

NO: **R225**

COUNCIL DATE: **December 12, 2011**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **December 2, 2011**

FROM: **City Solicitor**

FILE: **14460-03270**

SUBJECT: **Remedial Action Requirement Related to the Property at 14460 - 32B Avenue**

RECOMMENDATION

The Legal Services Division recommends that Council:

1. Instruct staff to prepare and forward to Council for consideration a Corporate Report that recommends that Council declare the structures and conditions related to the property at 14460 - 32B Avenue (the "Property") a nuisance pursuant to Section 74 of the *Community Charter*, S.B.C. 2003, c. 26 (the "*Community Charter*") and adopt a "remedial action requirement" pursuant to Sections 72 and 73 of the *Community Charter* to address the hazardous structures and unsightly conditions on the Property as described in this report; and
2. Authorize the City Clerk to:
 - a) Forward to the registered owner of the Property a copy of this report and the related Council resolution and invite the owner to appear before Council at the meeting of Council at which the Corporate Report and resolution referenced in 1. above is to be considered by Council at which time the owner may make representations to Council regarding the remedial action requirement; and
 - b) Forward a copy of this report and the related Council resolution to the appropriate representative of each entity that has a registered financial charge against the Property.

INTENT

The purpose of this report is to provide information regarding the condition of the Property, which is considered to constitute a nuisance, and to seek Council approval to bring forward for Council consideration a resolution for a "remedial action requirement" against the owner of the Property, which will act to motivate corrective action to eliminate the nuisance on the Property.

HISTORY

In November 2008 building permits were issued for the construction of a single family dwelling and swimming pool on the Property. Construction in accordance with the building permits proceeded but the related structures have not been completed to date. Since May 2010 complaints have been received by the City regarding the condition of the Property. City staff engaged in numerous discussions with the owner to remove the building material accumulated throughout the Property, to cut the overgrown grass, and remove water from the unfinished swimming pool. The owner advised staff that construction on the project is stalled due to financial difficulties. The owner made efforts to comply by cutting the grass on the boulevard, removing and stacking the building materials, and removing the water from the unfinished swimming pool.

In February 2011, the City received new complaints about the Property. The unfinished swimming pool was again filled with water; building materials had again accumulated throughout the Property and the grass was overgrown. City staff contacted the owner about these issues. To date, despite repeated letters and contact with the owner, the condition of the Property continues to constitute a nuisance and a hazard. The City has received and continues to receive neighbourhood complaints and requests for the City to take action to correct the conditions on the Property.

An inspection of the Property on October 28, 2011 confirmed that:

- the Property is in an unsightly condition due to rubbish and debris on the Property;
- the partially finished swimming pool structure in the rear yard of the Property is partially filled with water and not adequately fenced, which is considered a public safety hazard;
- the excavations on the Property are not properly retained so as to ensure their stability, which is considered a public safety hazard;
- the partially constructed building on the Property is not adequately enclosed, which is considered a public safety hazard; and
- the vegetative growth on the Property is in a state which is considered unsightly.

DISCUSSION

City Council may impose a remedial action requirement pursuant to Section 72 of the *Community Charter*. Under Section 74 of the *Community Charter*, Council may declare the structures to be a nuisance and order the owner to take corrective actions in relation to addressing the nuisance. Such action can include removal of the structures.

If the City imposes a remedial action requirement on the owner and the owner fails to comply with that requirement, the City may exercise its powers under Section 17 of the *Community Charter* by carrying out the remedial action requirement at the expense of the owner and recovering the costs in the same manner as property taxes.

To comply with the requirements of the *Community Charter*, Council must in an open meeting consider relevant information and adopt a resolution to impose the remedial action requirement. Therefore, if Council adopts the recommendations of this report, the following steps will be undertaken:

1. Staff will prepare a Corporate Report (the "Report") for Council's consideration as part of the agenda for Council's next Regular meeting and will include as a recommendation in the Report the following resolution that if adopted by Council will be the remedial action requirement related to the Property:

"That the owner of the Property at 14460 - 32B Avenue (the "Property")

- *Remove all rubbish and debris from the Property;*
- *Fill the partially finished swimming pool structure in the rear yard of the Property so that the resulting grade of the fill is level with surrounding grades;*
- *Install properly engineered retaining structures at the excavated slopes around the perimeter of the Property so as to ensure their stability;*
- *Fully enclose and secure the partially constructed building on the Property;*
and
- *Remove and trim all vegetative growth on the Property so as to return the Property to a neat and tidy condition;*

all to the satisfaction of the General Manager of Planning and Development of the City of Surrey and within 30 days of delivery of notice of Council having adopted a remedial action requirement with respect to the Property, which remedial actions shall be in compliance with all City of Surrey by-laws and other applicable statutes and guidelines."

2. To meet the requirements of due process and natural justice Council must consider and weigh the evidence submitted in the Report before deciding whether or not to impose the remedial action requirement and the owner of the Property should be given an opportunity to present his/her case to Council during the same meeting of Council at which the Report is considered by Council. In this regard, notice of the proposed remedial action requirement and a copy of the Report will be forwarded to the owner of the Property in advance of the Council meeting. The owner should then be given an opportunity to make a presentation to Council during the meeting but before Council makes a decision regarding the recommendations of the Report.
3. Despite this opportunity to be heard by Council, the owner will also have a right under the *Community Charter* to have Council reconsider the matter if the owner makes a written request within 14 days after Council imposes the remedial action requirement. If Council approves the remedial action requirement and the owner decides to exercise the right to seek reconsideration of the matter by Council, staff will schedule a reconsideration hearing before Council to allow for the owner to make representations to Council.
4. If Council approves a remedial action requirement in relation to the Property, the owner will have 30 days to comply with the remedial action requirement. This time frame may be decreased by Council if Council views the circumstance as requiring more urgent attention by the owner.

CONCLUSION

Based on the foregoing information regarding the hazardous structures on the Property, it is recommended that Council:

- Instruct staff to prepare and forward to Council for consideration a Corporate Report that recommends that Council declare the structures and conditions related to the property at 14460 - 32B Avenue (the "Property") a nuisance pursuant to Section 74 of the Community Charter, S.B.C. 2003, c. 26 (the "Community Charter") and adopt a "remedial action requirement" pursuant to Sections 72 and 73 of the Community Charter to address the hazardous structures and unsightly conditions on the Property as described in this report; and
- Authorize the City Clerk to:
 - Forward to the registered owner of the Property a copy of this report and the related Council resolution and invite the owner to appear before Council at the meeting of Council at which the Corporate Report and resolution referenced in 1. above is to be considered by Council at which time the owner may make representations to Council regarding the remedial action requirement; and
 - Forward a copy of this report and the related Council resolution to the appropriate representative of each entity that has a registered financial charge against the Property.

CRAIG MacFARLANE
City Solicitor

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Appendix "A": Current Photographs of the Condition of and Structures on the Property at
14460 -32B Avenue

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

APPENDIX "A"

Current Photographs of the Structures at 14460 – 32B Avenue

































