



## BUILDING CODE COMMISSION

**IN THE MATTER OF** Clause 24(1)(b) of the *Building Code Act*, S.O. 1992, c. 23 (“Act”).

**AND IN THE MATTER OF** Subsections 8(2.2) and (2.3) of the Act and Sentence 2.4.1.1.B.(1) of O. Reg. 403/97 (“Building Code”).

**AND IN THE MATTER OF** an application for a permit by Ravenda Homes Ltd. under subsection 8(1) of the Act for the construction of a building at 26 Abbott Street West, St. Catharines.

**AND IN THE MATTER OF** a dispute between Ravenda Homes Ltd. and Sandra Korakis, Chief Building Official of the City of St. Catharines, about whether the Chief Building Official informed the Applicant, within the time period prescribed in the Building Code, of the decision to refuse to issue a building permit and of all of the reasons for the decision.

<b>APPLICANT</b>	John Ravenda Ravenda Homes Ltd. Welland, Ontario
<b>RESPONDENT</b>	Sandra Korakis Chief Building Official City of St. Catharines
<b>PANEL</b>	Tony Chow, Chair Yaman Uzumeri Gary Burtch
<b>PLACE</b>	Toronto, Ontario
<b>DATE OF HEARING</b>	August 24, 2006
<b>DATE OF RULING</b>	August 24, 2006
<b>APPEARANCES</b>	John Ravenda, President Ravenda Homes Ltd. <b>The Applicant</b>  Brian Thiessen Chief Building Inspector City of St. Catharines <b>Designate for the Respondent</b>

## **RULING**

### **1. Particulars of Dispute**

The Applicant applied for a permit under subsection 8(1) of the Act to construct a one storey, five unit townhouse block at 26 Abbott Street West, St. Catharines.

The dispute between the parties is whether the Chief Building Official complied with subsections 8(2.2) and (2.3) of the Act and Sentence 2.4.1.1B.(1) of the Building Code and, in particular, whether the Respondent informed the Applicant of the decision to refuse to issue a permit, and of all of the reasons for the decision, within the time period prescribed in Table 2.4.1.1B. of the Building Code.

### **2. Provisions of the Act and Building Code in Dispute**

**Act:** subsections 8(2.2) and (2.3)

#### **Decision**

- (2.2) When an application for a permit contains the prescribed information, the chief building official is required to determine within the period prescribed by regulation whether to issue the permit or to refuse to issue it.

#### **Same, reasons for refusal**

- (2.3) If the chief building official refuses to issue the permit, he or she shall inform the applicant of all of the reasons for the refusal of the permit and shall do so within the period prescribed by regulation.

**Building Code:**

#### **2.4.1.1B. Period Within Which a Permit is Issued or Refused**

(1) Subject to Sentences (2) and (3), if an application for a permit under Subsection 8 (1) of the Act that meets the requirements of Sentence (5) is submitted after December 31, 2005 to a *chief building official*, the *chief building official* shall, within the time period set out in Column 3 of Table 2.4.1.1B. corresponding to the class of *building* described in Column 2 of Table 2.4.1.1B. for which the application is made:

- (a) issue the permit, or
- (b) refuse to issue the permit and provide in writing all of the reasons for the refusal.

**TABLE 2.4.1.1B.**

Period Within Which Permit Shall be Issued or Refused Forming Part of Article 2.4.1.1B.

Row Number	Class of <i>Building</i>	Time period
1	(a) A detached house, semi-detached house, townhouse, or row house where no <i>dwelling unit</i> is located above another <i>dwelling unit</i> . (b) A detached structure that serves a <i>building</i> described in Clause (a) and does not exceed 50 m <sup>2</sup> in <i>building area</i> . (c) A tent to which Section 3.13. applies. (d) A sign to which Section 3.14. applies.	10 days
2	(a) <i>Buildings</i> described in Clauses 2.1.1.3.(1)(a), (b) and (c), other than <i>buildings</i> described in Column 2 of any of Rows 1 and 4 of this Table. (b) <i>Farm buildings</i> that do not exceed 600 m <sup>2</sup> in <i>building area</i> .	15 days
3	(a) <i>Buildings</i> described in Clause 2.1.1.2.(1)(a) or (b), other than <i>buildings</i> described in Column 2 of any of Rows 1 and 4 of this Table. (b) <i>Farm buildings</i> exceeding 600 m <sup>2</sup> in <i>building area</i> .	20 days
4	(a) <i>Post-disaster buildings</i> . (b) <i>Buildings</i> to which Subsection 3.2.6. or any provision in Articles 3.2.8.3. to 3.2.8.11. applies.	30 days
Column 1	Column 2	Column 3

### 3. Applicant's Position

The Applicant stated that on July 20, 2006 the application for a building permit in this matter was submitted to the building department of the City of St. Catharines and payment was made of certain of the fees required to be paid when a permit application is made. The Applicant stated that payment of the balance of the required fees was made on July 24, 2006. The Applicant provided a copy of a "Payment Transaction" receipt from the City of St. Catharines, dated July 24, 2006, which lists fees collected in respect of proposed residential construction at 26 Abbot Street West, St. Catharines. The payment receipt lists no fees as being outstanding.

The Applicant submitted that the one storey, five unit townhouse building at issue is subject to the ten day time period set out in Table 2.4.1.1B. of the Building Code.

The Applicant stated that the Respondent's decision in respect of the permit application was first communicated in an e-mail of August 17, 2006, which contained as an attachment a letter from the Respondent, dated August 16, 2006. The Applicant did not provide a printed copy of this e-mail, although a copy of the letter attached to the e-mail was provided. This letter informed that the Respondent had reviewed the Applicant's building permit application, and that "[w]hen you have complied with the following [four] conditions, we will complete the processing of your application". The Applicant understood from this letter that the Respondent had refused to issue the permit, and that the Applicant's failure to satisfy the four "conditions" listed in the letter were the reasons why the permit had been refused.

The Applicant advised that the building permit in question had not been issued as of the date of the Commission hearing. The Applicant stated that he had not yet provided to the Respondent documentation evidencing compliance with an applicable law requirement, and expected to provide this shortly.

In summation, the Applicant submitted that the date on which the Respondent had informed him of the decision to refuse to issue the building permit, and of the reasons for the decision, was

outside of the ten day time period within which the Respondent was obliged to provide this information.

#### **4. Respondent's Position**

The Respondent stated that the Applicant submitted the building permit application in this matter on July 21, 2006 and that the application met the requirements of Sentence 2.4.1.1B.(5) of the Building Code. The Respondent agreed that it was on July 24, 2006 that payment in full was made of all fees required to be paid when an application is made.

The Respondent submitted that, according to Sentence 2.4.1.1B.(6) of the Building Code, the time period for making a decision about the issuance of a permit began on July 25, 2006, which was the day after the later of the day on which Applicant's building permit application met the requirements of Sentence 2.4.1.1B.(5) and the day on which payment was made of all fees required to be paid when an application is made.

The Respondent indicated that, initially, the construction proposed under the permit application in question was considered, by the municipality, to be as described in Column 2 of Row 2 of Table 2.4.1.1B. and therefore to be subject to the fifteen day time period set out in Column 3 of Row 2 of the Table. At the Commission hearing, however, the Respondent stated that it accepted that the proposed construction was as described in Column 2 of Row 1 of Table 2.4.1.1B and was therefore subject to the ten day time period in Column 3 of Row 1 of the Table.

The Respondent stated that it informed the Applicant of the decision to refuse to issue a building permit, and of the reasons for the decision, in the Respondent's letter of August 16, 2006. The Respondent agreed that this letter was sent as an attachment to an e-mail; however, the Respondent submitted that this e-mail was sent to the Applicant on August 16, 2006. The Respondent did not provide a printed copy of this e-mail. The Respondent also indicated that it had on August 16, 2006 faxed a copy of the letter to the owner of the property where the construction was to take place and had tried, without success, to fax the letter to the Applicant.

The Respondent submitted that the four "conditions" listed in their letter of August 16, 2006 comprised all of the reasons why it had refused to issue the permit at issue to the Applicant.

The Respondent agreed that documentation evidencing compliance with an applicable law requirement was still outstanding as of the date of the Commission hearing and indicated that, upon being provided with this documentation in satisfactory form, a building permit could be issued.

In summation, the Respondent submitted that the time period for informing the Applicant of the decision to refuse to issue the permit and the reasons for the decision in respect of the permit application at issue commenced on July 25, 2006. The Respondent further submitted that it provided this information to the Applicant in the letter of August 16, 2006 which was e-mailed to the Applicant on that date. While the Respondent had initially taken the view it was required to provide this information within a fifteen day time period, as of the hearing the Respondent took the view that a ten day time period was applicable.

#### **5. Commission Ruling**

It is the Decision of the Building Code Commission that the Respondent did not comply with the requirements under Subsections 8(2.2) and (2.3) of the Act and Sentence 2.4.1.1B.(1) of the Building Code to issue or refuse to issue the permit and, in the case of a refusal to issue the

permit, to provide in writing all of the reasons for the refusal, within the applicable time period set out in Table 2.4.1.1B. of the Building Code.

While the Respondent did inform the Applicant of the decision to refuse to issue the permit and all of the reasons for the decision, the Respondent did not do so within the applicable time period set out in Table 2.4.1.1B. of the Building Code.

## 6. Reasons

- i) Sentence 2.4.1.1B.(6) of the Building Code specifies when the time periods set out in Table 2.4.1.1B. commence:

The time period described in Sentences (1) to (3) shall begin on the day following the later of

(a) the day on which an application meeting the requirements of Sentence (5) is submitted to the chief building official, and

(b) the day on which payment is made of all fees that are required, under a by-law, regulation or resolution made under Clause 7 (1) (c) of the Act, to be paid when the application is made.

The parties disagreed about whether the building permit application at issue was submitted by the Applicant to the Respondent on July 20 or July 21, 2006. The Respondent accepted that the permit application was complete for the purposes of Sentence 2.4.1.1B.(1) (that is, the application satisfied the requirements of Sentence 2.4.1.1B.(5)). However, both parties agreed that it was on July 24, 2006 that payment was made by the Applicant of all fees that are required to be paid when the application was made.

As a result, regardless of the date on which the permit application was submitted to the Respondent, it is July 25, 2006 (the date on which payment was made of all fees required to be paid) that the applicable time period set out in Table 2.4.1.1B. commenced in this case.

- ii) The parties agreed that the construction proposed under the application in question was subject to the ten day time period set out in Column 3 of Row 2 of Table 2.4.1.1B.

Sentence 2.4.1.1B.(7) provides that the time periods described in Column 3 of Table 2.4.1.1B. does not include Saturdays, holidays and all other days when the offices of a principal authority are not open for the transaction of business with the public.

In the present case, the applicable ten day time period ended on August 8, 2006, and the Respondent was required by that date to issue or refuse to issue a permit in respect of the Applicant's permit application and, if the permit was refused, to provide in writing all reasons for the refusal.

- iii) There was no dispute between the parties about whether the Respondent had informed the Applicant of the decision to refuse to issue the permit and provided all of the reasons the refusal: the parties agreed that the Respondent did this in the letter of August 16, 2006. The dispute between the parties was whether the Respondent had had done so within the time period set out in the Table 2.4.1.1B; that is by August 8, 2006.

The parties submitted that the letter of the Respondent containing this information was sent by the Respondent either on August 16, 2006 (Respondent's submission) or on August 17, 2006 (Applicant's submission). The Commission accepts that the e-mail containing the letter was sent on one of these dates, but notes that both of these dates are after the expiry of the applicable ten day time period on August 8, 2006. The letter of the Respondent informing the Applicant of the decision to refuse to issue a permit and of the reasons for the refusal was therefore not provided to the Applicant within the applicable time period set out in Table 2.4.1.1B. of the Building Code.

- iv) The Commission notes that, at the hearing, the Applicant stated that he intends to shortly provide to the Respondent certain documentation evidencing compliance with an applicable law requirement, and the Respondent indicated that upon being provided with satisfactory documentation the building permit could be issued.

Dated at Toronto this **24<sup>th</sup>** day in the month of **August** in the year **2006** for application number **2006-38**.

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Tony Chow, Chair

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Yaman Uzumeri

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Gary Burtch