

NO: **R197**

COUNCIL DATE: **October 17, 2011**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **October 13, 2011**

FROM: **City Solicitor**

FILE: **17458-103B**

SUBJECT: **Fire Damaged Structure Located on Property at 17458 – 103B Avenue**

RECOMMENDATION

The Legal Services Division recommends that Council resolve:

1. That the fire damaged building (the "Structure") located at 17458 – 103B Avenue (the "Property") is a nuisance;
2. Pursuant to Sections 72 and 74 of the *Community Charter*, S.B.C. 2003, c. 26 (the "*Community Charter*"), to impose a remedial action requirement on the owner of the Property in the following terms:

"That the owner of the Property demolish and remove from the Property the fire damaged Structure located on the Property within 30 days of delivery of notice of Council having adopted a remedial action requirement with respect to the Property, which demolition and removal shall be in compliance with all City of Surrey by-laws and other applicable statutes and guidelines;

3. That if the owner of the Property fails to comply with the remedial action requirement by the date specified, the Manager, By-law & Licensing Services, together with workers or contractors employed by the City of Surrey, are authorized to enter on the Property and to complete the remedial action requirement at the expense of the owner of the Property and the City of Surrey will recover all expenses, together with interest and costs, in the same manner as municipal taxes;
4. 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; and
5. That any person served with notice of the remedial action requirement set out above may 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

The purpose of this report is to provide information regarding the condition of the Structure on the Property which staff views as constituting a nuisance and that should be removed from the Property and to obtain Council approval for a remedial action requirement to ensure that such a removal takes place.

HISTORY

The following provides a chronology of events related to the Structure and the Property:

September 4, 2009: The single family dwelling (the Structure) on the Property was damaged by fire.

September 9, 2009: Surrey Fire Services forwarded a report to the Building Division advising of the fire and reporting extreme fire damage.

September 16, 2009: Staff of the Building Division forwarded a letter to owner of the Property that noted that the Structure was damaged to the extent that demolition is necessary and that the owner is requested to undertake such demolition.

December 15, 2009: The City received a letter was from the Property owner's lawyer advising that the Property is the subject of a disputed insurance claim.

May 2010: The City received complaints from neighbouring residents regarding the condition of the Structure. The complainants advised that the burnt Structure was causing a negative impact on the neighbourhood and was a nuisance and a hazard.

May 20, 2010: In discussions with the Property owner and her lawyer staff was advised that the owner is rebutting the decision made by the insurance company to deny an insurance claim. The lawyer advised that the owner may demolish the house after the conclusion of the claim. The lawyer was not able to provide information about the length of time it would take to conclude the insurance claim.

May 26, 2010: Staff attended the Property and observed that the house was secured but that the Structure was unsightly. A fence had been erected securing the Property.

June 18, 2010: Staff sent a registered letter to Property owner ordering that the Structure be demolished and removed from the Property. The letter advised that such remedial action was to be taken within 7 days. There is no record on City files that confirms the owner received this letter.

June 25, 2010: Staff inspected the Property and observed overgrown grass and weeds. Some elements of the fire damaged Structure had fallen on the balcony and surrounding yard.

June 30, 2010: A registered letter was sent to the Property owner regarding the unsightly condition of the Property. There is no record on City files that confirms the owner received this letter.

July 13, 2010: Staff spoke to the Property owner regarding the letters that were sent to her. She stated she had not received any letters. Staff advised her that the letters were sent a few weeks ago and asked for a forwarding address. She stated she had no forwarding address because she lives with a friend; however, she stated that she goes and picks up her mail weekly. Staff requested that she cut the grass, clean the yard immediately and demolish and remove the Structure from the Property.

July 20, 2010: Staff attended the Property and observed that the grass had been cut and that debris had been removed from the yard.

July 29, 2010: Staff attended the Property and found the Structure still on the Property.

August 10, 2010: In response to an application, a demolition permit (Permit #: 2010-023020) was issued to a contractor acting on behalf of the owner of the Property to demolish a framed portion of the Structure. The foundation was to remain.

August 11, 2010: Staff attended and observed no changes to the Structure or the Property.

September 2, 2010: Staff attended and observed no changes to the Structure or the Property.

September 9, 2010: Staff spoke to the owner of the Property and was advised that the demolition of the house was going to cost the owner \$20,000 and that she could not afford that expense. Staff advised the Property owner that the Structure could not be left in its current condition. Staff requested that the Property owner advise the City in writing of her intentions for the Property.

October 7, 2010: Staff inspected the Property. The house was secured and no garbage was found on site.

October 20, 2010: Staff forwarded a registered letter to the owner as a final notice for the owner to demolition of the Structure. The City has confirmation of receipt on October 30, 2010 of the registered letter by the owner.

October 20, 2010: Staff attended the Newton Branch of the Royal Bank of Canada, the mortgage holder for the Property, and served a copy of the letter regarding the notice related to demolition of the Structure. An employee acknowledged receipt by signing a copy of the demolition notice.

November 18, 2010: Staff inspected the Property. The Structure remained. Staff had not received since the notices were issued any phone calls or correspondence from the owner of the Property, the mortgage company or legal counsel.

November 23, 2010: Staff received a complaint that debris such as burnt lumber and metal were blowing off the Property onto neighbouring properties.

November 29, 2010: Staff attended the Property and did not observe any garbage/debris on the Property or anywhere on the neighbouring properties. The fence securing the Property remained in place and the Structure was secured.

January 28, 2011: Staff attended the Property and observed that the Structure remained on the Property.

February 6, 2011: The demolition permit that had been issued in August 2010 for the Structure expired.

June 2, 2011: Staff received a complaint regarding the safety of children, who may enter onto the Property, and that the house poses a hazard.

June 16 to August 17, 2011: Staff received numerous phone calls and email messages from various complainants who are very upset with the lack of action by the City in relation to removing the Structure from the Property. The complainants advised that the fencing had been removed from the Property due to non-payment of rental fees by the owner of the Property.

August 31, 2011: Staff contacted the Property owner to discuss her plans for demolishing the Structure. The owner stated that she was not planning to do anything with the Property because she has not been able to pay her mortgage to the Royal Bank for the past 4 months. She advised that she thought that the Royal Bank had taken over the Property. The owner stated that she is not certain what is happening at this time, as she has not received any letters from the Royal Bank; she has only been contacted by the bank via telephone. The owner advised that she would contact the bank to clarify the status of the Property and would advise the City of the outcome. The owner also advised that she would forward to the City any letters that she received from the bank. Staff requested a forwarding address for the Property owner and were advised that she would access her mail at 17458 – 103B Avenue and not provide any further information.

September 7, 2011: Staff attended the Property and observed that the Property was overgrown with grass and weeds, the fence had been removed, and the back door to the Structure was open to allow access into the house. Staff took pictures of the Property. Staff received a phone call from a representative of Keyprime Inc., who advised that Keyprime had been hired by the Royal Bank to remediate the Property as the Property is in the process of forfeiture. Staff was advised by the representative that the Property may be demolished as early as within one week. Staff advised Keyprime Inc. that the Property and Structure are unsecured at this time as the back door to the Structure is open.

September 26, 2011: Staff attended the Property and observed that the grass and weeds were still overgrown but that the Structure was secured.

Photographs of the Property are attached as Appendix “C” to this Report.

DISCUSSION

The Property constitutes a nuisance and based on the failure of the owner to voluntarily rectify the situation, pursuant to Sections 72 and 74 of the *Community Charter* Council proceed with adopting the resolutions as contained in the Recommendations section of this report.

The resolutions if adopted constitute a Remedial Action Requirement (RAR), which will obligate the owner to remove the Structure from the Property within 30 days of the Council resolution adopting the RAR.

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 expenses incurred by the City 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 of the RAR 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.

Under legislation, the owner or others having an interest in the Property may seek reconsideration of Council's decision to impose the RAR if the owner or other party provides a written request within 14 days of the notice of the RAR being sent to the owner. Council must then provide an opportunity to the owner or other party having an interest in the Property to make representations before Council. Council after hearing the owner or other party may confirm, amend, or cancel the RAR.

CONCLUSION

Based on the foregoing information regarding the fire damaged Structure on the Property, it is recommended that Council adopt the resolutions as contained in the Recommendations section of this report.

CRAIG MacFARLANE
City Solicitor

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Appendix "A" – Notice to Owner
Appendix "B" – Description of the Property
Appendix "C" – Photographs of the Property

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

APPENDIX "A"

NOTICE

TO: MY HANH DAO
17458 - 103B Avenue
Surrey, BC
V4N 5R4

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:

PID: 026-057-476
Lot 15, Section 6, Township 9,
New Westminster District, Plan BCP13073

(the "Property")

YOU ARE NOTIFIED that on October 17, 2011, the City Council of the City of Surrey imposed the following remedial action requirement in relation to the Property which requires you to comply within 30 days of the date of this notice:

That the owner of the Property demolish and remove from the Property the fire damaged structure located on the Property within 30 days of delivery of notice of Council having adopted a remedial action requirement with respect to the Property, which demolition and removal shall be in compliance with all City of Surrey by-laws and other applicable statutes and guidelines.

(the "Work")

AND IF YOU FAIL to complete the Work within 30 days, the City Council has authorized the Manager, By-law & Licensing Services, together with workers or contractors employed by the City of Surrey, to enter on the Property and to complete the Work as required by the remedial action requirement. The Work will be done at your expense and the City of Surrey will recover the expense of the Work, 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 October, 2011.

CITY CLERK

APPENDIX "B"

DESCRIPTION OF THE PROPERTY

Legal Description of the Property:

PID: 026-057-476
Lot 15, Section 6, Township 9,
New Westminster District, Plan BCP13073

Civic Address of the Property:

17458 - 103B Avenue, Surrey, BC

Registered Owner of the Property:

My Hanh Dao

Registered Charge Holders:

Royal Bank of Canada
Mortgage No. CA683015
c/o McMillan LLP
Royal Centre, 1055 West Georgia Street
Suite 1500, PO Box 11117
Vancouver, BC
V6E 4N7

Attention: Lindsay D. Goldberg

APPENDIX "C"

PHOTOGRAPHS OF THE PROPERTY



