

# Minneapolis, resident knock heads over wall

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The 7-foot-high retaining wall near the edge of Elizabeth Howell's yard in southwest [Minneapolis](#) has a big crack and leans, giving every indication that one of these days it will tumble onto the sidewalk.

Three years after the city demanded that Howell repair the wall, it still hasn't been fixed. The dispute over who should pay for it has escalated into a lawsuit by Howell claiming that the city is harassing her.

She alleges she has already spent tens of thousands of dollars in legal fees to prove the wall is the city's responsibility. Meanwhile, the city has issued two "final warnings" to repair the wall or face legal action, then retreated without explanation.

The unique issues raised by retaining walls have prompted the city to launch a review to find out how many there are, and if there is a better way to deal with them.

Howell, 49, an investment manager, lives at 48th Street and Drew Avenue S. She says repairing the wall would cost \$40,000 and claims it's the city's job to fix it because her own lawn stops 8 feet short of the wall.

"Why do I want to pay for the wall?" she said. "It's wrong."

The city won't comment on Howell's case because of the lawsuit, which was filed in October in Hennepin County District Court. But Matthew Laible, a city spokesman, said in an e-mail that "the city's position generally is that when there is an issue with a retaining wall, we determine legal responsibility for the wall and move forward accordingly."

He said that "in many instances over the years, where a private retaining wall needed repairs," property owners "typically make those repairs" if ordered to do so without additional enforcement action.

Documents from Kristin Heebner, Howell's lawyer, suggest that the city has been flummoxed in dealing with Howell.

After an Aug. 29, 2008, visit, city inspectors concluded that the wall's condition violated an ordinance. Howell received a letter, ordering her to fix it by Nov. 1, 2008, or face a \$100 reinspection fee and possible legal action.

Over the next three years, the city issued Howell a \$200 fine, canceled the fine and sent her two "final warnings."

In April, the city notified Howell that it planned to assess her property to fix the wall, but in May, an administrative hearing officer said the question of the wall's ownership needed to be answered first.

A hearing was set for July 14 and rescheduled for Oct. 8. On Oct. 5, the city canceled the hearing, and the next day, an inspector came to Howell's house to re-examine the wall.

At the heart of the dispute is a city ordinance that states, "Every fence and retaining wall on or adjacent to residential property shall be kept well mended and in good repair, consistent with the design thereof."

But Howell says a plat map shows the wall is adjacent to city land, not her land. She says the wall was there when she bought the house in 1989 and there are no building permits to show a previous homeowner built it.

Last year, Assistant City Attorney Robin Hennessey wrote Howell that, as a property owner, she "technically" owns the "street, sidewalk, boulevard etc." in front of her house, although the city has the "right of way" to the property.

"The foregoing principles are not reflected in the city's code," Hennessey wrote. "Rather they have been established by common law."

Howell wrote back to say that if property boundaries are trumped by common law, "why not simply provide the common law? We can't find it."

Clinton McLagan, an [Eagan](#) attorney who specializes in property boundary law, notes that when a city repairs sidewalks, it charges the homeowner. McLagan isn't involved in the case.

Heebner counters that an ordinance makes owners responsible for sidewalk repair, but not so for retaining walls.

More damages?

Heebner wrote the city Tuesday, saying that if it does not repair the wall, the city's land will fall into the street and Howell's land will fall into the city's land, causing Howell substantial damage.

Laible, the city spokesman, said that as retaining walls get older, maintenance issues are becoming more common. He says a team consisting of regulatory services and public works staff will compile a list of the walls and review "our processes for handling" them "to see if there are any changes to the process we'd like to make."

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