



Corporate Report

NO: R288

COUNCIL DATE: November 29,

2004

REGULAR COUNCIL

TO: Mayor & Council DATE: November 24,
2004

FROM: General Manager, Planning and Development FILE: 3900-20-15244

SUBJECT: New Surrey Building By-law, 2003, No. 15244 and
Related Policies and Procedures

RECOMMENDATION

It is recommended that Council:

1. Authorize the City Clerk to bring forward, for the required readings, an amendment to the new Surrey Building By-law, 2003, No. 15244, that will defer the date that the by-law becomes effective from January 2, 2005 to June 1, 2005; and
2. Confirm by resolution, that the current Surrey Building By-law, 1987, No. 9011, as amended, will remain in force and be applicable to all in-stream building permit applications received before June 1, 2005, provided that such applications are complete.

BACKGROUND

At its Regular Meeting on December 12, 2003, Council considered Corporate Report No. R258 (Appendix I) that recommended that Council adopt a new building by-law. Council adopted the recommendations of that report and at that same meeting gave first second and third readings to a new building by-law known as Surrey Building By law, 2003, No. 15244. At its regular meeting on December 15, 2003, Council adopted Surrey Building By-law, 2003, No. 15244 (the "new By-law").

The adoption of the new By-law was timed to precede the enactment of the *Community Charter*, S.B.C. 2003, c.26, which occurred on January 1, 2004, the effects of which were not certain at the time. There was concern that the *Community Charter* would limit the City's autonomy insofar as the adoption of a new building by-law. As a result of these concerns, the new By law was drafted quickly at the end of 2003 and it was recognized, as documented in Corporate Report No. R258, that the new By-law, as adopted, would need to be further refined before it became effective. As such, even though it was adopted by Council in December 2003, the new By-law provided that it would not come into effect until August 3, 2004. The new By-law also provided that all complete building permit applications received prior to August 3, 2004, would be processed under the provisions of the current Surrey Building By-law, 1987, No. 9011.

On July 5, 2004 Council considered Corporate Report No. R169 that recommended a further deferment of the effective date of the new By-law to January 2, 2005. This rescheduling was requested to allow staff time to continue the process of completing refinements to the new By-law and to develop a full set of policies and procedures for the administration of the new By-law that would act to limit the City's potential liabilities related to the administration of the new By-law. Council approved this recommendation and adopted an amendment to the new By-law, such that it would take effect on January 2, 2005.

DISCUSSION

Refinements to the new By-law have now been completed, but the drafting of the policies and procedures in support of the administration of the new By-law have not yet been fully completed, primarily due to the very heavy volume of building permit applications that the Building Division has experienced during the year. Building Division staff focussed their efforts in processing the building permit applications in a timely manner. As such, some additional time is necessary to complete the drafting of the policies and procedures related to the new By-law.

It is estimated that it will take another month to complete the work of drafting the policy and procedures, at which time a further Corporate Report will be forwarded to Council recommending amendments to the new By-law to incorporate the refinements that have been identified during the last year and to obtain approval from Council of the new policies and procedures in support of the new By-law. Subject to Council approval of the recommended refinements, it is estimated that the new By-law should be adopted by the end of February, 2005. The new By-law will, in some respects, change the manner in which the development industry conducts business with the City. Accordingly, it is considered appropriate to allow some time between the adoption of the finalized new By-law and its effective date, during which time the development industry will have an opportunity to become familiar with the requirements of the new By-law and to make the necessary adjustments. It is estimated that three months should be adequate for this purpose. On this basis, it is recommended that the effective date for the new By-law be changed to June 1, 2005.

CONCLUSION

Based on the above, it is recommended that Council authorize the City Clerk to bring forward for the required readings an amendment to the new Surrey Building By-law No. 15244 that will defer the date that the by-law becomes effective from January 2, 2005 to June 1, 2005 and confirm by resolution that the current Surrey

Building By-law, 1987, No. 9011, as amended, will remain in force and be applicable to all in-stream building permit applications received before June 1, 2005, provided that such applications are complete.

Murray Dinwoodie
General Manager
Planning and Development

JKM/kms/saw

Attachments:

Appendix I Corporate Report No. R258 (without attachment)

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Appendix I

Corporate Report

NO: R258

COUNCIL DATE: Dec. 12/03



SPECIAL (REGULAR)

TO: Mayor & Council **DATE: December 11, 2003**

FROM: City Solicitor & General Manager **FILE: 3900-20-15244**
Planning & Development

SUBJECT: New Building By-law

RECOMMENDATION

It is recommended that Council:

1. Authorize the City Clerk to bring forward for the required readings a proposed new Surrey Building By law that is attached as Appendix "A" to this report, which if adopted by Council will apply to building permit applications received on or after August 3, 2004; and
2. Confirm that the existing Surrey Building By law, 1987, No. 9011, as amended ("By law No. 9011") will remain in force and be applicable to all in-stream building permit applications received before August 3, 2004 provided that such applications are complete.

INTENT

The intent of this report is to seek Council authorization to bring forward for the required readings a new Building By law (the "By law") that is designed to limit the City's exposure to liability arising from building construction in the City while streamlining the building plan approval, site visit and Building Code compliance process and maintaining the high quality of buildings constructed in the City of Surrey.

BACKGROUND

Recent Developments in Municipal Liability for Negligent Inspections

The British Columbia court decision on "*leaky condos*" related to the Delta case has demonstrated to municipalities the harsh and arbitrary outcome of the operation of the principle of joint and several liability. Under this principle, an award for damages in building inspection cases can fall disproportionately on local government, despite the local government being found liable for a relatively small percentage of the fault for the loss. Under joint and several liability, where a lawsuit judgment is made in favour of the complainant, the complainant may demand that any one of the defendants (who under the judgment was found liable for some percentage of the claim) pay to the complainant the entire amount of the judgment. That defendant then must take action to collect back from the other liable defendants their proportionate share of the judgment. In many cases, the other defendants are not solvent and it is difficult, if not impossible, to recover their proportionate share of the judgment. In most circumstances, the complainant sees the municipality as being the most solvent of the defendants and, therefore, the complainant demands that the municipality pay the judgment, leaving the municipality with the onerous task of attempting to collect from the other defendants their proportionate share of the judgment.

Issuance of building permits by local government Building Division staff based on design plans that are faulty or the non detection of construction errors by municipal inspectors are the main sources of municipal liability. The cost of

maintaining the level of staff resources that would be necessary to detect substantially all potential errors in the design and construction process on every building would impose an unreasonable financial burden on local governments. The existing process followed by the Building Divisions of local governments involving design review and spot inspections leaves the local government widely exposed to becoming the "*de facto*" insurer for new buildings related to building design and construction deficiencies.

Despite submissions by the City of Surrey and the Union of British Columbia Municipalities to the Province on the need to reform the principle of joint and several liability, there is no indication that the Province intends to make any changes in this regard.

In response to the significant financial exposure to claims brought about due to municipal building staff being involved in the building construction process through design review and spot inspections, a model "Core By law" was prepared by legal counsel for the Municipal Insurance Association apparently in consultation with industry, building professional and municipal stakeholders. The Core By-law formed the basis for the development of a new Building By law for Surrey. The proposed new Surrey Building By-law incorporates many of the policy prescriptions of the Core By law while, as discussed later in this report, carrying forward some key provisions and innovations of the existing Surrey Building By law No. 9011.

The policy departure of the new By law is to delegate the responsibility to professionals for ensuring that building construction is carried out in substantial conformance with the building design for which a building permit is issued and within the provisions of the B.C. Building Code.

The proposed new Building By-law is focussed primarily on maintaining a high quality of building construction in the City of Surrey so as to maintain a positive investment climate in the City while at the same time attempting to effectively manage the City's exposure to risk as a result of its continuing involvement in the building review and approvals processes.

DISCUSSION

Effective Date of By law

It is proposed that the By law take effect on August 3, 2004, so that new policies and procedures can be developed in support of the new By-law to guide owners, builders, contractors, architects, engineers and other building professionals in fulfilling their respective responsibilities under the new By law, the Building Code and other applicable enactments relating to building safety. It is noted that there will likely be a need to refine the new By-law prior to August 3, 2004 as the policies and procedures are developed.

These proposed City policies will also define the role of the City's building staff in the keeping of records, site visits and spot checks, and the making of orders to correct any work done in contravention of the new By law or in an unsafe manner.

It is recommended that Council adopt the new By law before January 1, 2004, the date the *Community Charter* (the "*Charter*") comes into force. This relates to the fact that the *Charter* requires that by laws addressing building standards in British Columbia be approved by the Minister, an action not required under the *Local Government Act*. This approval is to be given by order under a regulation or an agreement with the Province. Previously, a municipality could "*top up*" building standards (e.g. fire sprinklers) provided that they were not less than the requirements of the B.C. Building Code and were not in conflict with the B.C. Building Code (e.g. where the code was silent) without provincial approval.

The *Charter* has established five areas of provincial municipal concurrent regulatory authority, one of which is building regulation, in addition to public health, protection of the natural environment, wildlife and prohibition of soil removal or prohibition of soil deposit on the basis of soil quality. To date the Province has not produced any framework to address its conditions for approval of new municipal building by laws.

Given the uncertainty over the process that the Province will follow in determining whether it will grant approval to

new building by laws after January 1, 2004 and the City's need to update its by law based on liability concerns, it is recommended that the proposed new Building By law be adopted before January 1, 2004. As stated previously, it is recommended that the new By law come into force on August 3, 2004. The intervening period will allow time to put into place appropriate companion policies and procedures to complement the By law. For practical reasons, applications received on or before August 2, 2004 will be subject to the provisions of the current Building By law, No. 9011.

Certified Professional Program

Since 1991 the City has offered a "Certified Professionals (CP) Program" similar to that of Vancouver's (see the By law, s. 20). Developers and contractors value this program because it allows projects to be fast tracked saving considerable time and financial resources. Under this CP Program, a builder can retain, in lieu of the City's normal building permit and inspection process, a private sector "Certified Professional" to certify the building plans related to the building permit application as compliant with all Codes and other applicable regulations and requirements and to undertake and certify construction inspections confirming that construction of the building is in compliance with the certified plans and all other applicable Codes and regulations. This process is intended to offer builders an option to using City resources and thereby to leave more of the process under their control. Inspections by the Certified Professional can be done after hours and on weekends, which further expedites construction and building completion.

This CP Program essentially privatizes and delegates the building plan checking and inspection process in a package to CPs that have completed special training. The CP Program applies to Building Code Part III Complex Buildings or buildings exceeding 600 square metres in building area or exceeding two storeys in height, and classified as multi family residential or business occupancies, or medium and low hazard industrial occupancies (collectively referenced in this report as "complex buildings"). Under the CP Program an architect or engineer may qualify as a certified professional by applying to the General Manager, Planning & Development, completing prescribed courses and fulfilling certain professional requirements. This CP Program essentially delegates plan checking, building inspections, certification, and life safety approvals to the Certified Professionals.

Both the current and the proposed Building By laws disclaim any warranties and representations made by the City in respect of materials, workmanship and code compliance that could be implied through the issuance of a permit or any site visits by City staff. It describes the reliance of the City on the plan checking, building inspections, field reviews and letters of assurance given by registered professionals.

Registered Professionals and Complex Buildings

Under the proposed Building By-law, all building permit applications related to complex buildings will require the use of registered professionals in the inspection, supervision and Building Code compliance process. While the By-law carries forward the CP Program described in the previous section of this report, in a major departure from By law No. 9011, it introduces for all complex buildings the concept of inspections, field reviews and letters of assurance by registered professionals before building occupancy can be granted. Under the proposed By-law, the inspections and field reviews of and certification of every complex building is delegated by the City to registered professionals retained by the owner of the building. This differs from the CP Program in that the plan checking function will continue to be done by the City. Also, the registered professionals do not have to be certified by the City. The proposed Building By-law defines who is qualified as a "registered professional".

Letters of assurance as to the design, inspection and completion of the building must be signed by the owner and the registered professionals prior to the City issuing final occupancy for any complex building. The City is entitled under the By law to rely solely on the inspections and field reviews undertaken by the registered professionals as assurance that construction conforms to the building plans attached to the building permit and the Building Code. Provision (s. 17) is made for site visits by building officials to ascertain that the registered professionals are in fact undertaking field reviews.

The By law also sets out clearly what is required of owners and their registered professionals and will act to limit the City's liability in relation to the construction of complex buildings while still ensuring the high quality of buildings constructed in the City.

Simple Buildings (Part 9 Buildings)

The By law introduces a new definition for "simple buildings" (s. 10). A detached single family dwelling is a typical simple building being constructed in the City. For building permits related to simple buildings, the City's Building Division staff will continue to be involved in checking the plans. The proposed By-law sets out comprehensive building permit application requirements for simple buildings (s. 10).

In relation to simple buildings, the requirement to have registered professional certification is limited to the foundation design. However, at the discretion of Building Division staff, additional registered professional certifications may be required where the project involves two or more buildings or complex sites. These professional services include details of off site services, and the geotechnical, structural, electrical, mechanical and/or fire suppression aspects of the project.

Exemption Where Value of Construction Under \$2,000

The proposed Building By-law makes provision (see s. 5.3) that Building Division staff may waive the filing of plans in conjunction with a building permit application if the character of the construction is sufficiently described in the application and the value of the new construction does not exceed \$2,000. This same provision is contained in the current Building By-law, but is limited to construction with a value under \$1,000.

Other Building By law Provisions

All other provisions of the current Building By law except as otherwise generally documented in this report are being carried forward in the proposed new By law.

CONCLUSION

This report is recommending the adoption of a new Building By law that focuses primarily on maintaining a high quality of building construction in the City of Surrey so as to maintain a positive investment climate in the City while at the same time bringing an added measure of effectiveness in managing the City's exposure to risk related to its continuing involvement in the building review and approvals processes in comparison to the current Building By law. The new By law is proposed to come into effect on August 3, 2004 so as to allow time for staff to prepare complementary policies and procedures in support of the new By law.

On this basis, it is recommended that Council:

1. Authorize the City Clerk to bring forward for the required readings the proposed new Surrey Building By law that is attached as Appendix "A" to this report that if adopted by Council will apply to building permit applications received on or after August 3, 2004; and
2. Confirm that the existing Surrey Building By law, 1987, No. 9011, as amended ("By law No. 9011") will remain in force and be applicable to all building permit applications received before August 3, 2004 provided that such applications are complete.

Original signed by

CRAIG MacFARLANE
City Solicitor

Original signed by

MURRAY DINWOODIE
General Manager
Planning and Development

CM:mlg

Encl.