



# **Corporate** NO: R115

# **Report** COUNCIL DATE: May 14, 2001\_

## **REGULAR COUNCIL**

**TO: Mayor & Council**    **DATE: May 3, 2001**

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

**SUBJECT: 11375 - 142 Street Building Constructed without Inspection Approvals**

## **RECOMMENDATION**

1. That Council pass the Bylaw set out in Appendix "B" (the "Proposed By-law") pursuant to Section 698 of the *Local Government Act*, R.S.B.C. 1996, c. 323 (the "*Local Government 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 and the reinstatement of drainage on the Property in accordance with the requirements of the Surrey Building By-law, 1987, No. 9011 (the "Building By-law").
3. That Council order the clean up of the unsightly Property following the removal of the Building.

## **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 the Building By-law; and
2. Justify the Proposed By-law which would require the Owners of the Property to remove the Building and 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

The Building Division accepted a building permit application from the owners (the "Owners") of the Property.

August 20, 1999

A building permit was issued for the construction of a single family dwelling on the Property. Thereafter, electrical and plumbing permits were also issued for the Property.

September 20, 1999

Building Division staff inspected the Property and determined that the Owners had poured the concrete foundation without either an inspection or approval. Substantial defects in the foundation were noted at that time. A Stop Work Notice was posted on the Property.

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 or approved 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. The survey certificate showed the elevation for the top of the building foundation elevation, but did not include all setbacks from the property lines as required to confirm that the Building was located in accordance with the plans attached to the Building Permit. Mr. McKerricher was advised that the building setback dimensions were 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 re-inspected the Property and found that work had continued on the Building past the September 20, 1999, Stop Work Notice. The Owners had proceeded to complete the framing of the residence, 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 re-inspected the Property and found that there was no further work done on the Building.

May 24, 2000

Building Division staff re-inspected the Property and found that there had been no further work done on the Building.

July 17, 2000

A Section 698 Order requiring the demolition of the Building is introduced in Council and a delegation consisting of the mortgage holder and several subtrades is heard.

July 24, 2000

Council passes Surrey Unauthorized Construction, 2000, By-law No. 14070 pursuant to Section 698 of the *Local Government Act*.

July 24 – present

Efforts made to serve the Owners of the Property with the By-law as required by the *Local Government Act* proved to be very difficult. Service on one of the Owners, Brenda Talley, was completed on March 14, 2001, however the other Owner could not be located. In April, 2001 the City received a copy of a Power of Attorney from Lena Plett which indicated that service could be completed on her daughter, Bernice Rempel. It is recommended that since service can now be completed on the Owners a new hearing pursuant to Section 698 be convened to allow the Owners to present their position to Council as part of the consideration of a new Section 698 Order.

## **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. After the Stop Work Order was posted

on the Building the Owners allowed further work to be completed on the structure contrary to Section 11 of the Building By-law. The work on the Property has proceeded to the point where it is impossible to carry out and complete normal inspections. The exterior siding has been installed as has, as far as we can tell, the interior gyproc. Any inspection that is conducted will be a mere spot check without any ability to ensure that the Building is generally constructed in compliance with the applicable Building Code. Defects have been noticed in the foundations and other areas which indicate that there may be significant structural deficiencies in the Building.

On April 4, 2001 a site visit was made by the Manager of Field Inspections. While the inspector was not able to inspect the interior of the Building, an external inspection was completed and photographs were taken of the site. Those photographs are set out in Appendix "D" to this Section 698 Hearing Report.

A review of the building components indicates that from the foundation construction forward there were severe problems with the construction of the Building. Photographs 2-9 indicate some of the defects in the foundation that are above ground and visible. There are indications that the concrete was poured in stages with honeycombing occurring between the pours and incomplete pours in some areas. In addition, the foundations are out of alignment both horizontally and vertically to a significant degree creating some concern that they may not have the bearing capacity required for single family construction.

The British Columbia Building code (the "Code") stipulates in **Article 4.2.4.1 Design Basis** that the "*design of the foundations, excavations...shall be based on a subsurface investigation...*". There have been no subsurface inspections to confirm that the foundations have been placed on bearing soil and the professional engineer who submitted the B-1 and B-2 Schedules for the design and field review of the structural aspects of the Building did not inspect the foundation before the pouring of the concrete. As a result there is no way of determining the suitability of the soil bearing the foundations without the removal of all fill materials both inside and outside the Building. Such an inspection is simply not practically possible at this point and there are other significant defects in the foundations which require their removal.

The foundations are not plumb and are not square. Normally, foundations are consistently perpendicular to the footings and are not eccentric or inclined unless this is an element which is engineered into the design of the structure. As can be seen in Photographs 2,3 and 9 the foundations are not perpendicular and bend inconsistently at various points.

The Code (**Article 4.2.4.8. Eccentric and Inclined Loads**) requires that where there is an eccentricity or inclination of loading in foundation units, this effect shall be fully investigated and provided for in the design. Since the design of the building was for direct vertical loading and was not intended for eccentric and inclined loading the foundations must be rebuilt or redesigned to meet the Code requirements. Because of other defects in the foundations as listed below it is recommended that the foundations be removed.

Photographs 2-9 show a variety of other defects in the foundations. The red arrows on the photographs indicate areas where gaps between the top of the foundation and the bottom sill plate have been filled with non-structural foam elements. This is not permitted by the Code. In addition, the yellow arrows indicate areas where significant portions of concrete are missing. In these areas it is obviously not possible for the structure to bear properly on the foundations.

The Code (**Article 9.23.2.1 Strength and Rigidity**) requires that all members shall be so framed, anchored, fastened, tied and braced to provide the necessary strength and rigidity. Since the City inspectors are not able to complete an inspection of the framed, insulated and drywalled Building, we are unable to confirm that the Building has been constructed with the required strength and rigidity. However, the members that are visible indicate that the Building probably does not have the required structural integrity.

**Article 9.23.6.1 (Anchorage of Building Frames)** requires building frames to be anchored to the foundation unless a structural analysis of wind and earth pressures shows that anchorage is not required. Photographs 2-8 clearly show that the Building frame is not adequately anchored since there are large gaps between the bottom frame sill plate and the top of the concrete foundation walls. In addition **Article 9.23.7.2 (Levelling of Sill Plates)** requires that sill plates be levelled by setting them on a full bed of mortar, except that where the top of the foundation is level, they may be laid directly on the foundation. In the case at hand, the top of the foundation is severely out of level and it is not possible to level the sill plates with mortar.

Photographs 10–14 and 21 show significant variations from the approved plans in terms of the framing of the structure. For example, photograph 10 shows that the first floor is set out from the second floor, a detail that is not depicted in the plans. Such a defect may indicate that the Building is out of alignment, that bearing joists are not properly aligned or those walls were not properly installed. There is also no indication that there is flashing to prevent the ingress of water at that point. Photographs 11 and 12 depict various overhang features that are not constructed in accordance with the plans and which may indicate misalignment of joists. Certainly the protrusion depicted in photograph 12 indicates that a bearing girder truss has not been properly placed. All of the siding and interior gyproc would have to be removed in order to determine the extent of the improper framing. In light of the other visible defects it would appear that all of the framing will have to be removed in order to reconstruct the framing on rebuilt foundations in accordance with the plans.

The Property Owner for the building permit submitted a truss layout sheet for the Building. That layout sheet indicates that the trusses were designed to be end bearing on the exterior frame walls. The approved permit plans also show the trusses are end bearing on the exterior walls and the roof overhand is hand framed onto the ends of the trusses. Viewing through the exposed soffit area, it appears that some of the truss ends are cantilevered out to provide the roof overhang. The bearing wall below supports the truss on the bottom truss chord and not on the truss bearing end. The trusses were not designed to be supported on the bottom truss chord. The whole roof will need to be removed and the trusses replaced in accordance with plans.

Photographs 13 and 14 indicate that there is significant ponding of water on the flat roof of the garage. This indicates that there is either the absence of adequate drainage or that the roof alignment is defective. Extensive ponding will increase with increased deflection of the supporting members until the water either drains into the garage area and no longer stresses the supporting or the roof breaks.

Photographs 15 and 16 depict a significantly raised driveway along the Property line. The raised area has stressed the adjoining fence and needs to be removed in order to reinstate original drainage patterns in the area. (Section 24, Building By-law)

Photographs 17-21 depict the construction debris which has been left around the Property. Surrey Community Improvement and Unsightly Premises By-law, 1997, No. 13150 states:

*"Rubbish"*

*means decaying or non-decaying solid and semi-solid wastes, including but not limited to both combustible and non-combustible wastes, such as paper, trash, refuse, cardboard, waste material, cans, yard clippings, wood, glass, bedding, mattresses, crates, rags, barrels, boxes, lumber not neatly piled, scrap iron, tin and other metal, scrap paving material, discarded appliances, discarded furniture, dry vegetation, weeds, dead trees and branches, overgrown vegetation and trees which may harbor insect or rodent infestations or may become a fire hazard and piles of earth mixed with any of the above.*

*"Unsightly"*

*describes property having any one or more of the following characteristics:*

- (a) the accumulation of filth, discarded materials, rubbish or graffiti;*
- (b) fences characterized by holes, breaks, rot, crumbling, cracking, peeling or rusting;*
- (c) landscaping that is dead, characterized by uncontrolled growth or lack of maintenance, or is damaged;*
- (d) a lowering in quality of the condition or appearance of a building or structure or parts thereof characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence of physical decay or neglect or excessive use or lack of maintenance; or*
- (e) any other similar conditions of disrepair and deterioration regardless of the condition of other properties in the neighbourhood.*

The prohibition against unsightliness is set out in Section 3 of the Surrey Community Improvement and Unsightly Premises By-law, 1997, No. 13150:

3. *No owner or occupant of property within the City of Surrey shall permit or allow the property to become or remain unsightly.*

The construction debris which has been left on the Property over an extended period of time is in excess of that normally tolerated by the community when construction is in process. In the case of *Sisniegas v. Surrey* the court considered whether extended construction constituted unsightly premises as that term is used in the by-law. The Court stated:

*I accept the position advanced by counsel for the City that a construction site is, by its very nature, 'unsightly', but that it is tolerated as a permissive variation from the norm in a community for a reasonable length of time in order to allow for the development of the community. Where, as here, the work is not completed in a timely manner, it is not reasonable to expect a community to continue to tolerate the unsightly nature of the construction site.*

It is submitted that there is sufficient evidence to support a finding that the Property is unsightly and that it is appropriate therefore, to order that the Property be cleaned up with the removal of the construction and other debris that has accumulated on the site, including the removal of the outbuildings that have been constructed or placed on site without permits.

It is the opinion of the Manager of Field Inspections, who completed the inspections and took the photographs attached in Appendix "D", that due to the apparent defects that are evidenced from the foundations to the roof the only practical solution is to demolish the Building. The Building can not practically be brought into conformance with the provisions of the Code or the City's Building By-law, nor can inspections be completed without dismantling the whole Building, that could determine what remediation work, if any, could remedy the deficiencies. The information set out above supports the passage of an Order requiring the Owner to tear down the Building.

The failure to comply with the site drainage requirements require the removal of the blacktop drive which is located along the side of the Building. In addition, the City has received numerous complaints from neighbours regarding the unsightly condition of the Property and it is in order to require the Property to be brought into conformance with the provisions of the Surrey Community Improvement and Unsightly Premises By-law, 1997, No. 13150.

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 *Local Government 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.

Should Council choose to adopt the Proposed 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 *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*.

The 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 pass the Proposed By-law attached as Appendix "B" ordering the removal of the Building and driveway from the Property, the reinstatement of the drainage on the Property and the removal of all construction debris and unauthorized outbuildings.

Murray D. Dinwoodie  
General Manager  
Planning & Development Department

RGH/rgH

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

Sections 269, 376 and 698 of the *Local Government Act*

Surrey Building By-law, 1987, No. 9011

Surrey Unightly Premises By-law, 1997, No. 13150

c.c. - Manager, Building Division  
- City Solicitor