

SULLIVAN | MAHONEY LLP
LAWYERS

September 9, 2021

Via Registered Mail and Email

Please reply to St. Catharines Office
SARA J. PREMI
(905) 688-8039 (Direct Line)
sjpremi@sullivanmahoney.com

Ms. Natalie Thomson
Secretary, Property Standards Committee
Town of Niagara-on-the-Lake
1593 Creek Road, P.O. Box 100
Virgil, ON L0S 1T0

Dear Ms. Thomson:

**Re: Two Sisters Resorts Corp.
176 John Street East, NOTL
Notice of Appeal to Property Standards Order No. MLE-INV-04633**

We act as solicitors to Two Sisters Resorts Corp., the owner of 176 John Street East, Niagara-on-the-Lake (the "Subject Property").

Please accept this letter as our Notice of Appeal of the Town's Order No. MLE-INV-04633 (the "Order") made under Section 15.2(2) of the *Building Code Act* in respect of Property Standards By-law 1592-19 (the "By-law"). A copy of the Order is enclosed.

At the outset of this correspondence, we wish to make it clear that our client is committed to and is working on a plan in respect of the restoration the built heritage features on the Subject Property. Further, our client acknowledges the need to carry out the bulk of works set out in the Order, and looks forward to working with the Town on this important initiative and contributing to the preservation of the Town's built heritage.

As set out below, this Appeal is therefore scoped to (i) the proposed timeline as set out in the order; and (ii) two (2) substantive Items.

Background

As you are aware, the Subject Property has been designated under Part IV of the *Ontario Heritage Act* (the "OHA") by Town of Niagara-on-the-Lake By-law No. 5284-20.

Client Committed. Community Minded.

40 Queen Street, P.O. Box 1360, St. Catharines, ON L2R 6Z2 t 905.688.6655 f 905.688.5814

4781 Portage Road, Niagara Falls, ON L2E 6B1 t 905.357-3334 f 905.357.3336

sullivanmahoney.com



Official Counsel

Our client is keenly aware of the Subject Property's heritage value. The Town will be aware that a flood occurred at the Rand building in 2019 and that extensive interior remediation work has been underway. Further, our client has been working on a plan to restore the buildings on site for some time.

As the Town will appreciate, this is a complicated process, one in which Heritage Permits issued under the *OHA* will be required. To that end, our client consulted Greenock Anderson Heritage Consultants in July of 2021 with respect to this project. Mark-Anderson McGaw, a heritage planner with that firm, is currently working to prepare permit applications and has been in contact with municipal staff.

Our client's predominant concern with the Order is the proposed January 25, 2022 deadline for compliance. For reasons including those outlined below, it is our position that this timeline is unrealistic.

Our client does not dispute the bulk of the Items set out in the Order from a substantive perspective. Subject to timelines, our client does not object to Item No.: 1, 2, 3, 6, 7, 8, 9 or 10.

Appeal

Our client hereby appeals the Order.

Specially, the Appeal relates to following portions of the Order:

1. All Items of the Order in respect of the deadline for of January 25, 2022.
2. Item No. 4 – Windows and Doors, Chimneys (Sheets House and Coach House) – Securely board up all windows, doors, and chimneys in a manner that completely covers the opening and is properly fitted in a watertight manner.
3. Item No. 5 – Building Exterior (Sheets House and Coach House) – Install temporary metal fencing around Vacant Buildings.

Reasons for the Appeal

The reasons for our client's appeal include:

1. The deadline of January 25, 2022 is unrealistic and unattainable in respect to the bulk of the work to be carried out.
2. The requirements of section 2(a) of the Property Standards By-law are unclear vis-à-vis the obligations set out in the *OHA*. These provisions need to be reviewed and discussed with Town staff, including the need to determine the Town's position on which Items in the Order require a Heritage Permit to carry out the works.

3. As the Town is aware, our client has been committed to the restoration of the buildings on the Subject Property. Our client is working with Greenock Anderson Heritage Consultants to prepare a proposal for restoration work for the buildings on the Subject Property and to prepare a restoration plan and the reports necessary to support Heritage Permit applications, which will be required for the majority of the work.
4. The Heritage Permit applications then must be processed in accordance with the procedure set out in the *OHA*. It is unrealistic to expect that this process and the work itself can be done by January 25, 2022 in respect of all Items identified in the Order. Issuance of a Heritage Permit will, as you are aware, be reliant on the Town's Heritage Committee's availability to review and process the permit application – a process which is not exclusively within the control of the property owner.
5. There are restrictions on the type of work that may be carried out over the winter months. For example, mortar work is temperature sensitive. This work cannot begin until a Heritage Permit had been obtained, yet must take place under certain specific weather conditions.
6. In respect to the substantive appeal to Item No. 4— our client disagrees with this Item and asks that it be quashed. Our client has installed a security system at the Subject Property, which has significantly decreased the incidents of trespassing from neighbouring properties. Further, our client is in the process of installing Bell Fibe internet at the Subject Property to facilitate the installation of an improved security system including updated surveillance technology. The property and buildings contain “no trespass” signage. Further, our client has employed a groundskeeper who lives in the Town and who walks and monitors the Subject Property on a regular basis – in fact almost daily. It is our position that these efforts achieve the same goal as temporary metal security fencing and are more appropriate given the nature of the Subject Property.
7. In respect of the substantive appeal to Item No. 5 – our client disagrees with this item and asks that it be quashed for reasons including concerns that the boarding of the windows and doors as provided for in the Order will have a negative impact on the identified buildings.
8. Such further and other grounds to be presented to the Committee at the hearing of the matter.

Finally, we do wish to point out the there are many Items requiring compliance with residential standards. The buildings on the Subject Lands are not in fact a “residential property” for the purposes of the By-law. The work is rather appropriately characterized under section 2 of the By-law (which is also cited in the Order with the exception of Item No. 7).

As indicated above, we look forward to working collaboratively with the Town on this important initiative of restoring the built heritage attributes on the Subject Property.

We are enclosing herewith our Firm cheque in the amount of \$480.00 payable to the Town of Niagara-on-the-Lake.

We trust the above is satisfactory. Could you please acknowledge receipt of this appeal. In addition, we look forward to receiving a Notice of Hearing.

Yours very truly

Sullivan Mahoney LLP

Per. 

Sara J. Premi

SJP:bj
Encl.



Department of Community & Development Services
1593 Four Mile Creek Road
P.O. Box 100, Virgil, ON L0S 1T0
905-468-3266 • Fax: 905-468-0301

www.notl.org

August 25, 2021

RECEIVED

TWO SISTERS RESORTS CORP
122 ROMINA DRIVE
CONCORD, ON
L4K 4Z7

Registered Mail:
RN 446 246 641 CA
Ref: MLE-INV-04633

ORDER

issued pursuant to section 15.2(2) of
The Building Code Act, S.O. 1992, Chapter 23, as amended

Re: 176 John Street
PLAN 692 PT LOT 144 RP 30R1792 PARTS 3 TO 5
Roll Number: 26 27 010 002 008 00
NIAGARA-ON-THE-LAKE

The above described property which is owned by you or in which you have an interest was inspected on **July 16, 2021**.

The inspection revealed that in some respects the property does not conform to the standards prescribed by the Property Standards By-Law No. 5192-19, including the provisions for heritage properties.

IT IS ORDERED THAT the repairs necessary to correct the defects as set out in Schedule "A" attached hereto be carried out and the property be brought into a condition of compliance with the prescribed standards on or before: **January 25, 2022**

Where any permit is required to undertake any repair to conform to the standards as prescribed in this Order, it is the responsibility of the owner to obtain any such permit.

Where it has been determined that the necessary repairs have not been completed in accordance with this Order as confirmed or modified. The Town of Niagara-on-the-Lake may cause the property to be repaired and the cost of such action may be registered as a lien on the land and shall be deemed to be municipal real property taxes and may be added by the clerk of the municipality to the collector's roll and collected in the same manner and with the same priorities as municipal real property taxes.

YOU ARE HEREBY ADVISED THAT if you are not satisfied with the terms or conditions of this Order you may appeal to the Property Standards Committee by sending a Notice of Appeal by Registered Mail to the Secretary, Property Standards Committee, Town Administration Building, 1593 Four Mile Creek Rd., P.O. Box 100, Virgil, On., L0S 1T0. The fee for an Appeal is \$480.00 and must accompany the Notice of Appeal. The final date for giving notice of Appeal from this Order is **September 14, 2021**.

In the event that no appeal is taken by the date specified above, the Order shall be deemed to be confirmed and shall be final and binding upon you, requiring you to comply with its terms within the time and in the manner specified in the Order.

Benjamin Hopkins
Supervisor of Enforcement
Town of Niagara-on-the-Lake
905.468.3266 Ext.278
benjamin.hopkins@notl.com

August 25, 2021

Schedule "A"

176 John Street
 PLAN 692 PT LOT 144 RP
 30R1792 PARTS 3 TO 5
 Roll Number:
 26 27 010 002 008 00
NIAGARA-ON-THE-LAKE

File. MLE-INV-04633

Item #	Location	Necessary Repair	By-Law Sec
1.	Roof (Randwood - 3 storey brick building)	Reconnect all downspouts and direct water away from foundation.	3.07 (3) & 2(a)1(i)
2.	Soffit and Fascia (Randwood - 3 storey brick building) All Elevations	Repair damaged soffits and fascia. Reapply paint in the same colour. Any replacement material should be the same material as the original and in keeping with the design, colour, texture, grain, and any other distinctive features of the Heritage attributes.	3.05 (1) & 2(a)1(iii)
3.	Roof (Randwood - 3 storey brick building)	Verify that potential roof defects are not causing the damage to the soffit and fascia. If roof defects are causing damage, repair the roof accordingly. Any replacement material should be the same material as the original and in keeping with the design, colour, texture, grain, and any other distinctive features of the Heritage Attributes.	3.07 (1) & 2(a)1(iii)
4.	Windows and Doors (Randwood - 3 storey brick building)	Repair broken windows. Replace window sashes that have been removed and are sitting outside. Any replacement material should be the same material as the original and in keeping with the design, colour, texture, grain, and any other distinctive features of the original. Securely board up all windows and doors in a manner that completely covers the opening and is properly fitted in a watertight manner within the side jambs, the head jamb and the exterior bottom sill of the door or window opening so the exterior trim and cladding remains uncovered and undamaged by the boarding taking into account the following:	3.06 (1) & 2(a) 3(v)

Schedule "A"

August 25, 2021

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		<ul style="list-style-type: none">• Work must be done in a manner that minimizes visual impact:• all boards shall be painted or otherwise treated so that the colour blends with the exterior of the building or structure.• Work must be fastened securely in a manner that minimizes damage to the Heritage attributes and is reversible.• Doors, windows and other openings of the building or structure shall be securely boarded up with a 12.7mm (0.5 in.) weatherproofed sheet plywood secured with nails or screws at least 50 millimetres (2 inches) in length and be installed at appropriate intervals on centre or a metal plate at least 6 millimetres thick. If the aforementioned measures prove insufficient to secure openings, additional augmentation measures shall be required, consisting of the installation of steel mesh enclosures or steel panels over all boarded ground floor openings.• No window, door or other opening on a Heritage Property shall be secured by brick or masonry units held in	
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Schedule "A"

August 25, 2021

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File. MLE-INV-04633

		place by mortar unless required by a Property Standards Officer.	
5.	Building Exterior (Randwood – 3 storey brick building)	Install temporary metal fencing around Vacant Buildings. Metal fencing should be installed in such a way that there is no damage to identified heritage attributes.	2(a)3(iii)(g)
6.	Utilities (Randwood – 3 storey brick building)	Provide and Maintain utilities, to prevent damage to the Heritage attributes. A plan must be put in place, subject to Town approval, for reconnection as soon as possible.	2(a)3(ii)
7.	Building Interior (Randwood – 3 storey brick building)	Complete mold remediation, provide certification of completion.	3.01 (2)
8.	Concrete, Brick, and Stone perimeter Wall	Repair missing or deteriorated mortar. The replacement mortar should be softer than the brick and stone material (ie lime-based). Any existing damaged mortar should be removed without causing damage to any stone or brick material.	2(a)1(i)
9.	Metal Entrance Gates	Reinforce gates to prevent further deterioration of gate columns. Any reinforcement should not negative impact the columns and should only be undertaken on the gates.	2(a)1(i)

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FOR YOUR INFORMATION:

By-Law No. 5192-19 Sec 2.01 & Sec 5.01State: All repairs and maintenance of property shall be carried out with suitable and sufficient materials and in a manner accepted as good workmanship within the trades concerned. All necessary construction or repairs shall conform to the Ontario Building Code, Ontario Fire Code and the Fire Prevention and Protection Act.

Please be advised that the property is a heritage designated property under Part IV of the Ontario Heritage Act. As such, a municipality approved Heritage Permit is required prior to undertaking any alteration that is likely to impact the heritage attributes as outlined in By-Law 5285-20. If you have any questions about the requirement for Heritage Permits please consult with the Town's Heritage Staff.