

Ombudsman Toronto Enquiry Report

Enquiry into the Water Connection at a Scarborough Heritage Property

March 6, 2019

Complaint Summary

1. The complainant lives in a house on St. Andrews Road in Scarborough. Her parents used to own the house and she grew up there. A pipe ran through the basement and across her property to the neighbouring house. This is how the neighbouring house got its water.
2. After a leak developed, the complainant no longer wanted the pipe to run through her house and across her property. The City had refused to pay to connect the neighbouring house directly to the City's water supply. With her City Councillor's help, she brought the issue to Ombudsman Toronto.

Background

3. The water pipe had a complicated history. The neighbouring house is a heritage property, built in 1883, and was originally the cemetery caretaker's house (called "the Sexton's House") for St. Andrew's Presbyterian Church.
4. By the late 1970s, the Sexton's House was empty. Members of the community feared that the house would be demolished.
5. The complainant's father, a keen historian and a member of the church, opposed the possible demolition of this house.
6. With the support of the Scarborough Historical Society, the complainant's father renovated the house, and had it hooked up to the City's sanitary sewer. But the house did not have its own water service. The original well had dried up at some point in the past. The complainant's father and his group were unable to have the City (technically the Borough of Scarborough at the time) connect the home directly to the City's water supply as part of their efforts in the early 1980s.
7. Instead, they ran a pipe from the complainant's home to the Sexton's House. This brought water to the home, and allowed the Scarborough Historical Society to rent the Sexton's House to a tenant.

8. A member of the Scarborough Historical Society who was involved at the time told us that this pipe was always considered a temporary fix.
9. The Scarborough Historical Society member told us that his understanding was that at that time, representatives of the City promised a permanent solution as soon as the City could resolve technical issues related to running a line along St. Andrew's Road.
10. Roughly 35 years later, however, the pipe still ran through the complainant's basement, under her yard, across a stretch of City property, and into the Sexton's House next door.
11. A few years ago, the pipe leaked in the complainant's basement. She discovered the leak before it caused significant damage. Later, another leak developed in a section of the pipe out in her yard. As a result, she wanted the pipe gone from her property.
12. She asked the City to resolve this situation. She believed that the City had promised years ago to fix the problem and then failed to deliver. She tried to resolve this with City staff, with the help of her City Councillor.
13. Toronto Water told her they would not pay to connect the Sexton's House to the City's water supply. Their position was that costs to connect the Sexton's House must be paid by the owner, namely the church. She and the Councillor asked Ombudsman Toronto to help.

Steps Taken

14. During our Enquiry, we:
 - Spoke with the complainant, a member of the Scarborough Historical Society, a representative of the church, and the current tenant living at the Sexton's House
 - Received and reviewed letters from a number of people familiar with this situation, including the local City Councillor
 - Met with staff at Toronto Water and obtained and reviewed documents from them
 - Performed research into Toronto Water's Laser Fiche archive
 - Researched the relevant bylaws and policy documents
 - Visited the complainant's home and the Sexton's House and viewed the church grounds

Information Gathered

15. As noted above, a member of the Scarborough Historical Society who had been involved in restoring the Sexton's House in the early 1980s told us that as he understood it, representatives of the City said at the time that the City would eventually hook the house up directly to the municipal water supply. He told us

the person who communicated directly with the City about this was the complainant's father, who has since died.

16. Written documentation from this period is scarce. The representative from the Scarborough Historical Society provided us a copy of a drainage and plumbing permit from 1981 and notes from the Society's meeting in 1982 in which they discussed work being done on the house, including that "There will be no cost for a water connection (orig. est. *\$2,000.) as the Borough has approved the original water connection." He told us that the "original water connection" refers to the water pipe in question.
17. We visited the Sexton's House. There was a functional water meter installed in the basement, but Toronto Water said that it had not been billing the property for water consumption, it had no record of the meter being installed, and that it was not a City meter.
18. On the other hand, the representative of the Scarborough Historical Society told us that, to the best of his knowledge and recollection, the City had installed the meter and had sent bills in the past for the water used at the Sexton's House.
19. In any event, at least at the time of our visit, the City was not billing the church, the tenant living in the Sexton's House or the complainant for water used at the Sexton's House.
20. Toronto Water staff told us they had found no documents suggesting that the City had committed to providing the Sexton's House with a direct connection to the City's water supply. They said that it was quite possible that at some point, City staff told the complainant's father that the City would eventually install a water main on St. Andrews Road which would allow the Sexton's House to be connected.
21. Toronto Water staff told us that there was no plan to extend the distribution system on this street because the Sexton's House was the only property on the street that had no direct service. They told us it would cost too much to extend the main for one user.
22. Toronto Water staff gave us a copy of a briefing note they had prepared, laying out the technical and financial challenges associated with connecting this property to the City's water system.
23. A representative of the church told us that, without a water supply, the church would be unable to rent the Sexton's House to a tenant, and would therefore not have rental income to maintain the property. He told us that "the future of this historic home could well be said to rest on the provision of such a [water] supply..."

Analysis and Findings

24. It is impossible to know exactly what happened back in the early 1980s with this property. There are few written records, and the person with the most direct knowledge of the events (the complainant's father) died many years ago.
25. There is evidence, however that the City was aware of the arrangement put in place (the pipe running from the complainant's house to the Sexton's House).
26. We find it more likely than not that the plan was to eventually connect the property to a City water main, as the complainant alleges. But this never happened. The City never ended up extending the water main down St. Andrews Road.
27. It was unfair for the complainant to continue to be responsible for providing water to the neighbouring house through her own property. Although her father had apparently allowed this arrangement in the early 80s, she was now the owner and quite reasonably did not want a water pipe running through her property.
28. There are subdivisions to the east and west of the Sexton's House, built in the late 50s or 60s. The homes in these subdivisions all have direct connections to the City's water system. The complainant's house and the church, on either side of the Sexton's House, also both have direct connections to the City's water system. The complainant told us that the City provided her home with a water connection after their well dried up in the late 1950s. The Sexton's House stood in the area as the lone property without its own direct connection.
29. The Sexton's House has historical value to the City. It was designated a heritage property by the City of Scarborough in 1985.
30. The house is also providing affordable housing to a tenant.
31. It is in the City's interest to ensure the house remains habitable.

Resolution

32. We met with senior staff at Toronto Water to discuss this situation.
33. Staff stressed that typically in similar cases (with a property owner seeking to connect a secondary building to the water supply), the property owner would incur the expenses. They also had several technical concerns about the feasibility of connecting this home to the water system.
34. We acknowledged these concerns. We took the position, however, that given the unique history and context of the Sexton's House, including the possibility that City staff had said in the past that they could later connect the home, we

were calling on the City to lead the way in looking for a creative, practical and fair solution.

35. Ultimately, even if the City could not resolve this matter, we wanted to be satisfied that staff had thoroughly evaluated all options. Fairness demanded it.
36. At our request, a senior Toronto Water staff member agreed to visit the complainant's home and the Sexton's House, to assess the situation again and review any possible technical solutions with the complainant.
37. He visited the site, and identified a new technical solution that had not previously been discussed. And after learning more about the unique historical context, he decided it would be fair for the City to take action.
38. Toronto Water agreed to run a water service to the property line of the Sexton's House and install a new water meter. The proposed technical solution was to connect from the water service on City property in front of the complainant's home and run a small pipe along St. Andrews Road to the property line of the Sexton's House.
39. Toronto Water offered to cover this expense. They determined this solution would be more cost effective than the other possibilities they had considered. Toronto Water also agreed to waive the hook up fee, and did not charge for water already consumed.
40. The church was responsible for all costs incurred on their private property. Toronto Water set up an account so that the Sexton's House would be billed directly for water consumption.
41. We convened a meeting among Toronto Building, the complainant, a representative of the church and Ombudsman Toronto, to ensure that everyone understood and agreed with the plan.
42. Toronto Water carried out the work in August 2018. The Sexton's House now has its own direct water supply. It is also paying the City for the water it consumes, thanks to the new water meter.
43. We commend Toronto Water for taking the time to thoughtfully consider this situation and the unusual context in which it arose and for performing a thorough review of it. This led to a positive outcome for all the parties.

(Original signed)

Susan E. Opler
Ombudsman