

NO: **R257**

COUNCIL DATE: **December 17, 2012**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **December 12, 2012**

FROM: **City Solicitor**

FILE: **11358-14150**

SUBJECT: **Remedial Action Requirement Related to Fire-Damaged Structures Located on the Properties at 11358 – 141A Street**

RECOMMENDATION

The Legal Services Division recommends that Council resolve:

1. That the fire-damaged single family dwelling and detached garage (collectively referred to as the "Structures") located on the two parcels sharing a civic address of 11358 – 141A Street (collectively referred to as the "Properties") are 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 Properties in the following terms:

"That the owner of the Properties with an address of 11358 - 141A Street demolish and remove from the Properties the fire-damaged structures, including both the single family dwelling and the detached garage, that are located on the Properties within 30 days of delivery of notice of Council having adopted a remedial action requirement with respect to the Properties, 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 Properties 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 Properties and to complete the remedial action requirement at the expense of the owner of the Properties 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 Properties, as well as all holders of registered charges in relation to the Properties; 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 Structures on the Properties, which are considered to constitute a nuisance, and to bring forward for Council consideration a resolution for a remedial action requirement against the owner of the Properties, which will act to motivate corrective action to eliminate the nuisance on the Properties.

BACKGROUND

The following provides a chronology of events related to the Structures and the Properties:

November 2, 2007: Mr. Jeyarajah Pillai purchased the Properties, which are two adjacent parcels sharing the same civic address of 11358-141A Street, Surrey, British Columbia.

February 5, 2009: Surrey RCMP inspected the Properties pursuant to the Controlled Substance Property Bylaw, 2006, No. 15820 (the "CSP Bylaw") and found evidence of a marijuana grow operation. A "Do Not Occupy" notice was posted on the single family dwelling. A letter was also sent by staff to the owner advising that the Properties were not to be occupied until remediation of the Properties, as required under the CSP Bylaw, was complete. The letter further explained the process and inspections required to properly remediate the Properties. There is no record on City files that confirms the owner received the letter. To date, City files and staff inspections indicate that the Properties have not been remediated as required under the CSP Bylaw.

March 2009 to present: Staff re-inspected the Properties on numerous occasions, usually on a monthly or bi-monthly basis, pursuant to the CSP Bylaw to ascertain whether the Properties were occupied contrary to the "Do Not Occupy" notice and whether the Structures were secure. On each inspection staff did not see any occupants, although on some occasions there was evidence that plywood boards boarding up the Structures were removed to allow people to enter.

March 5, 2010: Staff received a call from the Surrey RCMP advising that the single family dwelling on the Properties was not secure. Staff attended the Properties and observed some of the plywood boarding up the windows and doors had been tampered with. Staff advised the Surrey Fire Service of the situation. Staff and

Surrey Fire Service left messages with the owner to repair the plywood boards on the Structures.

March 8, 2010: Surrey Fire Service left another message for the owner to repair the plywood boards on the Structures.

March 10, 2010: Surrey Fire Service left a message with the owner advising the plywood boards needed to be repaired otherwise the City will perform the repairs. There was no response to these or the prior messages. Surrey Fire Service arranged to have a contractor repair the damaged plywood boards on the Structures as the owner did not secure the Structures voluntarily.

April 1, 2010: Surrey RCMP advised staff that the single family dwelling was not secure. Staff attended the Properties and observed that plywood boarding up the back door had been removed and an adjacent window had been tampered with. Staff advised Surrey Fire Service of the damage. Surrey Fire Service left a message with the owner to have the plywood boards repaired on the Structures.

October 26, 2010: Staff spoke to a representative of the mortgagor of the Properties, Concentra Financial Services Association ("Concentra Financial"), who indicated they foreclosed on the Properties and are in the process of having the Structures demolished.

November 3, 2010: Surrey Fire Service attended the Properties. The Structures were not secure and there was evidence of a recent fire. Also, Concentra Financial now advised City staff that it did not have authority to demolish the Structures.

November 5, 2010: Surrey Fire Service left a message with the owner to have the Structures boarded up again.

December 6, 2010: Staff received a call from the Surrey RCMP advising that the detached garage requires boarding up as squatters are occupying it.

December 7, 2010: Staff sent a letter to each of the owner and Concentra Financial advising that the Structures are abandoned and that to protect the health and safety of persons and property the Structures on the Properties are to be demolished by the owner within 30 days of receipt of the letter and the Properties are to be secured within 5 days of receipt of the letter to prevent unauthorized entry, occupation, vandalism, fire or other damage. There is no record on City files that confirms the owner or mortgagor received the letter.

January 22, 2011: Surrey Fire Service attended the Properties and found a couch and chair on fire inside the detached garage on the Properties.

January 24, 2011: Surrey Fire Service contacted the owner, who advised he no longer owned the Properties and that Surrey Fire Service could do what it wants with the Properties.

January 27, 2011: Concentra Financial advised Surrey Fire Service that the Structures were boarded up again as a result of the January 22, 2011 fire and that it would have the Properties inspected every two days.

February 5, 2011: Surrey Fire Service attended the Properties and found a child's playhouse on fire on the Properties.

February 28, 2011: Staff sent a letter to the owner and Concentra Financial advising that the City intends to enter onto the Properties to demolish the Structures. Staff further advised that the costs would be approximately \$34,330 and would be charged to the owner of the Properties. If the charges were not paid, they would be added to the property taxes for the Properties. There is no record on City files that confirms the owner or Concentra Financial received the letter.

May 14, 2011: Surrey Fire Service attended the Properties. The rear of the detached garage was smouldering from what appeared to be a deliberately lit fire. The rear of the single family dwelling showed signs of attempted ignition.

May 24, 2011: Surrey Fire Service contacted Concentra Financial to have the plywood boards on the Structures repaired as a result of the May 14, 2011 fire.

January 2012: The City received several complaints from area residents regarding the condition of the Structures. The complainants advised that the Structures were abandoned for many years, there have been multiple fires on the Properties, they suspected illegal activity was occurring on the Properties and the Structures were a hazard to the neighbourhood.

January 2012 to present: MCAP Service Corporation ("MCAP"), which was servicing the mortgage on the Properties, and legal counsel for Concentra Financial have been in contact with staff and Surrey Fire Service requesting status updates on the demolition of the Structures.

January 8, 2012: Surrey Fire Service attended the Properties. A small smouldering fire was discovered at the side of the detached garage.

January 22, 2012: Surrey Fire Service attended the Properties. Smoke was emanating from the soffits and windows of the single family dwelling. Plywood boarding up a window appeared to have been removed allowing individuals access inside the building.

January 24, 2012: MCAP wrote to staff requesting an update on the demolition process and indicated that it would pay the costs of demolition if such charges were added to the property taxes.

May to September 2012: Several unsuccessful attempts were made by staff to locate the owner so that he could be served with the first corporate report

regarding the Properties and the invitation to appear at the Council hearing where the second corporate would be considered.

June 11, 2012: Surrey Fire Service attended the Properties and discovered a fire at the detached garage.

June 12, 2012: Surrey Fire Service contacted Concentra Financial to board up the Structures as a result of the June 11, 2012 fire.

June 23, 2012: Concentra Financial contacted Surrey Fire Service and indicated it would board up the Structures that day.

September 12, 2012: Legal counsel for Concentra Financial paid the City the sum of \$14,015.53 "under protest" in order to prevent a tax sale of the Properties for unpaid property taxes. No further explanation was given as to why the payment was "under protest."

October 29, 2012: The owner of the Properties contacted staff by telephone. He advised that legal counsel for the "bank" requested that he call the City. Staff advised him of the process before Council to have the Structures demolished. He provided a forwarding address and contact information so that he could be served with the first corporate report regarding the Properties and the invitation to appear at the Council hearing where the second corporate would be considered.

Photographs of the Properties taken December 3, 2012 are attached as Appendix "C" to this report.

DISCUSSION

The Properties constitute a nuisance and based on the failure of the owner to voluntarily rectify the nuisance, pursuant to Sections 72 and 74 of the *Community Charter* Council may proceed to adopt the resolutions as contained in the Recommendations section of this report as means to rectify the nuisances.

The resolutions, if adopted, constitute a Remedial Action Requirement (the "RAR"), which will obligate the owner to comply with the conditions contained in the RAR within 30 days of being delivered notice of the Council resolution adopting the RAR.

In the event that the owner fails to carry out the required remedial actions within 30 days of being given notice, the resolutions authorize the City or its agents to enter onto the Properties to carry out the required remedial 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 Properties, any occupiers of the Properties, and the holders of any registered charges in relation to the Properties.

Under legislation, the owner or others having an interest in the Properties 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 or other party. Council must then provide an opportunity to the owner or other party having an interest in the Properties to make representations before Council. Council after hearing the owner or other party may confirm, amend, or cancel the RAR.

CONCLUSION

Based on the above discussion, the Legal Services Division recommends that Council resolve:

- That the fire-damaged single family dwelling and detached garage (collectively referred to as the "Structures") located on the two parcels sharing a civic address of 11358 – 141A Street (collectively referred to as the "Properties") are a nuisance;
- 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 Properties in the following terms:

"That the owner of the Properties with an address of 11358 - 141A Street demolish and remove from the Properties the fire-damaged structures, including both the single family dwelling and the detached garage, that are located on the Properties within 30 days of delivery of notice of Council having adopted a remedial action requirement with respect to the Properties, which demolition and removal shall be in compliance with all City of Surrey by-laws and other applicable statutes and guidelines."

- That if the owner of the Properties 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 Properties and to complete the remedial action requirement at the expense of the owner of the Properties and the City of Surrey will recover all expenses, together with interest and costs, in the same manner as municipal taxes;
 - 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 Properties, as well as all holders of registered charges in relation to the Properties; and

- 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.

CRAIG MacFARLANE
City Solicitor

BL:ld

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LJD 12/12/12 4:31 PM

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

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

APPENDIX "A"

NOTICE

TO: JEYARAJAH PILLAI
4054 Moscrop Street
Burnaby, British Columbia
V5G 2E3

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

PID: 007-681-933
Lot 5, Block 95
New Westminster District Plan 2546

and

PID: 007-681-950
Lot 6, Block 95
New Westminster District Plan 2546

(the "Properties")

YOU ARE NOTIFIED that on December 17, 2012, the City Council of the City of Surrey imposed the following remedial action requirement in relation to the Properties which requires you to comply with this notice:

That the owner of the Properties with an address of 11358 - 141A Street demolish and remove from the Properties the fire-damaged structures, including both the single family dwelling and the detached garage, that are located on the Properties within 30 days of delivery of notice of Council having adopted a remedial action requirement with respect to the Properties, 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 Properties 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 this notice being sent, 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 December, 2012.

CITY CLERK

APPENDIX "B"

DESCRIPTION OF THE PROPERTIES

Legal Description of the Properties:

PID: 007-681-933
Lot 5, Block 95
New Westminster District Plan 2546

PID: 007-681-950
Lot 6, Block 95
New Westminster District Plan 2546

Civic Address of the Properties:

11358 - 141A Street, Surrey, BC

Registered Owner of the Properties:

Jeyarajah Pillai

Registered Charge Holders:

Concentra Financial Services Association
Mortgage No. CA619042 for Lots 5 and 6
Certificate of Pending Litigation No. BB1078139 for Lots 5 and 6
c/o Fulton & Company LLP
300 - 350 Lansdowne Street
Kamloops, British Columbia
V2C 1Y1

Attention: J. Rick Heney

Shakuntala Devi Pillai
Court Order No. BB1320095 for Lot 5
Court Order No. BB1320093 for Lot 6
c/o Family Maintenance Enforcement Program
P.O. Box 80449
Burnaby, British Columbia
V5H 3X9

British Columbia Hydro and Power Authority
Statutory Right of Way No. 137558C for Lot 6 only
8th floor, 333 Dunsmuir Street
Vancouver, British Columbia
V6B 5R3

Attention: Linda Kowalski

APPENDIX "C"

Photograph of the front of the Structures



Photograph taken December 3, 2012

Photograph of the side of the single family dwelling



Photograph taken December 3, 2012

Photograph of the front of the detached garage



Photograph taken December 3, 2012

Photograph of the front of the Structures



Photograph taken December 3, 2012

Photograph of the back of the single family dwelling



Photograph taken December 3, 2012

Photograph of the interior of the detached garage



Photograph taken December 3, 2012

Photograph of the back of the detached garage



Photograph taken December 3, 2012

Photograph of the back of the detached garage



Photograph taken December 3, 2012