

Complaint

The Complainants claimed that a Convenience Store which sits on property abutting the rear of their own property, installed, without a permit, an exhaust fan on the rear wall of the Store, facing the Complainants' and their neighbours properties. The Complainants stated that the Fan was running 24 hours a day, every day, for a number of months, and that in addition to being illegally installed, the Fan exceeded allowable decibel levels, creating a noise disturbance for themselves and their neighbours. The Complainants brought the Noise Issue to the City of Burlington's By-law Enforcement Department and a number of the Complainants' neighbours also filed noise complaints with the City.

Findings

The City of Burlington acted both reasonably (though not perfectly) and in good faith to the noise infraction issue. The City's response time was rapid and several levels of staff were all involved in the decision-making process and in working with the residents who were affected by the Fan noise. Additionally, compliance was ultimately achieved, and though it took a number of months for that to happen, that is of no particular fault of the City of Burlington; rather, it is simply a function of following through with complex governance systems. However, the City did not have the proper equipment to conduct a scientifically valid noise assessment, and therefore could only rely the naked ear perception and opinion of a By-law Enforcement officer.

The City did not mishandle the building permit issue. A process was quickly commenced to ensure that the owners of the Convenience Store applied for a permit and thereby brought their Fan into compliance. The City acted reasonably and in good faith to achieve compliance from the Convenience Store.

Recommendations

It is recommended that the City of Burlington acquire the necessary sound measurement equipment, and that it properly train enough staff (which number is left to the City's discretion to determine) to use such equipment, in accordance with the standards set out in *NPC-300*, so that the City may properly carry out any necessary noise testing required to enforce its Noise By-law. As it was additionally noted that the City's Noise By-law is out of date and references expired Provincial guidelines, it is recommended that the City of Burlington update its Noise By-law at the earliest opportunity the legislative agenda for City Council allows.