



BUILDING CODE COMMISSION

IN THE MATTER OF Subsection 24(1) of the *Building Code Act*, S.O. 1992, c. 23, as amended.

AND IN THE MATTER OF Sentences 8.1.2.2.(1), 8.2.1.4.(2), 8.2.1.6.(1), 8.2.1.6.(2), 8.7.3.2.(1), Clauses 8.7.2.1.(1)(c), 8.7.3.1.(1)(b), 8.9.1.2.(1)(c) and Subclause 8.9.3.2.(1)(a)(i) of Regulation 403, as amended, (the Building Code).

AND IN THE MATTER OF an application by Ted Antkow, Homeowner, for resolution of a dispute with Bill Goodale, Chief Building Official, Sewage Systems, Township of Tiny to determine whether the work undertaken to repair an existing Class 4 sewage system to remedy the alleged deficiencies identified in an Unsafe Order provides sufficiency of compliance with Sentences 8.1.2.2.(1), 8.2.1.4.(2), 8.2.1.6.(1), 8.2.1.6.(2), 8.7.3.2.(1), Clauses 8.7.2.1.(1)(c), 8.7.3.1.(1)(b), 8.9.1.2.(1)(c) and Subclause 8.9.3.2.(1)(a)(i) when considering Part 11 of the Building Code at 305 Concession 11 W., Township of Tiny, Ontario.

APPLICANT	Ted Antkow Homeowner Mississauga, Ontario
RESPONDENT	Bill Goodale Chief Building Official, Sewage Systems Township of Tiny, Ontario
PANEL	Judy Beauchamp, Chair Designate Jim Wilkinson Eric Gunnell
PLACE	Toronto, Ontario
DATE OF HEARING	September 21, 2006
DATE OF RULING	September 21, 2006
APPEARANCES	Ted Antkow Homeowner Mississauga, Ontario The Applicant
	Bill Goodale Chief Building Official, Sewage Systems Township of Tiny, Ontario The Respondent

RULING

1. Particulars of Dispute

The Applicant has received an Unsafe Order under the *Building Code Act, 1992*, requiring that a building permit be obtained and that the existing sewage system be replaced at 305 Concession 11 W, Township of Tiny, Ontario.

The subject building is described as a one and a half storey, two bedroom, seasonal cottage, having a building area of approximately 64 m². The dwelling is served by a private dug well and has a total of 7.5 plumbing fixture units.

The construction in dispute relates to the repairs undertaken by the Applicant to the existing Class 4 sewage system located on the property. The existing system consists of an 1, 800 litre septic tank connected to a leaching bed. The subject sewage system has been in existence for approximately 40-45 years. In response to the Unsafe Order, the Applicant filled the bottom of the existing septic tank with 15-20 cm of concrete in an effort to repair the system.

The issue at dispute pertains to the work undertaken by the Applicant to remedy the unsafe situation and whether said work provides sufficiency of compliance with Sentences 8.1.2.2.(1), 8.2.1.4.(2), 8.2.1.6.(1), 8.2.1.6.(2), 8.7.3.2.(1), Clauses 8.7.2.1.(1)(c), 8.7.3.1.(1)(b), 8.9.1.2.(1)(c) and Subclause 8.9.3.2.(1)(a)(i) when considering Part 11 of the Building Code.

2. Provisions of the Building Code in Dispute

8.1.2.2. Operation and Maintenance

(1) Operation and maintenance of *sewage systems* shall comply with Section 8.9.

8.2.1.4. Clearances (See Appendix A.)

(2) Unless it can be shown to be unnecessary, where the *percolation time* is less than 10 minutes, the clearances listed in Articles 8.2.1.5. and 8.2.1.6. for wells, lakes, ponds, reservoirs, rivers, springs or streams shall be increased to compensate for the lower *percolation time*.

8.2.1.6. Clearances for a Class 4 or 5 Sewage System

(1) Except as provided in Sentences 8.2.1.4.(1) and (2), a *treatment unit* shall not be located closer than the minimum horizontal distances as set out in Table 8.2.1.6.A.

(2) Except as provided in Sentences 8.2.1.4.(1) and (2), a *distribution pipe* shall not be located closer than the minimum horizontal distances set out in Table 8.2.1.6.B. and these distances shall be increased when required by Sentence 8.7.4.2.(9).

8.7.2.1. General Requirements

(1) A *leaching bed* shall not be located:
(a) in an area that has an average slope that exceeds one unit vertically to four units horizontally,
(b) in *soil* or *leaching bed fill* having a *percolation time*

- (i) less than one minute, or greater than 125 minutes if *constructed* as a *shallow buried trench*, or
- (ii) less than one minute, or greater than 50 minutes for all other *leaching beds*, or
- (c) in or on an area that is subject to flooding that may be expected to cause damage to the *leaching bed* or impair the operation of the *leaching bed*.

8.7.3.1. Length of Distribution Pipe

- (1) The total length of *distribution piping* shall
 - (a) not be less than 30 m when *constructed* as a *shallow buried trench*, or
 - (b) not be less than 40 m for any other *absorption trench*.

8.7.3.2. Absorption Trenches

- (1) Except as provided in Sentence (2), *absorption trenches* shall be,
 - (a) approximately the same length and not more than 30 m in length,
 - (b) at least 500 mm and not more than 1 000 mm in width,
 - (c) at least 300 mm and not more than 900 mm in depth,
 - (d) centred at least 1 600 mm apart,
 - (e) at least 900 mm at all points on the bottom of the *absorption trench*, or 900 mm from the surface of a filter bed above the *high ground water table*, rock or soil with a *percolation time* greater than 50 minutes, and
 - (f) backfilled, after the installation of the *distribution pipe* with *leaching bed fill*, so as to ensure that after the *leaching bed fill* settles, the surface of the *leaching bed* will not form any depressions.

8.9.1.2. General Requirements for Operation and Maintenance

- (1) Every *sewage system* shall be operated and maintained so that,
 - (a) the *sewage system* or any part thereof shall not emit, discharge or deposit *sanitary sewage* or *effluent* onto the surface of the ground,
 - (b) *sanitary sewage* or *effluent* shall not emit, discharge, seep, leak or otherwise escape from the *sewage system* or any part thereof other than from a place or part of the *sewage system* where the system is designed or intended to discharge the *sanitary sewage* or *effluent*, and
 - (c) except as provided in Sentence (2), *sanitary sewage* or *effluent* shall not emit, discharge, seep, leak or otherwise escape from the *sewage system* or any part thereof into a piped water supply, well water supply, a watercourse, *ground water* or *surface water*.

8.9.3.2. General

- (1) Every *sewage system* shall be maintained so that,
 - (a) the *construction* of the *sewage system* remains in accordance with,
 - (i) the basis on which the *construction* and use of the *sewage system* was approved or required under this Act or predecessor legislation, as the case may be, and
 - (ii) the requirements of the manufacturer of the *sewage system*, and
 - (b) all components of the *sewage system* function in their intended manner.

Part 11 – Renovation

(Please Part 11 of the Building Code.)

3. Applicant's Position

The Applicant provided the Commission with a brief overview of the existing sewage system and outlined the history of the dispute between the parties. He stated that the subject building is a seasonal family dwelling that has been in existence for approximately 55 years. He specified that, since receiving the Order from the Township, the sewage system has not been used. He advised that, originally, he proposed to replace the septic tank with a new septic tank but upon further investigation and consultation with various individuals during the month of June 2006, he became aware that he could simply repair the sewage system. It was his submission that, upon learning that he could repair the sewage system himself, he attempted to remedy the concerns contained in the Unsafe Order.

The Applicant affirmed that the septic tank of the existing sewage system was in disrepair, as the bottom of the tank had disintegrated. He submitted that he has repaired the septic tank by filling the inside of the bottom of the tank with approximately 15-20 cm of cement which effectively sealed the tank. He declared that, based on his research, this approach is an effective way to remedy the deficiency of the septic tank. He believes he has met the requirements of the Building Code in respect of the repairs made to the existing septic system.

The Applicant claimed that the document, submitted as Exhibit 5 to these proceedings, support his argument that the work undertaken to repair the septic tank sufficiently complies with the provisions of the Building Code and that he has also addressed the concerns outlined in the Unsafe Order. Exhibit 5 indicates that a septic tank visual inspection was performed by a sanitation disposal company on September 8, 2006 and further indicates the tank construction material condition to be "good". He maintained that the sewage system has been operating well and that he has not observed any problems, with the exception of the bottom of the septic tank which he has now repaired.

The Applicant summarized his position by stating that it his belief that by sealing the defective septic tank with concrete he has repaired and improved the sewage system. He reiterated that the work undertaken sufficiently complies with the requirements of Part 11 of the Building Code and also addresses the concerns contained within the Unsafe Order issued against him.

4. Respondent's Position

The Respondent provided the Commission with a brief history of the Township of Tiny Sewage System Re-inspection Program. He stated that this program was initiated to eliminate sources of groundwater contamination. He submitted that as the Chief Building Official for Sewage Systems for the Township of Tiny it is his duty to prevent the contamination of the groundwater from any new or existing sewage systems.

The Respondent addressed the issues regarding the Applicant's original proposal, indicating that, in his opinion, the minimum clearance distances outlined in Sentences 8.2.1.6.(1) and 8.2.1.6.(2) are not being maintained. He added that Sentence 8.2.1.4.(2) of the Code would require that the minimum clearance distances outlined in Article 8.2.1.6. be increased to compensate for the lower percolation time of the soil. Further, the Code requires the length of distribution piping to be at least 30 m and he advised that the length of distribution in this instance is significantly less than 30 m. He reported that a visual inspection revealed that the bottom of the septic tank has disintegrated.

In response to the Applicant's position that the work undertaken to repair the septic tank sufficiently complies with the Code requirements, the Respondent disagreed. He stated that the

repair does not address the concerns outlined in the Unsafe Order issued to the Applicant and that the existing septic tank, in his opinion, is undersized. Further, he advised that there is no way to ensure that the septic tank has been properly sealed.

The Respondent remarked that he recognizes that Part 11 of the Building Code provides compliance alternatives and alternative measures to permit the acceptance of existing clearance distances. However, he advised that there would still be an issue pertaining to the proximity of the sewage system to the high water table. He maintained that it is his duty to protect the health and safety of the public and to prevent contamination of the groundwater.

In summation, the Respondent reiterated that it his role to enforce the Building Code and ensure the health and safety of the public and, in his opinion, the existing sewage system is unsafe. He declared that the work undertaken to repair the septic tank does not meet minimum requirements outlined in the Building Code or address the concerns identified in the Unsafe Order.

5. Commission Ruling

It is the Decision of the Building Code Commission that the work undertaken to repair an existing Class 4 sewage system to remedy the alleged deficiencies identified in an Unsafe Order does not provide sufficiency of compliance with Sentences 8.1.2.2.(1), 8.2.1.4.(2), 8.2.1.6.(1), 8.2.1.6.(2), 8.7.3.2.(1), Clauses 8.7.2.1.(1)(c), 8.7.3.1.(1)(b), 8.9.1.2.(1)(c) and Subclause 8.9.3.2.(1)(a)(i) when considering Part 11 of the Building Code at 305 Concession 11 W, Tiny Township, Ontario.

6. Reasons

- i) The repair to the defective septic tank, as described by the applicant, does not provide sufficiency of compliance with the Building Code when considering the minimum set of construction requirements prescribed by the Code nor does the repair sufficiently address the requirements of the Orders issued.
- ii) Part 11 of the Building Code applies to sewage systems that have been in existence for at least five years. The Commission recognizes that the subject system falls within those parameters and that Part 11 of the Code applies in this instance. The Commission, however, is of the opinion that the health and safety concerns identified by the Respondent which precipitated the issuance of both an Order to Prohibit the Use or Occupancy of the Building and an Unsafe Order have not been fully remedied by the work undertaken to repair the defective tank.
- iii) While it may not be possible for the Applicant to fully meet the setback requirements for a new system constructed under the current standards prescribed in Part 8 of the Building Code, Part 11 permits the Respondent to consider Compliance Alternatives and Alternative Measures identified in the Code.

Dated at Toronto this **21st** day in the month of **September** in the year **2006** for application number **2006-28**.

Judy Beauchamp, Chair Designate

Jim Wilkinson

Eric Gunnell