



# **Corporate** NO: R243

# **Report** COUNCIL DATE: October 30, 2000

## **REGULAR COUNCIL**

**TO: Mayor & Council**    **DATE: October 25, 2000**

**FROM: General Manager, Planning & Development**    **FILE: 12512-80103**

**SUBJECT: Remedy of the Nuisance at 12512 Old Yale Road**

## **RECOMMENDATION**

1. That Council, pursuant to Section 727 of the *Local Government Act*, consider the Resolution set out in Appendix 'A' related to fill on *the Property* at 12512 Old Yale Road;
2. That the registered owners of *the Property* (the owners) be notified of the proposed Resolution and be given the opportunity to attend Council on a date to be set by the Legislative Services Division in order to speak to the proposed Resolution; and
3. That a copy of this report be forwarded to the owners of *the Property*.

## **INTENT**

The intent of this report is to:

1. apprise Council of the soil imported and illegally deposited at 12512 Old Yale Road (*the Property*) which we believe to be a nuisance; and
2. seek Council approval of a Resolution which, if adopted, will declare the illegally deposited soil to be a nuisance and require the owners of *the Property* to remove the fill and bring *the Property* into compliance with the City's by-laws.

## **BACKGROUND**

*The Property*, owned by Sukhdev S. Jhand and Sampuoran S. Jhand (the owners), which is vacant is

approximately 580 square metres (6,300 sq.ft.) in area and is within the Light Impact Industrial (IL) Zone. It is located at the base of a steep slope on the south side of Old Yale Road. Soil conditions in this area are poor consisting of soft peat with a high ground water level. *The Property* fronts onto Old Yale Road. The adjacent property to the east is a corner store and residence. To the west is a single family dwelling and to the south (rear) the land is undeveloped. Previous owners of *the Property* installed a ditch running from the rear of the lot draining to Old Yale Road. This ditch carried local surface rainwater run-off and water from an area of continuously flowing springs located south and east of *the Property*.

Fill has been placed on *the Property* at various depths to a maximum depth of approximately 2.0 metres and encroaches onto the neighbouring properties to the south and west. This fill was placed without the owners of *the Property* obtaining the necessary permits from the City as is required by Surrey Soil Deposition By-law No. 5880. The owner installed a 6 inch pipe under the fill to replace the ditch that has been filled. The pipe commences on the adjacent property to the south and runs under the fill discharging to the storm sewer on Old Yale Road. The drainage system has not been engineered. The inlet is not well designed and plugs due to debris build up causing storm water to be diverted onto the neighbouring property at 12504 Old Yale Road. The Surrey Waterways Protection By-law No. 2659 states that:

"No person shall foul, obstruct or impede the flow of any stream, creek, waterway, watercourse, waterworks, ditch, drain or sewer, whether or not the same are situated on private property."

## CHRONOLOGY

The following is a summary of events and City staff involvement to date:

- January 1999 One of the owners of *the Property* inquired at the Planning & Development Department as to the requirements to obtain a soil deposition permit for *the Property*.
- February 22, 1999 A complaint was received by the Building Division that excavation and clearing on *the Property* had disturbed the ditch on *the Property* diverting water onto the adjacent residential lot at 12504 Old Yale Road.
- February 23 & 24 1999 One of the owners was informed by staff of the Building Division to take immediate action to alleviate the drainage problem he had created.
- February 1999 to May 1, 1999 The owners imported several hundred cubic meters of soil and other materials onto *the Property*. No application was made nor permit issued for this activity. A drainage pipe was installed on *the Property* to carry the water that previously accessed the storm sewer through the existing ditch that had been filled.
- May 25, 1999 Building Division staff and a By-law Enforcement Officer attended the site. It was observed that the entire lot was filled and fenced (see the attached photographs). The drain pipe installed to replace the ditch was plugged. Water was diverted onto the adjacent property at 12504 Old Yale Road saturating the yard and creating ponds in the rear yard.
- May 27, 1999 Building Division staff and a By-law Enforcement Officer attended the owners place of business. The owner in attendance was asked to hire a Professional Engineer to design remedial works to mitigate the effects of the fill placement on *the Property* and to obtain a soil deposition permit in accordance with the requirements of Surrey's Soil Deposition By-law No. 5880. Subsequently, City staff met with one of

the owners on *the Property* where he was shown the plugged drainage pipe and the resulting impact on 12504 Old Yale Road. The owner proceeded to clear the blockage, allowing the storm water to drain. The owner was also shown the substantial settlement and cracking of the paved parking area of the store to the east of *the Property* that had occurred since the fill had been placed on *the Property*. *The Property* boundaries were poorly defined in the field and as a result the owner was asked to have *the Property* lines located by a surveyor. The owner was given the option of having the survey done by the City at his cost.

- June 28, 2000 The City of Surrey crew completed the survey of *the Property* which indicated that the fill and fence encroached onto the neighbouring properties.
- July 8, 1999 A By-law Officer hand delivered a letter (Appendix 'D') to the owners which informed them of the encroachment issues identified by the survey.
- July 9, 1999 Building Division staff and a By-law Officer attended *the Property* with one of the owners and his contractor and identified the issues that needed to be resolved.
- Sept. 4, 1999 Building Division staff delivered a hand written memo to one of the owners informing him that the soil placed on *the Property* contravenes Surrey's Soil Deposition By-law, No. 5880 and which gave a 10 day time period to remove the unauthorized material.
- Sept. 14, 1999 A site inspection revealed the illegal fill was still on *the Property* and the drainage system installed by the owners had failed due to a blockage. Water was flowing westward onto 12504 Old Yale Road causing significant accumulations of water and saturating the yard. A checklist of requirements was faxed to the owners to assist them in making application for the required soil deposition permit that would allow the soil to remain on site. A Municipal Ticket Information (MTI) was issued to one of the owners for depositing soil without a permit. This ticket was not paid or disputed and a deemed conviction was entered.
- Oct. 14, 1999 A site inspection revealed the illegal fill was still on *the Property*. A second MTI was issued to one of the owners for failing to remove the illegally placed soil. This ticket was paid and thus is considered an admission of guilt by the owner.
- Oct. 25, 1999 A letter to Mayor and Council was received from Mr. and Mrs. Gaunt, owners of the adjacent property, 12504 Old Yale Road. They outlined the drainage and settlement problems they have experienced as a result of the illegal fill placed on *the Property*.
- Nov. 11, 1999 A By-law Officer and Building Division staff visit *the Property*. One of the owners of *the Property* was again informed that the fill must be removed from *the Property* or legitimized through the permit process and proper engineering.
- Nov. 16, 1999 A By-law Officer and Building Division staff visit *the Property* with one of the owners and their consultant. The City's requirements are explained again to assist the consultant in preparing a suitable proposal.
- Dec. 15, 1999 A legal opinion is obtained from Surrey's Assistant City Solicitor confirming it is proper to use Section 727 of the *Local Government Act* to seek a resolution regarding the nuisance caused by the activity on *the Property*.

- Dec. 20 1999 A preliminary proposal from the owners' consultant to mitigate the effects of the illegal landfill on *the Property* is received by the Building Division.
- Jan. 5, 2000 A fax is sent to the owners' consultant to advise him that the proposal submitted Dec. 20, 1999 requires some revisions and re-submission for further consideration.
- Jan 17, 2000 One of the owners of *the Property* is faxed a copy of the fax sent to their consultant with a note requesting a response.
- Feb. 17, 2000 A fax is sent to the owners' original consultant requesting a response to the previous Building Division fax dated January 5, 2000.
- Feb. 23, 2000 A letter to the registered owners is hand delivered by the By-law Enforcement Officer which advised that the City of Surrey will be proceeding to seek Council's declaration that the fill and resulting drainage issues are a nuisance in accordance with Section 727 of the *Local Government Act*. The owners were given until March 10, 2000 to remove the offending material or obtain a soil deposition permit and comply with the regulations of the Soil Deposition By-law, No. 5880.
- April 4, 2000 One of the owners submitted an application form and drawing to obtain a soil deposition permit. The application is accepted with the oral instruction that a letter of supervision from a Professional Engineer is required before a permit may be considered for issuance.
- April 5, 2000 The Building Division sends a letter to the owners restating that the City requires a Professional Engineer to supervise the works proposed at *the Property*.
- July 14, 2000 A letter is received by the City from the owners' consultant which advises that he has been retained to supervise the work.
- July 19, 2000 One of the owners attended City Hall and discussed with staff the issue of posting a security bond. It was explained to the owner that the Soil Deposition By-law requires that a \$10,000 bond be posted before a permit could be issued. The owner stated that he was not prepared to post the bond.
- July 27, 2000 The same owner was advised by staff that the City was prepared to reduce the security bond amount to \$2,500. The owner agreed to post this amount.
- August 30, 2000 Staff contacted the same owner as the security bond had not yet been submitted. At this time, the owner said he was not prepared to post the bond.
- October 6, 2000 The consultant retained by the owners of *the Property* advises the City in writing that he is rescinding his letter of responsibility of supervision for soil deposition at *the Property*.

## DISCUSSION

The Surrey Soil Removal and Deposition By-law No. 5880 requires that the owners of property receive a permit to deposit fill on a property before proceeding with the work. Filling of *the Property* at 12512 Old Yale Road, was completed without a permit. An application has since been made but a security bond, as required

under the By-law, was not submitted. The By-law requires a bond of \$10,000 to be posted. Due to the small size of *the Property*, staff were prepared to accept a bond of \$2,500 as a reasonable amount to ensure satisfactory completion of the work. When contacted by staff, one of the owners agreed to submit bonding in the reduced amount. However, the bond has not been submitted. When further contacted on August 30, 2000, the same owner indicated that he was not prepared to post the bond. In the meantime, the nuisance remains and the adjacent properties are being affected by the lack of adequate drainage controls causing flooding and by the encroachment of the unauthorized fill onto these properties. The nuisance should be corrected before the wet weather sets in.

The problem has been on-going since February 1999, and despite the issuance of two MTI Tickets (fines) by the By-law Officer and assistance of City staff, the owners do not appear willing to bring *the Property* into compliance with the City's By-laws.

Given the nuisance created by the unauthorized fill material on *the Property*, the resultant drainage disruption and the failure of the owners to voluntarily rectify the nuisance, it is recommended that Council pass a Resolution to have the fill removed from *the Property* pursuant to Section 727 of the *Local Government Act*.

The Proposed Resolution set out in Appendix 'A' requires the Owners to remove the fill material within 30 days.

In the event that the Owners fail to carry out the necessary removal within 30 days, the proposed Resolution 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 *Local Government Act* as its authority. Any unpaid amounts may be collected as a debt or unpaid taxes pursuant to Section 376 of the *Local Government Act*.

In accordance with City practice, prior to Council adoption of the resolution, it is recommended that Council authorize the City Clerk to arrange a date at which the owners will have the opportunity to speak to the proposed resolution before Council.

The City's Legal Services Division has reviewed this report and the text of the proposed Resolution.

## CONCLUSION

Unauthorized fill has been placed on *the Property* at 12512 Old Yale Road which is a nuisance and causing damage to adjacent properties. It is recommended that Council adopt the Resolution attached as Appendix 'A' which requires the owners to remove the unauthorized fill and restore drainage on *the Property*. It is further recommended that Council authorize the City Clerk to set a date at which the owners of the subject property can speak to Council regarding the proposed resolution prior to Council adoption of the resolution and that a copy of this report be forwarded to the owners in advance of that date.

Murray D. Dinwoodie

General Manager

DO/kms/8092      Planning & Development Department

### Attachments

Exhibit #1    - Site Plan

Appendix 'A' - Proposed Resolution

Appendix 'B' - Description of *the Property* and Owners

Appendix 'C' - Photographs

Appendix 'D' - Letter from Legal Services Division to Owners

- c.c. - Manager, By-laws and Licensing Services
- Acting Manager, Building Division
  - Kelly Rayter, Assistant City Solicitor
  - Ed Van Dooyeweert, By-law Enforcement Officer

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