



Corporate Report

NO: R135

COUNCIL DATE: June 7, 2004

REGULAR COUNCIL

TO: Mayor & Council DATE: May 25, 2004
FROM: General Manager, Planning FILE: 3527-14950
and Development
SUBJECT: Notice Against Title of Property at 3527-149A Street –
Construction Inspection Irregularities

RECOMMENDATION

It is recommended that Council direct the City Clerk to file the notice set out in Appendix "A" (the "Notice"), pursuant to Section 57 of the *Community Charter*, S.B.C., 2003, c.26, as amended (the "*Community Charter*"), against the title of the property at 3527 – 149A Street and more particularly described in Appendix "B" (the "Property"), due to non-compliance with the Surrey Building By-law, 1987, No. 9011 (the "Building By-law").

INTENT

The purpose of this report is to inform Council that a building was constructed on the Property contrary to the Building By law and to present information supporting a recommendation that Council adopt a resolution directing the filing of a Notice against the title of the Property. The Notice will notify the owners, those holding an interest in the Property and prospective purchasers that the City of Surrey Building Division did not conduct the framing and insulation inspections on the building, as required in the Building By-law.

BACKGROUND

On February 26, 2003, the owners of the Property, received a building permit (No. 03 01115-0-0) to construct a dwelling on the Property. The foundation forms for the dwelling were inspected and approved by Building Division staff on March 14, 2003. On May 7, 2003, the under-slab poly was inspected and approved by Building Division staff. On June 19, 2003, an inspection of the Property by Building Division staff revealed that the dwelling had been insulated without approval. The building inspector left an inspection slip at the Property that noted that cross ventilation is required for the deck over the living area and that the exterior sheathing only was approved to be covered. The inspection slip further indicated that the framing had not been inspected and approved. The owners were requested to remove all of the vapour barrier and insulation to permit City staff to conduct the framing inspection. On September 2, 2003 the building inspector posted a Stop Work Notice at the Property because the owners of the Property were applying drywall to the dwelling without having obtained the required framing inspection.

On September 15, 2003 a letter was forwarded to the owners to advise them of the Stop Work Order. The correspondence indicated that work on the building could not continue until the necessary framing and insulation inspection approvals were issued by the City. The owners were advised that, in the absence of such inspection approvals, the City would not be in a position to grant either provisional or final occupancy approval and that any occupancy of the premises would be contrary to the Building By-law. The owners were advised that remediation of the inspection deficiency would require that the drywall, vapour barrier and insulation be removed from the building so that the City building inspector could conduct the required inspections as required by the Building By-law.

Recognizing that the removal of the drywall, vapour barrier and insulation would be a very significant task, the owners questioned whether there was an alternative method for achieving final occupancy approval from the City. After careful consideration and in view of the fact that an engineer had been involved in the project from its design through construction, the owner was advised final occupancy approval may be considered by the City if:

- the Engineer of Record (the "Engineer") submitted a letter to the City indicating that the Engineer had inspected all of the framing and insulation in the building and that those components of the building meet the requirements set out in the 1998 British Columbia Building Code; and
- City Council, acting pursuant to section 57 of the *Community Charter*, authorized the posting of a notice on the title of the Property at the Land Title Office identifying the building inspection deficiencies.

The owners have decided to pursue this latter approach and have submitted documentation from an Engineer for the framing and insulation inspections on the dwelling and have requested that the matter be forwarded to Council for consideration. The dwelling has now been completed. However, final inspection approval has not been granted due to the outstanding framing and insulation inspections.

DISCUSSION

The owners completed construction of the dwelling on the Property without obtaining the framing and insulation inspections from the City's Building Division. By covering the walls with insulation, vapour barrier and then drywall the owners prevented the City building inspector from conducting any meaningful inspections to determine whether the construction complied with the applicable regulations in the Building Code. While the Engineer has submitted documentation to the Building Division indicating that he is taking responsibility for the framing and insulation aspects of the construction that were not inspected by the City's building inspector, the City is not in a position to confirm, in view of the history of the construction of the building, that the Engineer was able to perform the inspection process that is required by the Building By-law.

In view of the above, it is recommended that, pursuant to Section 57 of the *Community Charter*, the Notice be placed on the title of the Property informing both the owners and those having an interest in purchasing or investing in the Property that the City did not conduct the framing and insulation inspections on the building on the property and has relied on the certification of the Engineer for the subject inspections. This will provide reasonable notice to third parties regarding the inspections related to the Property and will assist in addressing the risk to the City of the irregularities in the inspections process.

If Council declines to adopt the resolution, a notice will not be placed on title and the Building Division will require the owner to remove the drywall, vapour barrier and insulation to permit inspection of the building, as the City has no authority to grant occupancy approval until all of the inspections required by the Building By-law have been completed.

Section 57 states in part:

57. (1) A building inspector may recommend to the council that it consider a resolution under subsection (3) if, during the course of carrying out duties, the building inspector

- (a) observes a condition, with respect to land or a building or other structure, that the inspector considers
 - (i) results from the contravention of, or is in contravention of,
 - (A) a municipal bylaw,
 - (B) a Provincial building regulation, or
 - (C) any other enactment

that relates to the construction or safety of buildings or other structures, and

- (ii) that, as a result of the condition, a building or other structure is unsafe or is unlikely to be usable for its expected purpose during its normal lifetime, or,

- (b) discovers that
 - (i) something was done with respect to a building or other structure, or the construction of a building or other structure, that required a permit or an inspection under a bylaw, regulation or enactment referred to in paragraph (a) (i), and
 - (ii) the permit was not obtained or the inspection not satisfactorily completed.
- (2) A recommendation under subsection (1) must be given in writing to the corporate officer, who must
 - (a) give notice to the registered owner of the land to which the recommendation relates, and
 - (b) after notice under paragraph (a), place the matter before Council.
- (3) After providing the building inspector and the owner an opportunity to be heard, the council may confirm the recommendations of the building inspector and pass a resolution directing the corporate officer to file a notice in the land title office stating that
 - (a) a resolution relating to that land has been made under this section, and
 - (b) further information about it may be inspected at the municipal hall.

The City Clerk has notified the owners and those having an interest in the Property that the resolution to place the Notice on the title of the Property will be considered by Council on June 7, 2004 (see Appendix "C") and they will be given an opportunity to be heard at that meeting.

The Deputy City Solicitor has reviewed and is in agreement with the text of the Notice, as documented in Appendix "A".

CONCLUSION

Based on the foregoing information regarding the Property, it is recommended that Council authorize the City Clerk to file the Notice set out in Appendix "A", pursuant to Section 57 of the *Community Charter*, against the title of the Property described in Appendix "B", due to non-compliance with the Building By-law. Subject to Council approval and the Notice being placed on title, the Building Division will issue final occupancy for the dwelling on the Property.

Murray Dinwoodie
General Manager
Planning and Development

HH/kms/saw

Attachments

Appendix "A" - Notice

Appendix "B" - Description of the Property, Registered Owners & Those Having an Interest in the Property

Appendix "C" - Notice to Property Owners

Notice of Contravention & Land Title Act Application

Land Title Act

FORM 17

(Sections 154,155(1), 241)

APPLICATION

Note: Before submitting this application for interests under (1) and (2), applicants should check and satisfy themselves to the tax position, including taxes of the Crown Provincial, a Municipality and Improvement, Water and Irrigation Districts.

NATURE OF INTEREST:

(1) FEE SIMPLE:	<input type="checkbox"/> Market Value: _____ Parcel Identifier No.: _____ _____
(2) CHARGE:	<input type="checkbox"/> Parcel Identifier: 025-456-555 <div style="text-align: center; font-size: 1.2em; font-weight: bold;"> Nature of Charge: Notice Against Title </div>
(3) CANCELLATION OF CHARGE:	<input type="checkbox"/> Nature and Number of Charge Cancelled: _____

HEREWITH FEES OF: \$ _____

As to (1) and (2) ADDRESS of person entitled to be registered as owner, if different than shown in the instrument:

City of Surrey, 14245-56th Avenue, Surrey, B.C. V3X 3A2

As to (3) FULL NAME of person entitled to cancellation who or on whose behalf the application is made:

LEGAL DESCRIPTION, if not shown in instrument being submitted with this application:

FULL NAME, ADDRESS, TELEPHONE NUMBER of person presenting application:

Signature of

Applicant, Solicitor or Authorized Agent

(TO BE PRINTED ON CLERK'S LETTERHEAD)

COMMUNITY CHARTER
S.B.C., 2003, c. 26, Section 57 as amended

NOTICE OF CONTRAVENTION

TO: Registrar of Titles

TAKE NOTICE that the land described below is subject to a Resolution passed by the Council of the City of Surrey pursuant to Section 57 of the *Community Charter*, S.B.C., 2003, c. 26 as amended. Further information respecting the Resolution may be inspected at the office of the City Clerk of the City of Surrey.

PARTICULARS OF NOTICE

1. Type of Notice: Notice of contraventions of the City of Surrey Building By-law, 1987, No. 9011, as amended
2. Notice: A dwelling has been constructed and completed on the land described below without the necessary City inspections or approvals at the framing, insulation and vapour barrier stages of construction, contrary to the provisions of the City of Surrey Building By law, 1987, No. 9011, as amended. Occupancy approval for the dwelling does not constitute approval of those elements of the construction which would or could have been inspected at the framing, insulation or vapour barrier stages of construction.
3. Statutory Authority: *Community Charter*, S.B.C., 2003, c. 26, Section 57 as amended
4. Legal Description of Land Affected:

Parcel Identifier: 025-456-555

Lot 20 Section 27 Township 1 New Westminster District Plan BCP428

5. Resolution Date: _____
6. File No. _____

DATED the ____ day of _____, 2004.

CITY OF SURREY

Marg Jones, City Clerk

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SAW 6/7/04 9:43 AM

Appendix "B"

Description of Property, Registered Owners & Persons Having an Interest in the Property

Legal Description:

Parcel Identifier: 025-456-555
Lot 20 Section 27 Township 1 New Westminster District Plan BCP428

Civic Address:

3527 - 149A Street

Registered Owners:

Ashish Arora
Savita Arora
6715 - 122A Street
Surrey, B.C.
V3W 0L9

Charges, Liens & Interests:

CIBC Mortgages Inc.
5th Floor 400 Burrard Street,
Vancouver, B.C.
V6C 3A6

Valley Truss Ltd.
5265-192nd Street
Surrey, B.C.
V3S 8E5

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SAW 6/7/04 9:43 AM

Appendix "C"

Notice

To: Ashish Arora
Savita Arora
6715 - 122A Street

Surrey, B.C. V3W 0L9

Re: 3527 - 149A Street, Surrey, B.C.

YOU ARE HEREBY NOTIFIED that on the 7th day of June, 2004, at 7:00 p.m. the Council of the City of Surrey will consider a resolution to authorize the City Clerk to file a Notice, a copy of which is attached hereto, pursuant to Section 57 of the **Community Charter**, S.B.C. 2003, c. 26, as amended, against the title of the parcel of land in the City of Surrey, in the Province of British Columbia, which is more particularly known and described as:

Parcel Identifier: 025-456-555

Lot 20 Section 27 Township 1 New Westminster District Plan BCP428

YOU ARE FURTHER NOTIFIED that Council will be requested to authorize the placement of the Notice on Title of the above noted property due to a contravention of the Surrey Building By law, 1987, No. 9011. The building inspector has observed a contravention of the Building By-law, specifically that the inspections required under the Building By-law were not satisfactorily completed. The construction of the dwelling was completed without obtaining the frame and insulation inspection approvals, from the building inspector, as required by the Building By-law.

YOU ARE FURTHER NOTIFIED that Council will be reviewing a report from the General Manager, Planning and Development who will be given an opportunity to be heard. As the registered owners of the property you will also be given an opportunity to be heard.

THIS NOTICE is given by the City of Surrey this 27th day of May, 2004.

Susan Palmer, Acting Deputy Clerk

c.c. CIBC Mortgages Inc.

5th Floor 400 Burrard Street

Vancouver, B.C. V6C 3A6

Valley Truss Ltd.

5265 - 192nd Street

Surrey, B.C. V3S 8E5

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