



# Corporate

NO: R157

# Report

COUNCIL DATE: July 9, 2001\_

<b>REGULAR COUNCIL</b>			
TO:	<b>Mayor &amp; Council</b>	DATE:	<b>June 14, 2001</b>
FROM:	<b>General Manager, Planning &amp; Development</b>	FILE:	<b>12121-10170</b>
SUBJECT:	<b>Partially Constructed Dwelling at 12121 - 101B Avenue</b>		

## RECOMMENDATION

1. That Council pass the By-law 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 partially constructed dwelling at 12121 - 101B Avenue (the "Property") to be in contravention of Surrey Community Improvement and Unsightly Premises By-law, No. 13150 (the "Unsightly By-law"); and
2. That Council order the demolition and removal of the wood framing of the partially constructed dwelling on the Property and backfilling of the basement cavity.

## INTENT

The intent of this report is to respond to Council's request for staff to bring forward a By-law that would require the owner of the property to demolish and remove the partially constructed dwelling located on the Property and to remediate the Property by backfilling the basement cavity.

## BACKGROUND

At the Monday, May 14, 2001 Regular Council meeting, Council adopted a motion that staff be directed to prepare the appropriate by-law/order under either Section 698 or Section 727 of the *Local Government Act*, regarding the Property and report back to Council at the earliest opportunity.

## HISTORY

The subject lot was created by subdivision in 1990 and is not subject to a building scheme. A building permit for the single family

dwelling on the Property was issued in 1993 to the previous owner of the Property, SZ Projects Limited. The corporate principals of the current owner, CIC Management Limited, have owned the Property under various corporate names since 1994.

Construction of the dwelling has proceeded slowly and sporadically since the installation of the piling for the foundation in 1993 and the pouring of the foundation in 1997. Currently, the dwelling is at the framing stage.

In 1998 a Stop Work Order was applied to the dwelling and in December 1998, the Property was the subject of an Order under Section 698 of the *Local Government Act* which required that the stabilization of the slopes and structures on the Property. The stabilization work proceeded very slowly, and while the owner indicates that the work necessary to stabilize the slope and structures has been completed, the owner has not yet submitted the geotechnical engineer's final certification in this regard.

The wood framing has been exposed to the elements for approximately three years. The primary concern in this regard relates to the extent of the deterioration of the wood framing. The partially framed building has been left exposed to the elements over this period of time without a roofing membrane and with no windows or doors installed. As a result, the flooring in some areas has rotted. In general, the wood members are laced with mold and rot. Structural considerations aside, recent studies indicate that there can be serious health risks associated with molds on wood framing members in buildings.

Due to the extended period over which the wood framing has been exposed to the elements, the City has had the wood framing assessed by a private consultant (report attached as Appendix "H"). The report confirms that widespread deterioration has occurred and that many of the wood-framing members are no longer structurally adequate. The owner has recently installed a temporary roofing membrane in an attempt to protect the exposed wood, but unfortunately, a great deal of damage has already occurred.

The primary concern at this time is the unsightly condition of the partially constructed building, coupled with the likelihood that the wood framing may ultimately have to be demolished and removed in any event.

## **DISCUSSION**

Staff in the Building Division and in the Legal Services Division have received complaints from area residents regarding the state of the unfinished dwelling. The owner has been contacted and made aware of these concerns and has repeatedly informed staff that the construction delay is due to financial constraints.

The owner has generally followed the regulations of the Surrey Building By-law, 1987, No. 9011 (the "Building By-law"), attached as Appendix "F" and has obtained the inspection approvals at the required stages of construction. In reviewing the issue of whether the owner can be required to complete the construction, there are no provisions in the Building By-law for requiring an owner to complete a building project within a specific time frame once construction has started. Under the Building By-law, the building permit is ongoing and valid. In the near future, it is the intention of the Planning & Development Department to submit a report to Council recommending a revision to the Building By-law to incorporate a time limit to complete construction under a building permit.

The building, left partially constructed 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 Unsightly By-law

(attached as Appendix "G"). 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 (Photographs attached as Appendix "D") and in contravention of the requirements of the Unsightly By-law. It is appropriate, in light of the deteriorated condition of the structure, to order that the Property be cleaned up with the demolition and removal of the wood framing of the partially constructed dwelling on the Property and the backfilling of the basement cavity. If Council determines that the Property is unsightly, then it may pass a by-law pursuant to Section 698 of the *Local Government Act* (attached as Appendix "E"), which provides:

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 owner to demolish the wood framing of the partially constructed dwelling on the Property, and backfill the basement cavity, as well as remove all construction debris from the Property and allows thirty (30) days for completion of the work.

In the event that the owner fails to carry out the necessary work 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 owner's expense, using Section 269 of the *Local Government Act* as its authority. Section 269 provides:

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.*

Any unpaid amounts may be collected as a debt or unpaid taxes pursuant to Section 376 of the *Local Government Act* (attached as Appendix "E").

A copy of this report has been provided to the owner at least 14 days in advance of the hearing date at which this report will be considered by Council and the owner or his representative may, as is their entitlement, appear before Council as a delegation to speak to this report and the related By-law.

Legal Services has reviewed this report.

## CONCLUSION

Based on the foregoing information regarding the partially constructed dwelling on the Property, it is recommended that Council determine that the Property is in contravention of the Surrey Community Improvement and Unsightly Premises By-law and adopt the Proposed By-law attached as Appendix "B".

Murray D. Dinwoodie  
General Manager  
Planning & Development Department  
JKM/bea/saw/8133

Attachments

- Appendix "A" - Notice to Owner
- Appendix "B" - Proposed By-law
- Appendix "C" - Description of the Property Owners and Persons Having a Financial Interest in the Property
- Appendix "D" - Photographs and Site Plan
- Appendix "E" - Sections 269, 376 and 698 of the *Local Government Act*
- Appendix "F" - Surrey Building By-law, 1987, No. 9011
- Appendix "G" - Surrey Unsightly Premises By-law, 1997, No. 13150
- Appendix "H" - WSB report on wood framing members