

ITEM

MANAGER'S REPORT NO. 31

COUNCIL MEETING Apr. 25/77

Re: LETTER FROM THE NEW HOME WARRANTY PROGRAM OF BRITISH COLUMBIA WHICH APPEARED ON THE AGENDA FOR THE APRIL 4, 1977 MEETING OF COUNCIL (ITEM 3f)

Appearing on the agenda for the April 12, 1977 meeting of Council was a letter from R. J. Borrie regarding the New Home Warranty Program. Following is a report from the Chief Building Inspector on this matter.

RECOMMENDATIONS:

1. THAT Council indicate its pleasure with and its support of the present New Home Warranty Program of British Columbia;
2. THAT Council at this time decline for reasons noted in this report to make the Warranty Program mandatory as a condition precedent to obtaining a building permit;
3. Council provide a copy of this report to the Secretary of the New Home Warranty Program of British Columbia.

* * * * *

April 15, 1977.

Mr. M.J. Shelley,
MUNICIPAL MANAGER.

Subject: New Home Warranty Program
of British Columbia

The following report is submitted in reference to the letter of March 23, 1977, from the Secretary of the New Home Warranty Program of British Columbia, and received by Council at its meeting of April 4, 1977.

Early in 1975 a study of the need for a warranty Program for housing was undertaken by the Consumer Affairs Department of the Provincial Government, and Mr. B. Doughton, P.Eng., of the Building Department, Corporation of Richmond, was retained to research the situation and accumulate the available information. In due course Mr. Doughton submitted his report to the government, but to the best of our information that report has not been acted upon.

Prior to 1975, the Housing and Urban Development Association of Canada, on a Federal basis, had been urging government to undertake a formal study of a warranty system which would protect the purchasers of new housing. The outcome of that action was an interim report of a Joint Committee of HUDAC, CMHC, and the Federal Department of Consumer and Corporate Affairs recommending the formation of an independent body to administer a system of warranty and insurance protection for the new home buyer. The Federal Government and industry were not able to reach unanimity on a national warranty plan, and as a result the Provincial Councils of HUDAC agreed to proceed on their own with warranty plans.

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During the time Mr. Doughton was preparing his report for the Provincial Consumer Affairs Department, the British Columbia Council of HUDAC acted to initiate the warranty Program which we now have in operation in this province. The Program operates through a company known as Pacific New Homes Services Incorporated and is an independent non-profit organization. Participation in the Program is binding upon all residential builder members of HUDAC, but the Program is also open to and anxious to obtain the participation of all independent residential builders in the province. In other words, builder participation in the warranty Program does not require builder membership in HUDAC.

For a builder to participate under the warranty Program, requires registration of the builder on a yearly basis for an initial registration fee of \$50.00 plus renewal fee. For each house or housing unit produced by the builder for warranty, there is an enrollment fee of \$85.00 per unit, plus other costs which the builder may be assessed by the Program such as inspection fees. The Program includes single, semi-detached and row-house units as well as condominium units of wood frame construction in structures not over four storeys in height.

The effect of the Program is to guarantee to an owner occupier a builder warranty for repairs of any defects in materials or workmanship (with certain specified exclusions) which appear during the first year from the date of occupancy. Most reputable builders have been voluntarily providing this form of warranty service in British Columbia to their customers, but under the Program if a registered builder defaulted on the warranty obligation, the Program would step in to have warranty fulfilled. The Program also extends through the second to fifth years after occupancy of the home to cover the repair of any major structural defects which become manifest to a maximum limit of \$20,000.

As is noted by the Secretary of the Program in his letter of March 23, 1977, there has been some interest expressed by municipalities in making the warranty Program mandatory as a condition of obtaining a building permit. In effect, the idea of the imposition of the Home Warranty Program through local building by-law legislation binding upon every builder applying for a building permit. An opinion on the capacity of a municipality to require builders to warranty homes has been obtained from the legal firm of Fraser Hyndman. The opinion is: "Yes," that a municipality can so require, but the opinion is qualified by the statement: "...the issue is not clear cut; a reasonable argument can be raised against a municipality having such power;..." Our Municipal Solicitor, Mr. W.L. Stirling, has read the Fraser Hyndman opinion and cannot say that it is wrong. Mr. Stirling differs with Fraser Hyndman on the section of the Municipal Act under which such action, if contemplated, should be taken. Mr. Stirling sees any contemplated warranty action being more appropriately taken under the licencing section 458 M of the Act rather than the building regulation section 714 of the Act.

Notwithstanding affirmative legal opinion on the capacity of the municipality to impose warranty legislation, the writer is unable to support the concept of legislated warranty at this time in the Municipality of Burnaby for various reasons:

1. A Warranty Program is in operation in the Province of British Columbia, including the Municipality of Burnaby, and is thereby available to the consumer public.
2. The consumer shopping for a home can choose a finished housing unit bearing the sticker of the Warranty Program; or the consumer can select a builder(s) registered under the Program and obtain a unit which will become enrolled for warranty as it is finished and available for occupancy.
3. The Warranty Program has only been in operation a short time and an assessment of its operating efficiency cannot very well be made, although there is nothing to suggest that the Program will not be entirely adequate when a need arises.
4. Housing units being constructed under terms of the current National Building Code of Canada are far more stringently and broadly regulated than was the case, say, ten years ago. That regulation, which may be looked upon in part as consumer protection legislation, is implemented in this municipality through a thorough plan checking process prior to the issuance of a building permit, and followed throughout construction by a high level of inspection service. The result of this implementation of regulation is that the number of complaints received by this department which might be classed as warranty complaints is two or three a year on an output of 1,300 to 1,400 warrantable units a year. In the case of such complaints, the Building Department is generally able to have a builder return to the unit and attend to the complaint. In our opinion, and based on available records, an imposed warranty charge of \$85.00, plus possible other builder costs arising from program application per housing unit added to the present cost of housing, cannot be justified on the basis of need in Burnaby.
5. Implementation of an imposed warranty system would place additional administrative costs on the Building Department. The extent of such costs cannot be determined accurately without detailed knowledge of how the program would integrate with the Building Department. But again, in our opinion, any additional cost to the municipality cannot be justified on the basis of need.
6. A case can probably be made for an imposed warranty requirement in some of the sparsely settled areas of the Province. In these areas, building regulation is obtained through the Regional District and due to limitations of time, travel distance, and season, the frequency of on-site inspection service is far different than it is in the Greater Vancouver or Lower Mainland districts, or than it is in the incorporated cities

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and towns of the Province which maintain their local inspection service. Those communities in the sparsely settled regions of the Province might very well justify the imposition of Warranty Program in the best interest of their residents.

7. The Agreement which the builder enters into with the Warranty Program requires that:

"The builder shall construct each residential unit in accordance with the National Building Code (Canadian Code for Residential Construction) as adopted or amended from time to time by regulation and for legislation of the Government of British Columbia or the Municipality in which the home is located."

Municipal building regulatory power comes from Section 719 A of the Municipal Act and from Regulations made by Order in Council pursuant to Section 719 A and cited as "Building Regulations of British Columbia." The said regulations only extend to application of the National Building Code of Canada and the British Columbia Plumbing Code 1972. The regulations do not include the Canadian Code for Residential Construction required in the builder's Agreement. Moreover, Section 719 A (3) of the Municipal Act states:

"Any provision of the Municipal By-Law that purports to deal with matters regulated by the Building Code as amended, added to, or varied, and that is inconsistent therewith, is of no force and effect and shall be deemed to be repealed; ..."

Moreover, the current copy of the Canadian Code for Residential Construction, now known as Residential Standards, Canada, 1975, states on its cover: "This document is not intended as a municipal by-law."

Hence, we believe that if a municipality imposed by by-law the present Warranty Program with the documentation now in use between the builder and the Program, such a by-law would be ultra vires.

However, there is nothing inconsistent about the present warranty documentation with a builder under the present form of voluntary participation in the Program.

Recommendation:

It is recommended that:

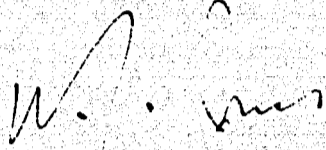
- (1) Council indicate its pleasure with and its support of the present New Home Warranty Program of British Columbia;
- (2) Council at this time decline for reasons noted in this report to make the Warranty Program mandatory as a condition precedent to obtaining a building permit;

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Recommendation: cont'd

- (3) Council provide a copy of this report to the Secretary of the New Home Warranty Program of British Columbia.

Respectfully submitted,



M.J. Jones,
CHIEF BUILDING INSPECTOR.

MJJ:lm

c.c. MUNICIPAL SOLICITOR