager, Building Inspections	Email	Request for Manager, Building Inspections to contact complainant.
Sept 29/06	F: Manager, Building Inspections T: Chief Building Official	Email	Confirm conversation with complainant, 'everything is good'.
Oct 23/06	Edwards Certificate of Verification	Form	Fire alarm equipment verified.
Oct 23/06	F: Complainant T: Manager, Building Inspections	Email	Comments related to damage to sidewalk and removal of trees (trees part of site plan agreement).

**CITY OF OTTAWA**  
**AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
Oct 23/06	F: Manager, Building Inspections T: Complainant	Email	Comment that Building Branch cannot assist with sidewalk. (Complainant followed up with request that Manager, Building Inspections contact someone.)
Oct 23/06	F: Manager, Building Inspections T: Director, Surface Operations	Email	Requested action to follow up with request by Complainant and repair damaged sidewalk.
	Summary of Evidence		Chronological listing of events surrounding legal action re: 215 Preston Street.
Nov 23/06	F: Chief Building Official T: Building Code Enforcement Officer	Email	Requesting update on legal action.
Nov 23/06	F: Building Code Enforcement Officer T: Chief Building Official	Email	Provided copy of summary of legal action.
Nov 23/06	F: Councillor Holmes T: DCM, Planning, Transit and the Environment	Email	Questions regarding actions of Building Branch regarding 215 Preston.
Nov 23/06	F: Executive Assistant, Planning Transit and the Environment T: Chief Building Official	Email	Requested response to questions from Councillor Holmes.
Nov 23/06	F: Chief Building Official T: Councillor Holmes	Email	Responded to questions.
Nov 23/06	F: Program Manager, Building Inspections T: Program Manager, Building Inspection	Email	Forwarded Chief Building Official, email.
Nov 24/06	F: DCM, Planning, Transit and the Environment T: Chief Building Official	Email	Requesting confirmation of cash in lieu situation.
Nov 24/06	F: Chief Building Official T: DCM, Planning, Transit and the Environment	Email	Responded to question regarding cash in lieu.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
Nov 28/06	Planning and Environment Committee	Minutes	City established cash in lieu of parking spaces.
Dec 18/06	F: Manager, Dev Approvals West/Central T: Program Manager, Permit Approvals	Email	Confirmation that all securities and cash in lieu payment have been received. Forwarded to Zoning Plan Examiner.
Dec 18/06	F: Planner II F: Zoning Plan Examiner, Program Manager, Permit Approvals, Manager, Permit Approvals	Email	Confirmation that required securities and cash in lieu have been received, and Planning and Infrastructure Approvals have no objection to release of building permit.
Dec 19/06	Confirmation of Commitment by Owner	Form	Signed by L. Zaccone indicating O. Sbrissa as Architect, and Durham Engineering as structural. Mechanical, Electrical, Geotechnical and Code Consultant are indicated as 'Same' on the form.
Dec 19/06	Building Permit	Form	Addition of one storey full service restaurant. Signed by Chief Building Official, prepared by Building Official III.
Dec 21/06	F: Articling Law Student T: Building Code Enforcement Officer	Email	Outlined successful prosecution of Owner.
Dec 21/06	F: Building Code Enforcement Officer T: Chief Building Official	Email	Outlined successful prosecution of Owner.
Dec 22/06	F: Chief Building Official T: Building Code Enforcement Officer	Email	Acknowledged email regarding prosecution.
June 18/07	F: Ovidio Sbrissa T: Chief Building Official	Letter	Alleged work not inspected and potentially unsafe, and concludes that building is unsuitable for occupancy. Handwritten comments on letter in Working File as issued addressed.
June 19/07	Inspection report	Form	Occupancy permitted. (Building Official III) Requested professional reports.
June 19/07	Occupancy Report	Form	Partially completed building, ready for occupancy. Occupancy allowed to 'all parts' of the building, no conditions indicated.

**CITY OF OTTAWA**  
**AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
June 29/07	F: Ovidio Sbrissa T: Chief Building Official	Email	Forwarded letter of June 18.
June 29/07	F: Chief Building Official T: Manager, Building Inspections	Email	Forwarded letter of June 18 from O. Sbrissa.
June 29/07	F: Manager, Building Inspections T: Building Official III	Email	Forwarded letter of June 18 from O. Sbrissa. Requested that Building Official III take action with O. Sbrissa to respond to and close off any issues, and report back on action taken. (Program Manager, Building Inspection noted to be away)
July 3/07	F: Chief Building Official T: Manager, Building Inspections	Email	Forwarded email from Ovidio Sbrissa of June 29.
July 3/07	F: Manager, Building Inspections T: Building Official III	Email	Forwarded email and letter from Ovidio Sbrissa of June 29 requesting action.
July 3/07	F: Program Manager, Building Inspection T: Building Official III	Email	Requested discussion regarding site.
July 5/07	F: Building Official III T: Program Manager, Building Inspection	Email	Responded to items raised in O. Sbrissa letter. <ul style="list-style-type: none"> <li>- Noted occupancy issued June 19.</li> <li>- Noted building permit issued Dec. 19/06.</li> <li>- Noted that O. Sbrissa did not indicate that inspections were not being done.</li> <li>- Noted that inspection with O. Sbrissa was scheduled for July 6.</li> </ul>
July 5/07	F: Manager, Building Inspections T: Program Manager, Building Inspection	Email	Noted that occupancy permit should include receipt of letters of general review from Architect and engineer and these should be followed up with.
July 5/07	F: Program Manager, Building Inspection T: Manager, Building Inspections	Email	Noted that meeting was being set up by Building Official III and Program Manager, Building Inspection would attend, to follow up with recommendations of Manager, Building Inspections.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
July 6/07	Inspection Report	Form	Form is dated July 9, however summarized meeting on site on July 6. Discussed concerns of Ovidio Sbrissa regarding welding. Owner instructed to have letter of review sealed by engineer provided by July 13/07.
July 7/07	F: Ovidio Sbrissa T: Graham, Program Manager, Building Inspection	Letter	Confirming site visit on July 6, and outlining concerns with building.
July 8/07	F: Ovidio Sbrissa T: Program Manager, Building Inspection	Email	Forwarding letter of July 7. Notes in file indicate Program Manager, Building Inspection advised O. Sbrissa that branch will pull records and investigate concerns.
July 9/07	Inspection Report	Form	Meeting on site with O. Sbrissa, discussed structural concerns. Owner requested to provide final sign off letter from P. Eng. by July 13, 2007.
July 10/07	F: Carleton Iron Works, Roger Pilon T: Luigi Aprile, Sala San Marco	Letter	Letter confirms that welding was done in accordance with sealed design of their engineer, and in accordance with requirements of design drawings prepared by Durham Engineering.
July 11/07	F: Luigi Aprile T: Building Official III/Program Manager, Building Inspection	Fax	Forward letter of July 10 from Carleton Iron Works.
July 13/07	Order Requiring Tests and Samples	Form	Order requesting structural review certification of steel, welding, foundations and final review letters for architectural, mechanical and electrical components. Prepared by Building Official III.
July 13/07	Inspection Report	Form	Order of July 13 delivered and left on site. Noted that letter from Carleton Iron Works was not sealed by P. Eng. Report by Building Official III.
July 25/07	Inspection Report	Form	Met on site with Adjeleian Allen Rubeli, Owner requested extension of time for reports for structural information. Extension was granted to August 17/07. Note that Owner's lawyer called on July 27 to confirm the extension of time. Report by Building Official III.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
July 30/07	F: Chiarelli Engineering T: Sala San Marco	Letter	Letter from Mechanical/Electrical engineer confirming that they did periodic reviews of the work, and was in accordance with their plans.
August 24/07	Inspection Report	Form	Building Official III met with Owner, structural consultant (AAR) and welding company engineer. Access to inspect structural steel was discussed. Reports to follow.
Oct 1/07 and Oct 2/07	F: Ovidio Sbrissa T: Program Manager, Building Inspection / Chief Building Official	Email	Requesting information regarding site. Noted Order Requiring Tests issued July 13. Note in file by Program Manager, Building Inspection indicated he spoke to O. Sbrissa on Sept 25 and indicated that an inspection is forthcoming and once completed, O. Sbrissa would be notified of the course of action to be taken by the City.
Oct 4/07	Inspection Report	Form	Form is report on telephone conference with Jean Michelle of Adjeleian Allen Rubeli. Another site visit is required by the firm to finalize their findings and preliminary report.
Oct 6/07	F: Ovidio Sbrissa T: Councillor Holmes	Email	Raising concerns with occupancy.
Oct 16/07	F: Ovidio Sbrissa T: Adjeleian Allen Rubeli and Chief Building Official	Letter and email	Outlining concerns with inspection by AAR and problems with the Owner. Email and letter copied to Chief Building Official.
Oct 19/07	F: Levac Robichaud Leclerc T: Sala San Marco	Letter	Letter confirms that foundation installation was witnessed and piling and foundations repairs were completed according to their recommendations. The letter references LRL letter and drawings dated March 28 and 29, 2006.
Oct 23/07	F: Councillor Holmes T: Chief Building Official	Email	Forward O. Sbrissa email of Oct 6 and requesting response.
Oct 23/07	F: Chief Building Official T: Councillor Holmes	Email	Responded to concerns raised by O. Sbrissa as requested by Councillor Holmes.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

DATE	ACTION/COMMUNICATION	TYPE	COMMENTS
Oct 24/07	F: Councillor Holmes T: Chief Building Official	Email	Requesting additional information.
Oct 24/07	F: Chief Building Official T: Councillor Holmes	Email	Responded to questions raised by Councillor Holmes. Noted that final occupancy permit not yet issued.
Oct 31/07	Inspection Report	Form	Reviewed plumbing issues and occupant loads. Load noted based on washrooms is 390 persons (less than liquor license or architect's information)
Nov 26/07	F: Design and Systems T: Sala San Marco	Letter	Letter from Bhupender Khoral, P. Eng. that he inspected one weld, and the rest of welding should be, in his opinion, satisfactory. He references long standing good record of Carleton Iron Works.
Nov 26/07	F: Adjeleian Allen Rubeli T: Sala San Marco	Letter	Letter indicates that based on a limited review of the structure, they are satisfied that the structural work was undertaken in general conformance with the structural drawings and construction practices.
Dec 19/07	Inspection Report	Form	Building Official III notes that fire rated doors and washroom were removed. These were required to be reinstated by Feb. 11, 2008.
Jan 25/08	Inspection Report	Form	Door installation not done. Letters of acceptance from structural and geotechnical engineer accepted. Note that OK to lift OTC. Note dated Feb 6/08 that doors installed and ready for inspection.
Feb 26/08	Inspection Report	Form	Lobby doors installed and OK. Washroom in basement provided for staff. Vestibule to be constructed at main floor staff washroom and kitchen.
March 28/08	Inspection Report	Form	Vestibule and door constructed at main floor staff washroom and kitchen. Basement washroom sign not provided for staff washroom.
March 28/08	F: Chief Building Official T: Building Code Enforcement Officer	Email	Requested update to the summary.

**CITY OF OTTAWA  
AUDIT OF THE BUILDING CODE SERVICES PROCESS FOR 215 PRESTON STREET**

**DETAILED PROJECT CHRONOLOGY**

<b>DATE</b>	<b>ACTION/COMMUNICATION</b>	<b>TYPE</b>	<b>COMMENTS</b>
March 31/08	F: Building Code Enforcement Officer T: Chief Building Official	Email	Provided documentation related to actions to date.
March 31/08	F: Chief Building Official T: Program Manager, Building Inspection /Manager, Building Inspections	Email	Forwarded documentation related to actions to date.
April 2/08			Summary of activities for 215 Preston St, from Feb 9/07 to March 28/08.