

Corporate Report

NO: R144

COUNCIL DATE: June 13, 2005



REGULAR

TO: Mayor & Council DATE: May 30, 2005
FROM: City Solicitor FILE: 5400-80-01850
SUBJECT: Unlawful Construction at 13733 – 18A Avenue

RECOMMENDATION

1. That Council declare that:
 - (a) the erection of the domed structure (the "Structure") on the lands located at 13733 – 18A Avenue (the "Property") contravenes the City's building by-law, as it was built without first obtaining a building permit from the City; and
 - (b) having been erected without the required permits, the Structure is in an unsafe condition.
2. That pursuant to Section 72 of the *Community Charter*, S.B.C. 2003, c. 26 (the "*Community Charter*") Council pass a resolution imposing a remedial action requirement on the owner of the Property in the following terms:

That the owner of the Property remove or demolish the Structure within 30 days of delivery of notice of the remedial action requirement, which removal or demolition shall be in compliance with all City of Surrey by-laws and other applicable statutes and guidelines.
3. That Council pass a resolution:

That if the owner of the Property fails to comply with the remedial action requirement by the date specified, the Manager, Building Division, together with workers employed by the City of Surrey, are authorized to enter on the Property and to complete the remedial action requirement. The remedial action will be completed at the expense of the owner of the Property and the City of Surrey will recover the expense, together with interest and costs, in the same manner as municipal taxes.
4. That Council pass a resolution:

That notice of the remedial action requirement set out above be sent in the form set out in Appendix "A" to all persons who own or occupy the Property, as well as all holders of registered charges in relation to the Property.
5. That Council pass a resolution:

That any person served with notice of the remedial action requirement set out above must provide the City with written notice of a request for Council to reconsider the remedial action requirement within 14 days of delivery of the notice of the remedial action requirement.

INTENT

It is the intent of this report to provide Council with information regarding the recent usage of the Property and the contravention of the City's building by-law and unsafe condition of the Property.

HISTORY

February 2, 1989

A building permit is issued by the City to build a single family dwelling at the Property. The house received final approval on June 21, 1989.

June 27, 2003

Darren James Eaton purchased the Property.

October 17, 2003

The City received a complaint that a structure had been erected on the east side of the Property during the last week of September 2003.

October 20, 2003

A By law Enforcement Officer for the City attended and noted that a silver coloured domed structure had been erected on the driveway on the east side of the Property. The Structure consisted of five u shaped metal poles, with each of the ten metal support brackets secured to the exposed aggregate driveway with two bolts. A silver coloured tarp was tied on over the metal supports enclosing the entire Structure. The Structure is 7.3 metres in length, 3.4 metres in width and 2.8 metres in height. The entire Structure covers 24.8 square metres and is sited within 4.3 metres of the front lot line which borders 137A Street. No building permit was applied for or issued for the erection of the Structure. Under the applicable RH-G zoning, any permitted buildings or structures must be located at least 7.5 metres from the front lot line. In this case, the distance from the Structure to the road is approximately 4.1 metres.

October 21, 2003

A Building Inspector for the City of Surrey attended the Property and as a result, sent a letter dated November 20, 2003 to the owner advising that the construction had been carried out without the necessary building permit in contravention of the City's Building By law and that the siting of the Structure was contrary to the setback requirements of the Zoning By law. The owner was given 30 days to either obtain a building permit to relocate the Structure to comply with the Zoning By law or to remove the Structure from the Property.

December 13, 2003

Two By law Enforcement Officers for the City attended the Property and met with the owner, Darren James Eaton. The owner indicated that he had not received the letter from the Building Inspector. One of the By law Enforcement Officers provided him with a copy of the letter.

March 10, 2004

A By law Enforcement Officer attended at the Property and noted that the Structure was still there. The Officer met with the owner and discussed the situation. The owner had admitted that he erected the Structure on the Property and he was given two weeks to comply with the City's by laws. The next day, the By law Enforcement Officer telephoned the owner who advised that he was going to consult with a lawyer. The Officer said that he would contact the owner again on March 24, 2004 for his decision as to what he was going to do about the Structure.

March 19, 2004

A By law Enforcement Officer contacted the owner and explained the process for making an application to the Board of Variance to allow for a relaxation of the setback requirements. It was left to the owner to decide whether he wanted to make such an application.

March 27, 2004

A By law Enforcement Officer attended the Property and met with the owner. The owner advised that he had attended at City Hall and picked up the information package regarding the Board of Variance and that he would be making an application to the Board.

April 27, 2004

A By law Enforcement Officer telephoned the owner who advised that he would not be making an application to the Board of Variance. A second complaint was then received by the City of Surrey.

April 28, 2004

A By law Enforcement Officer attended at the Property, and took measurements and photographs of the Structure. A copy of those photographs is attached as Appendix "C".

June 15, 2004

The owner telephoned the By-law Enforcement Officer to advise that he had tentatively sold the Property although he did not think he could meet all of the conditions of sale. The owner also indicated that he was contemplating approaching the Building Division to inquire about an extension on to his garage. The Structure is being used by the owner as a garage. The Officer advised the owner that the City would take further action pursuant to the remedial action requirements of the *Community Charter* if the Structure was not removed.

March 11, 2005

A By-law Enforcement Officer reattended at the Property. The Structure was still there. A number of photographs were taken which are also attached as Appendix "D" to this report.

April 18, 2005

A By-law Enforcement Officer hand delivered a letter dated April 14, 2005 to the Property owner advising that this report and recommendation would be made to Council if he failed to remove the structure on the Property within 21

days. The Structure was still present on the Property.

May 12, 2005

A By-law Enforcement Officer attended at the Property. The unlawful Structure was still present.

To date, no building permits have been applied for, nor has any application been made to the Board of Variance to relax the setback requirements.

DISCUSSION

Surrey Building By-law, 1987, No. 9011, Section 3, requires that no structure may be built or altered without first obtaining a building permit from the City. In this instance, the Structure was erected without a building permit having been applied for and obtained. As a result, the required inspections have never been conducted by the City and, therefore, the Structure may be in an unsafe condition.

Furthermore, the Structure is located within the front yard setback, contrary to the requirements of Part 15, Section F of Surrey Zoning By law, 1993, No. 12000. The required setback is 7.5 metres from the front lot line. The Structure is located only 4.1 metres from the front lot line.

Given the illegal nature and possible unsafe condition of the Structure, and the failure on the part of the owner to voluntarily rectify the situation, we recommend that Council pass the resolutions described at the beginning of this report pursuant to Section 72 of the *Community Charter*.

The resolutions set out above require the owner to remove the Structure from the Property and allows 30 days for completion of the remedial action.

In the event that the owner fails to carry out the required remedial action within 30 days, the resolutions authorize the City or its agents to enter onto the Property to carry out the required work at the expense of the owner, using Section 17 of the *Community Charter* as its authority. Any unpaid amounts may be collected as a debt or unpaid taxes pursuant to Sections 17 and 258 of the *Community Charter*.

Under Section 77 of the *Community Charter*, notice must be given to the owners of the Property, any occupiers of the Property, and the holders of any registered charges in relation to the Property.

CONCLUSION

Based on the foregoing information regarding the Structure on the Property, its non compliance with the City's by-laws and its unsafe condition, we recommend that Council adopt the resolutions set out at the beginning of this report pursuant to Section 72 of the *Community Charter*.

CRAIG MacFARLANE
City Solicitor

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Encls.

Appendix "A" – Notice
Appendix "B" – Description of the Property

Appendix "C" – Photographs of the Property taken April 28, 2004
Appendix "D" – Photographs of the Property taken March 11, 2005

c.c. Manager, By-law & Licensing Services
Manager, Building Division
Al Campbell, By-law Enforcement Officer
Kelly Rayter, Assistant City Solicitor

APPENDIX "A"

NOTICE

TO: Darren James Eaton

13733 – 18A Avenue
Surrey, BC V4A 9J4

RE: **Remedial Action Requirement** on that parcel of land in the City of Surrey, Province of British Columbia, which is more particularly known and described as:

Parcel Identifier 011-397-187
Lot 3 Section 16 Township 1
New Westminster District Plan 78064

(the "Property")

YOU ARE NOTIFIED that on the ____ day of _____, 2005, the City Council of the City of Surrey authorized that you carry out the following remedial action requirement on the Property within 30 days of the date of this notice:

That the owner of the Property remove or demolish the domed structure from the Property.

AND IF YOU FAIL to complete the remedial action requirement within 30 days, the City Council has authorized the Manager, Building Division, together with workers employed by the City of Surrey, to enter on the Property and to complete the remedial action requirement. The remedial action requirement will be done at your expense and the City of Surrey will recover the expense of the remedial action requirement, together with interest and costs, in the same manner as municipal taxes as provided in Sections 17 and 258 of the *Community Charter*, S.B.C. 2003, c. 26.

A RECONSIDERATION of this remedial action requirement may be requested by you in writing within 14 days of the date of this notice, but your request must comply with Section 78 of the *Community Charter*, S.B.C. 2003, c. 26.

THIS NOTICE is given by the City of Surrey this _____ day of _____, 2005.

CITY CLERK

cc: Larry Borcowsky
2788 – 133 Street
Surrey, BC V4A 2P7
Mortgage BV241914

APPENDIX "B"

LEGAL DESCRIPTION OF THE PROPERTY:

Parcel Identifier 011-397-187
Lot 3 Section 16 Township 1
New Westminster District Plan 78064

CIVIC ADDRESS OF THE PROPERTY:

13733 – 18A Avenue
Surrey, BC V4A 9J4

REGISTERED OWNER OF THE PROPERTY:

Darren James Eaton

OCCUPIER OF THE PROPERTY:

N/A

REGISTERED HOLDERS OF CHARGES IN RELATION TO THE PROPERTY:

Larry Borcowsky
2788 – 133 Street
Surrey, BC V4A 2P7
Mortgage BV241914