



Corporate NO: R146

Report COUNCIL DATE: June 26, 2000

REGULAR COUNCIL

TO: Mayor & Council DATE: June 22, 2000

FROM: General Manager, Planning & Development FILE: 11375-14200

SUBJECT: 11375 - 142 Street Building Constructed without Inspection Approvals

RECOMMENDATION

1. That Council pass the By-law set out in Appendix "B" (the "Proposed By-law") pursuant to Section 698 of the *Municipal Act*, R.S.B.C. 1996, c. 323 (the "*Municipal Act*") declaring the building (the "Building") at 11375 - 142 Street (the "Property") to be illegally constructed.
2. That Council order the removal of the Building from the Property.
3. That the registered Property owners described in Appendix "C" (the "Owners") be notified of the Proposed By-law and be requested to attend Council at a date to be set in order to speak to the Proposed By-law.

INTENT

The intent of this report is to:

1. apprise Council of the Building that has been constructed on the Property and is in contravention of Surrey Building By-law, 1987, No. 9011; and
2. justify the Proposed By-law which would require the Owners of the Property to remove the Building to bring the Property into compliance with the City's by-laws.

HISTORY OF THE PROPERTY

July 13, 1999

A demolition permit was issued to demolish the existing single family dwelling on the Property.

July 29, 1999

The Building Division received a complaint that foundation forms were installed at the Property without a building permit. The Building Division investigated and informed the complainant that foundation forms could be installed before the building permit is issued but concrete must not be poured prior to permit issuance and inspection approval.

August 17, 1999

A building permit application from the Owners was accepted by the Building Division.

August 20, 1999

A building permit was issued for the construction of a single family dwelling on the Property. Electrical and Plumbing permits were also issued for the Property after the building permit issuance date.

September 20, 1999

Building Division staff inspected the Property and posted a Stop Work Notice on the Property because the Owners had poured the foundation without inspection approval.

September 22, 1999

Mr. Shawn McKerricher, a representative of the Owners, contacted the Building Division to request information about the Stop Work Notice. He was informed that a survey certificate must be submitted showing the location and elevations of the building on the property. He was also informed that Letters of Assurance from a structural and geotechnical engineer were required for the foundation since that work had been completed without inspection approvals from the City.

The structural engineer-of-record sent a fax transmittal to the Building Division to indicate that he had not inspected the footings and foundation walls of the building on the Property.

September 23, 1999

A letter was sent to the Owners advising that a Stop Work Notice had been posted on the Property and that construction had proceeded without the required inspection approvals.

October 4, 1999

The Building Division received a survey certificate dated October 4, 1999, showing top of foundation elevation for the building but the survey does not include all setbacks from the property lines as required to confirm that it is located in accordance with the plans attached to the building permit. The building inspector advised Mr. Shawn McKerricher the Owners' representative, of the building setback dimensions missing on the survey certificate.

October 14, 1999

The work covered under the demolition permit for the Property received final approval.

December 14, 1999

Building Division staff reinspect the Property and find that work has continued on the building past the September 20, 1999, Stop Work Notice. The Owners completed the framing, covered the insulation and installed siding on the building without the required inspections. A Stop Work Notice was therefore re-posted on the Property.

January 12, 2000

Building Division staff reinspected the Property and found that there was no further work done on the building.

May 24, 2000

Building Division staff reinspected the Property and found that there had been no further work done on the building.

DISCUSSION

Surrey Building By-law, 1987, No. 9011, Section 14, requires that the owner of a building shall have the building inspected and approved by the Building Inspector. In this instance, the Building was constructed without the required inspections having been requested and obtained. The work on the property has proceeded to the point where it is impossible to carry out and complete normal inspections. Any inspection that is conducted would be a mere spot check without any ability to ensure that the building was generally constructed in compliance with the applicable Building Code. Since the required inspections have not been conducted by the City, the Building may be hazardous.

The Legal Services Division has advised that there are three options available to obtain by-law conformity for the Property. They are:

- (a) attempt to work with the Owners to facilitate inspections and issue the occupancy approval for the Building.
- (b) undertake no inspections and file a notice on the title of the Property as permitted under Section 700 of the Municipal Act.
- (c) Council may consider an Order under Section 698 of the Municipal Act to have the Building removed from the Property.

Option (a)

An attempt to work with the Owners to complete the required inspections and grant the final approval for the Building would not be possible since much of the work on the Building has been completed. The Owners have backfilled against the foundation, placed the basement floor slab and covered the building structure with drywall so that it is not possible to inspect the drainage, damp proofing, structural framing elements, electrical, plumbing, etc. Any inspections that were conducted would be incomplete audits of the Building, and based on

legal advice, would not be sufficient to grant the final approval without the City incurring liability for building deficiencies.

The Deputy City Solicitor recently advised the Building Division regarding a decision rendered by the Supreme Court of Canada in the case of *Ingles v. Tatkaluk Construction Ltd.* In this particular case a homeowner was renovating his residence and engaged a contractor to assist him in that endeavour. The Owner was aware that a building permit was required in order to obtain inspection of the work. However, he accepted his contractor's advice to commence construction prior to obtaining the permit. The construction was partially completed when the permit was obtained and as a result the inspectors were unable to inspect the critical aspects of the construction and relied on the contractor's assurances that it conformed to the Building Code. The work later proved defective and the owner paid extensive amounts for the repairs and sued the Municipality for negligent inspection.

The court in this case determined that once the Municipality had undertaken the inspection it had a duty of care to ensure that the works complied with the Building Code requirements. Therefore, it found the Municipality liable for the defective works and noted that the owner by his conduct had not brought himself outside the purview of the duty of care owed by the Municipality to an owner.

The acceptance of a letter from a Professional Engineer would still put the City in the position of assuming the risks associated with granting final approval for the Building without having completed the required inspection process. It is not recommended that the City proceed with Option (a) as the City could clearly be held liable for any defects in the construction should such exist and result in damage in the future.

Option (b)

The second alternative would be to not conduct inspections and not grant the final approval for the Building. The City would file a notice on the property title pursuant to Section 700 of the Municipal Act regarding the lack of inspections and approvals for the Building to advise any future owners of the Property that the City has not inspected the Property and takes no responsibility. This would make it difficult for the Owners to sell the Property in the future.

This option is not recommended because the City By-laws have not been followed and the Building may be hazardous. As such, based on legal advice the City could be found liable for defects in construction, particularly those which may be hazardous to third parties.

Option (c)

The third alternative is for Council to pass a By-law pursuant to Section 698 of the Municipal Act to remove the Building from the Property. This approach will require the Owners to confront the matter of building without inspections. Council must however, be prepared to order the removal of the Building from the Property if no appeal is made from the Order. If the Owners appeal the Order, the City will be in the position of laying the matter and the facts before the court which can make an Order it deems appropriate.

Recommendation:

Given the illegal nature and possible hazard of the Building on the Property and the failure on the part of the Owners to voluntarily rectify the situation, it is recommended that Council pass a by-law pursuant to Section 698 of the *Municipal Act*, which provides:

Demolition or Repair of Unsafe Buildings, Structures and Excavations

698 (1) *A Council may, by bylaw, authorize:*

(a) *the demolition, removal or bringing up to a standard specified in the bylaw of a building, structure or thing, in whole or in part, that contravenes a bylaw or that the council believes is in an unsafe condition.*

The Proposed By-law set out in Appendix "B" requires the Owners to remove the Building and allows 30 days for completion of the work.

The Act provides that prior to passing such a By-law and related Order, Council must offer the owner an opportunity to speak to the By-law and Order.

Should Council choose to adopt the By-law and issue the related Order, in the event that the Owners fail to carry out the necessary removal within 30 days, the Proposed By-law authorizes the City or its agents to enter onto the Property to carry out the required work at the Owners' expense, using Section 269 of the *Municipal Act* as its authority. Section 269 provides:

Municipal Action at Defaulter's Expense

269 (1) *If a council has authority to direct that a matter or thing be done by a person, the council may also direct that, if the person fails to take the required action, the matter or thing is to be done at the expense of the person in default.*

(2) *If action is taken under subsection (1), the council may recover the expense from the person, together with costs and interest at the rate prescribed under Section 11(3) of the Taxation (Rural Area) Act, in the same manner as municipal taxes.*

The City Legal Services Division has reviewed and is in agreement with the text in the Proposed By-law.

CONCLUSION

Based on the foregoing information regarding the Building on the Property, its non-compliance with the Surrey Building By-law, 1987, No. 9011 and its potential hazardous condition, it is recommended that Council authorize the City Clerk to bring forward the By-law attached as Appendix "B" for the required readings, that Council order the removal of the Building from the Property, and that Council authorize the City Clerk to set a date for a meeting at which the Owner may appear before Council to speak to the By-law and Order.

Murray D. Dinwoodie

General Manager

Planning & Development Department

HH/kms/8064

Encls.

Appendix "A" - Notice to Owner

Appendix "B" - Proposed By-law

Appendix "C" - Description of the Property, Owners and Persons Having an Interest in the Property

Appendix "D" - Photographs and Site Plan

c.c. - Manager, Building Division

- City Solicitor

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