

NO: L002

COUNCIL DATE: **January 23, 2012**

REGULAR COUNCIL – LAND USE

TO: **Mayor & Council** DATE: **January 23, 2012**

FROM: **General Manager, Planning and Development** FILE: **5790-17650**
City Solicitor

SUBJECT: **Proposed Strata Title Conversion of the Two Storey Mixed Use**
(Commercial/Residential) Located at 5790 – 176A Street

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Resolve not to approve the issuance of a Certificate of Approval related to its authority under Section 242(6) of the *Strata Property Act*, S.B.C. 1998, c.43 (the "*Strata Property Act*") for the strata conversion of the 2-storey, mixed-use building at 5790 – 176A Street (the "Property"); and
3. Instruct the City Clerk to forward a copy of this report and the related Council resolution to the owner of the Property.

BACKGROUND

At its Regular Council – Land Use meeting on October 3, 2011, Council considered Corporate Report No. L007 (copy attached as Appendix "A") regarding a proposed stratification of the mixed-use building on the Property. The report included a recommendation that Council not approve the issuance of a Certificate of Approval for the strata conversion of the commercial building with two residential suites on the property on the basis that such a conversion would reduce the potential for future redevelopment of the Property. Redevelopment of the Property is contemplated under the Cloverdale Town Centre plan for the purpose of the planned and orderly redevelopment of the Town Centre.

Ms. B. Karnail, the owner of the Property, informed Council during the referenced meeting that the reason that stratification of the Property was for financial purposes. Ms. Karnail indicated if the building was stratified that the mortgage rate related to financing each of the residential strata units would be lower than the current rate being paid on the commercial mortgage that is covering the entire Property.

Council subsequently passed the following motion:

"That Corporate Report Loo7 be referred to staff to review how the objectives of the City and the applicant can both be served. [RES.R11-1678]".

DISCUSSION

The existing building, although oriented towards 176A Street, is sited at the rear of the lot with on-site surface parking at the front of the building toward 176A Street (as illustrated in Appendices I and II of Appendix "A", attached to this report). The Cloverdale Town Centre Plan calls for pedestrian-oriented commercial development along 176A Street. With the exception of the subject lot, all of the buildings on the subject block are sited with minimal setbacks from 176A-Street, creating a pedestrian-friendly streetscape.

The applicant is seeking stratification of the subject building to qualify for a lower residential mortgage rate on each of the two residential units on the second floor of the building in comparison to the commercial mortgage rate that is currently being paid on the Property.

In accordance with Section 242(3) of the *Strata Property Act*:

"The approving authority [i.e. City Council] may

- (a) approve the strata plan, or approve the strata plan subject to terms and conditions, or*
- (b) refuse to approve the strata plan, or refuse to approve the strata plan until terms and conditions imposed by the approving authority are met".*

The owner has advised that she does not wish to sell the stratified units, but only requires the stratification for banking purposes. Should stratification occur and each of the individual strata units be sold to different people, redevelopment of this lot would be made more difficult as concurrence of three separate owners and cancellation of a strata plan would be required. To address this possible impediment to redevelopment, two options were proposed to the owner, as described below.

Option 1:

The owner register a Section 219 Restrictive Covenant on the title of the Property pursuant to Section 219(2)d of the *Land Title Act*, prohibiting the sale of any of the strata lots separately. Under this approach all three strata lots would remain under one owner.

Option 2:

The owner register a Right of First Refusal charge on the title of the Property, in favour of the City, concurrently with registration of the strata plan, to enable the City to determine in the future, if it wishes to acquire all three strata lots for the expansion of parking within the Cloverdale Town Centre, in accordance with the Public Off-Street Parking Facilities By-law No. 3470. If the City elects not to purchase the three strata lots, the Right of First Refusal would be discharged in exchange for the Section 219 Restrictive Covenant described in Option 1 above.

The owner approached a number of banks/credit unions with these options. She was advised in each case that they would not mortgage the residential units at the lower mortgage rate if the charges as described in either of the options were on the title of the Property.

The owner has offered to enter into a notarized private agreement between herself and the City within which she would agree not to sell the Property or any of the newly created strata lots. However, staff is concerned that once the strata units are created it will be difficult to ensure that they remain under a single owner over time regardless of the proposed agreement.

Possible Alternative Courses of Action by Council

1. Deny the application for strata conversion;
2. Approve the application for strata conversion; or
3. Approve the application for strata conversion with a private agreement with the owner as described above.

Evaluation

In consideration of the fact that the strata conversion will increase the value of the Property and make acquisition of the Property more difficult due to potential multiple ownership, both of which outcomes will leave the Property in a less attractive position for redevelopment, staff holds the view that the application for strata conversion should be denied. Approval will reduce the potential for timely and orderly redevelopment in the Cloverdale Town Centre.

As noted in the previous report to Council on this matter (Appendix "A"), staff has consulted with representatives of the Cloverdale Business Improvement Association and the Cloverdale District Chamber of Commerce, who have confirmed that they are not in support of the Property being strata-titled.

CONCLUSION

Based on the above discussion, it is recommended that Council:

- Resolve not to approve the issuance of a Certificate of Approval related to its authority under Section 242(6) of the *Strata Property Act* for the strata conversion of the 2-storey, mixed-use building at 5790 – 176A Street; and
- Instruct the City Clerk to forward a copy of this report and the related Council resolution to the owner of the Property.

Original signed by
Jean Lamontagne
General Manager,
Planning and Development

Original signed by
Craig MacFarlane
City Solicitor

PL/kms/saw

Attachments:

Appendix "A" Corporate Report No. Loo7 (October 3, 2011)

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CORPORATE REPORT

NO: **L007**COUNCIL DATE: **October 3, 2011****REGULAR COUNCIL – LAND USE**

TO: **Mayor & Council** DATE: **October 3, 2011**

FROM: **General Manager, Planning and Development** FILE: **5790-17650**

SUBJECT: **Strata Title Conversion of the Commercial Building with
Two Residential Suites Located at 5790 - 176A Street**

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Resolve not to approve the issuance of a Certificate of Approval related to its authority under Section 242(6) of the *Strata Property Act*, S.B.C.1998, c.43 (the "*Strata Property Act*") for the strata conversion of the commercial building with two residential suites located at 5790 - 176A Street (the "Property") as illustrated in Appendices I and II attached to this report; and
2. Instruct the City Clerk to forward a copy of this report and the related Council resolution to the owner of the Property.

BACKGROUND

The Planning and Development Department received an application from the owner of the Property to strata-title the existing building on the Property that contains a commercial component on the first floor and two residential suites on the second floor. The owner is proposing to strata title the property into three units, with the commercial component being one of the strata title units and each of the two residential suites being strata titled as separate units. The map attached as Appendix I illustrates the location of the Property. In accordance with the *Strata Property Act*, City Council approval is required for the strata conversion of any existing occupied building.

DISCUSSION

The building on the Property was constructed in 1974. In 2007, a building permit was issued for the addition of a second storey to the building that would contain two residential suites. The first floor in the building was upgraded as part of this same building permit. On December 21, 2010, the building permit for this work was concluded with the final inspection approval being issued.

Staff is concerned with the proposed stratification of this existing building. Although the current building meets the requirements of the current zoning for the lot, it is not consistent with the Cloverdale Town Centre Plan. The lot on which the building is located fronts on 176A Street in the heart of the commercial district of Cloverdale. The current building is set back from 176A Street with on-site surface parking at the front of the building on 176A Street, as illustrated in the photograph, which is attached to this report as Appendix II. The Town Centre Plan calls for this site to be redeveloped with a commercial building in line with the commercial buildings to the south (i.e., with minimal setback from 176A Street. The conversion of this fee simple lot and its mixed use building into a strata-titled property will reduce the potential for future redevelopment of this Property in that each of the owners of the proposed strata-titled lots would need to agree with the other owners to such a redevelopment.

Staff has consulted with the Cloverdale Business Improvement Association and the Cloverdale District Chamber of Commerce, who have confirmed that they are not in support of the Property being strata-titled. On this basis, staff has concluded that the strata conversion of this Property will detract from the potential for planned and orderly development in the Cloverdale Town Centre.

Information if Council is Inclined to Grant a Certificate of Approval

The City's policy regarding the strata conversion of rental residential units requires that the vacancy rate in Surrey should be 4% or greater for rental residential units. In this regard, the rental vacancy rate in Surrey, according to CMHC statistics available at the time of the strata title application (statistics are published annually) was 4.2%.

Photographs of the subject building are attached as Appendix II. The property is zoned "Town Centre Commercial Zone" (C-15) Zone and is subject to the provisions of Development Permit No. 7907-0035-00. The building has been certified by a registered professional architect as being of reasonable quality for the age of the building. The architect further advised that with proper maintenance the building has a life expectancy exceeding 50 years.

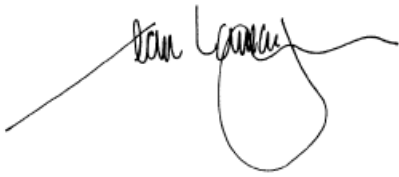
In accordance with Council Policy, the owner has notified the existing tenants in the building of the owner's intention to strata-title the building. No concerns have been received by the City from the tenants concerning the strata-title application.

CONCLUSION

Based on the above discussion, it is recommended that Council

- Resolve not to approve the issuance of a Certificate of Approval related to its authority under Section 242(6) of the *Strata Property Act* for the strata conversion of the commercial building with two residential suites located at 5790 - 176A Street, as illustrated in Appendices I and II attached to this report; and

- Instruct the City Clerk to forward a copy of this report and the related Council resolution to the owner of the Property.

A handwritten signature in black ink, appearing to read "Jean Lamontagne". The signature is fluid and cursive, with a long horizontal stroke extending to the left and a large loop at the bottom.

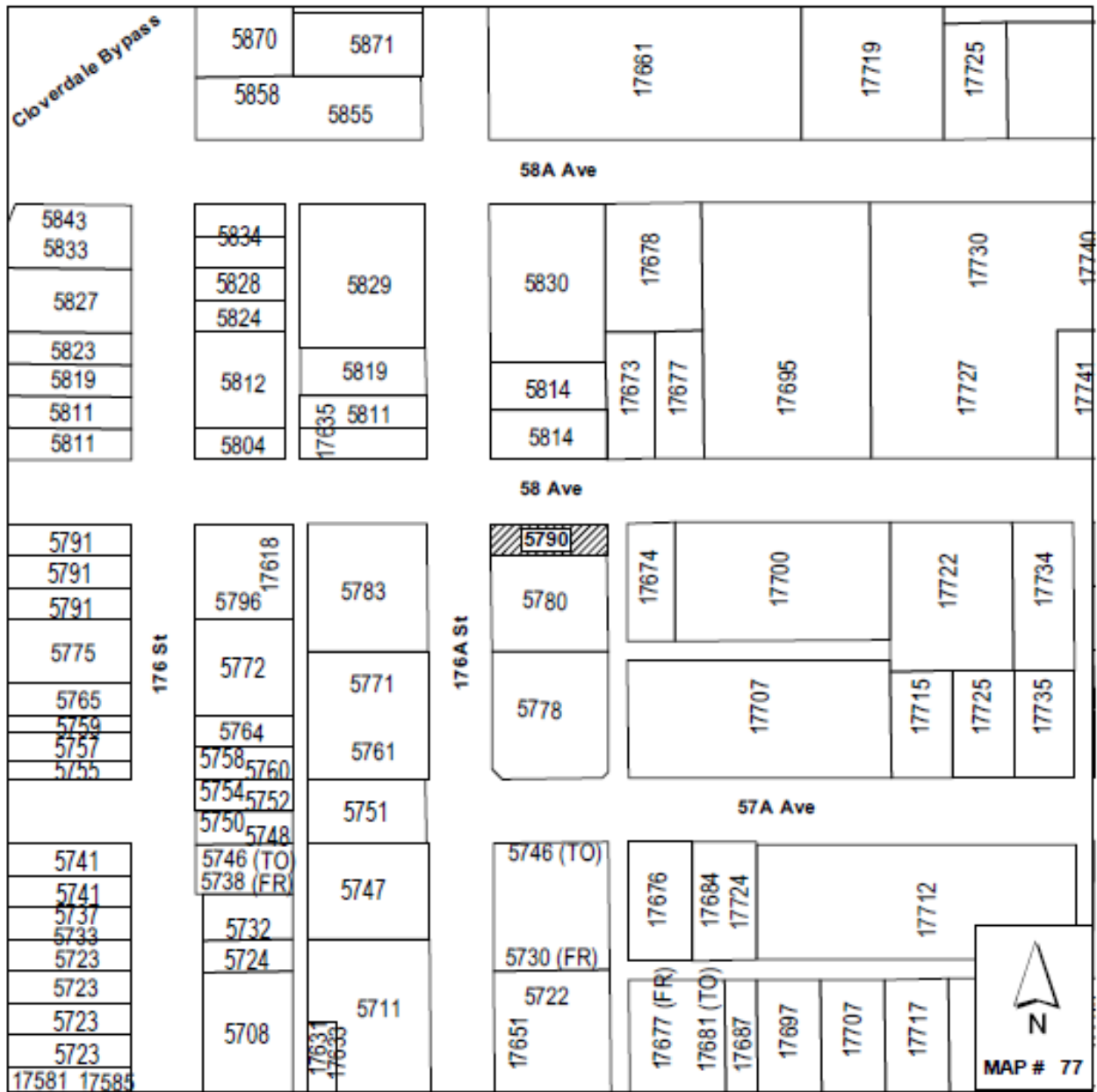
Jean Lamontagne
General Manager,
Planning and Development

HH:saw

Attachments:

Appendix I Map of 5790 – 176A Street

Appendix II Photographs of Building at 5790 – 176A Street Proposed for Strata Conversion













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