

ITEM 9
MANAGER'S REPORT NO. 54
COUNCIL MEETING 90/09/10

TO: MUNICIPAL MANAGER 1990 SEPTEMBER 04

FROM: DIRECTOR PLANNING &
BUILDING INSPECTION

SUBJECT: CONTRAVENTION OF BYLAWS
FILING IN LAND TITLE OFFICE

PURPOSE: TO GIVE CONSIDERATION TO THE RECOMMENDATIONS OF THE CHIEF
BUILDING INSPECTOR THAT COUNCIL DIRECT THE CLERK TO FILE A
NOTICE IN THE LAND TITLE OFFICE PURSUANT TO SECTION 750.1
OF THE "MUNICIPAL ACT" WITH RESPECT TO PROPERTY OBSERVED TO
BE IN CONTRAVENTION OF MUNICIPAL BYLAWS.

RECOMMENDATIONS:

1. THAT Council direct the Clerk to file a notice in the Land Title Office stating that:
 - (a) a resolution relating to the land at 6847 Noelani Place has been made under Section 750.1 of the Municipal Act; and
 - (b) further information respecting the resolution may be inspected at the offices of the Municipal Clerk, Corporation of the District of Burnaby.
2. THAT a copy of this report be sent to A. Punjani and S. Punjani, 6847 Noelani Place, Burnaby, B.C. V5E 4C2.

BACKGROUND:

An inspection of the premises at 6847 Noelani Place was conducted on 1989 April 24. The premises form one-half of a semi-detached, two-family dwelling. Unauthorized construction of a 9' x 6' addition to the rear of the semi-detached dwelling was noted by the building inspector. A notice of suspension of construction was posted.

The owner attended the Building Division counter to apply for a building permit and was informed that a permit could not be issued because the building with the addition exceeded the maximum allowable density by 629 square feet. The owner was also informed that the addition had to be removed.

BACKGROUND: cont'd

Prior to the construction of the enclosure, the building's status was legal non-conforming. The gross floor area exceeded the current maximum by 575 square feet. The property is zoned Residential (R5), wherein semi-detached dwellings are permitted, subject to a maximum gross floor area of 1,247.30 square feet.

The building was constructed prior to the enactment of restrictions to the maximum gross floor area of semi-detached dwellings. As a result, any further extensions or modifications to the building must conform to the provisions of the current bylaw.

The "Municipal Act" precludes the compromise of permitting a cut back of the area equivalent to that of the enclosure (54 square feet) and requires that a total of 629 square feet be removed as a condition of providing a permit for the enclosure.

COMMENTS:

No complaints have been received by the Building Division regarding this construction. It was brought to our attention by a building inspector who had observed the new construction during travelling to called inspections to other sites in close proximity.

When the owner was apprised of the need for a building permit, he immediately attended the Building Division to make the necessary application for the permit. Construction of the new enclosure was completed by a company that manufactures and distributes solariums. This company did not apply for the required permits or inform the owner of the need to do so.

All efforts to obtain voluntary compliance with the bylaws have failed. The owner has taken the position of being an innocent party having spent \$10,000 to date and having to face a further undetermined expense required to remove the enclosure.

POLICY CONSIDERATIONS:

The use of Section 750.1 of the "Municipal Act" has been contemplated by Council in its adoption of the recommendations of the Housing Committee Report of 1989 March 06 which included:

"THAT Council provide authority for staff to proceed with the filing of contraventions of bylaws in the Land Title Office under the guidelines of Section 750.1 of the Municipal Act."

Section 750.1 (Attachment 1) provides for the filing of notices in the Land Title Office pursuant to a resolution of Council, upon recommendations of the building inspector, where contraventions of a building code or other similar regulations have been discovered.

The building inspector can recommend that a notice be filed when work has been done on a building without either a permit or inspection that is required by bylaw or regulation.

The procedure for filing a notice is initiated by the inspector or approving officer by notifying the municipal clerk that a recommendation to Council will be made.

The "Municipal Act" requires that the clerk notify the property owner and bring the matter before Council. The owner has the opportunity to speak on his own behalf when Council reviews the inspector's recommendations.

Should Council decide to file the notice, a resolution to that effect must be adopted.

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POLICY CONSIDERATIONS: cont'd

The Registrar of Titles is required to file notices when requested to do so by Council. The registration of a notice on title would define a contravention of bylaws and record the owner's non-compliance.

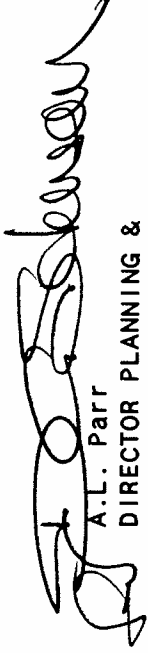
The recommendation to use Section 750.1 in this instance is consistent with the Report of the Housing Committee adopted by Council dated 1989 March 08.

Enforcement through court action would not be warranted for practical and economic reasons at this time.

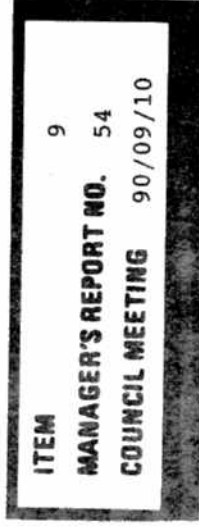
CONCLUSION:

Construction of the extension on this property took place without the necessary building permit and adequate safety inspections, and may not meet the requirements of the Building Bylaw and the B.C. Building Code. Failure to take action consistent with the Municipal Act and the Corporation's policies may leave the municipality at risk in the event of third party litigation. A notice registered on the title will effectively inform prospective purchasers of the current violation of Burnaby Zoning and Building Bylaws.


RK:GRH:lm
Enc.


A.L. Parr
DIRECTOR PLANNING &
BUILDING INSPECTION

cc: CHIEF BUILDING INSPECTOR
MUNICIPAL SOLICITOR



Contravention of bylaws — filing in land title office

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750.1 (1) Where, during the course of carrying out his duties, a building inspector

(a) observes a condition, with respect to land or a building or structure, that he considers

(i) results from the contravention of, or is in contravention of a bylaw or regulation under Division (5) of Part 21 or under any other enactment relating to the construction or safety of buildings or structures, and

(ii) as a result of that condition, a building or structure is unsafe or is unlikely to be usable for its expected purpose during its normal lifetime, or

(b) discovers that anything was done with respect to a building or structure or the construction thereof, that required a permit or an inspection under a bylaw, regulation or enactment referred to in paragraph (a) (i), and that the permit was not obtained or the inspection not satisfactorily completed, the inspector may, in addition to any other action that he is authorized or permitted to take, recommend to council that a resolution under subsection (2) be considered by the council.

(2) A recommendation under subsection (1) shall be given to the clerk of the municipality in writing, and the clerk shall, after notifying the registered owner of the land with respect to which the recommendation relates, place the matter before council which may, after hearing the building inspector and the owner, confirm the recommendations of the building inspector and pass a resolution directing the clerk to file a notice in the land title office stating that

(a) a resolution relating to that land has been made under this section, and

(b) further information respecting it may be inspected at the offices of the municipality

and the clerk shall ensure that all records are available for that purpose.

(3) Where the registrar of land titles receives a notice under subsection (2), he shall, on payment of the prescribed fee, make a note of the filing against the title to the land that is affected by the notice.

(4) The clerk shall, on receiving a report from a building inspector that the condition that gave rise to the filing of the notice under subsection (2) has been rectified, file a cancellation notice, and the registrar shall, on receiving the notice, cancel the note against the title to which it is related.

(5) In the event of any omission, mistake or misfeasance by the registrar or his employees in relation to the making of a note of the filing under subsection (3) after the notice is received by the land title office,

(a) the registrar is not liable nor is the Crown liable vicariously, and

(b) the assurance fund or the Attorney General as a nominal defendant is not liable under Part 20 of the *Land Title Act*.

(6) An owner of land with respect to which a notice has been filed under this section, may apply to the council for a resolution that the note be cancelled, and the council may, after hearing the applicant, pass a resolution directing the clerk to file a cancellation notice.

(7) Where a resolution has been passed under subsection (6), the clerk shall file a cancellation notice in the land title office and the registrar shall, on receiving the notice, cancel the note against the title to which it is related.

(8) Where the council does not pass a resolution under subsection (6), the owner may apply to the Supreme Court and notify the municipality to attend before the court to show cause why the note should not be cancelled, and the court may, after reviewing any evidence that the owner and the municipality may adduce, make an order directing the registrar to cancel the note made under subsection (3), and the registrar shall, on receiving the order, cancel the note accordingly.

(9) The note of a filing of a notice under this section is extinguished when a new title to the land issues in consequence of the deposit of a plan of subdivision or a strata plan.

(10) Neither the building inspector nor the municipality is liable for damage of any kind for the doing of anything, or the failure to do anything, under this section that would have, but for this subsection, constituted a breach of duty to any person.

(11) This section applies to a regional district as though the board was the council and the secretary was the clerk.