

ITEM	20
MANAGER'S REPORT NO.	67
COUNCIL MEETING	90/11/05

TO: Municipal Manager 1990 November 01

FROM: Director Planning & Building Inspection

SUBJECT: 5321 SPRUCE STREET, BURNABY
 LOTS 371 & 372, D.L. 80, PLAN 57663
 BUILDING CONSTITUTING A NUISANCE AND IN AN UNSAFE CONDITION

PURPOSE: To obtain Council approval to declare the premises a nuisance and order its removal.

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RECOMMENDATIONS:

1. THAT Council declare the building located at 5321 Spruce Street a nuisance and order that it be removed by its owner within 30 days after the service of the order.
2. THAT Council order that:
 - (a) in the case of default by the owner to comply with the order within the period named in it, the municipality, by its employees or others, may enter and carry out the demolition of the building and the removal of related debris from the property, at the expense of the owner.
 - (b) in the case of default by the owner to comply with the order, the charges for carrying out the demolition of the building and the removal of related debris, including all incidental expenses, if unpaid on 1991 December 31, shall be added to and form part of the taxes payable on the subject land for real property as taxes in arrears.
3. THAT a copy of this report be provided to the registered owners of the property, Mr. James S. Nemeth and Mrs. M. C. Nemeth, 5222 Sussex Avenue, Burnaby, B. C. V5H 3B1

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Background:

Appearing on the 1990 November 05 Council agenda is a petition from concerned residents in the neighbourhood of the subject premises. The petitioners complain that the unoccupied and unfinished building addressed at 5321 Spruce Street is a safety hazard and is extremely unsightly, and request that the municipality take appropriate action to remedy the situation.

The Environmental Health Division was requested to investigate and prepare a response to Council relative to compliance of the subject property with the "Unsightly Premises" Bylaw. Due to the deteriorating condition of the site and building, Environmental Health staff also requested investigation by this Division relative to safety and public nuisance. Enforcement of the unsightly premises bylaw in this case is not considered effective or sufficient in eliminating a safety concern which has been recurring for almost 10 years.

A chronology of Building Inspection Division records for this address is provided as follows:

1980 November 24

Building Permit No. B-49991 was issued for the construction of a new single-family dwelling at the subject address.

1982 November 02

Since construction had ceased for more than 90 days, the owner was advised, in writing, that Building Permit No. B-49991 was void and that an option of reinstating the permit was available.

1982 November 18

Building Permit No. B-53499 was issued to reinstate Building Permit No. B-49991.

1984 June 05

Since construction had again ceased for more than 90 days, the owner was advised, in writing, that Building Permit No. B-53499 was void and that an option of reinstating the permit was available.

1984 July 04

Building Permit No. B-56756 was issued to reinstate Building Permit B-53499.

1985 January 29

Construction again ceased for more than 90 days, the owner was advised, in writing, the Building Permit B-56756 was void and that an option of reinstating the permit was available.

1985 August 07

Verbal complaint was received from a Spruce Street resident concerned about the unfinished dwelling and unsightly yard. The allegation was confirmed by a Building Inspector on the same day.

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1985 August 15

The owner of the property was contacted by telephone regarding the condition of the dwelling. He stated that he had boarded up the structure a number of times but that vandals had removed the boarding on each occasion. The owner stated that he does not plan to make any further effort to board up and secure the structure.

1985 September 04

A written complaint was received from another Spruce Street resident concerned about the potential dangerous unfinished house at the subject address.

1985 September 09

A memo was received from the Chief Fire Prevention Officer indicating that the building constituted a fire hazard which "could create a danger to life and/or property".

1985 September 09

Site inspection by the Building Inspection Division confirmed that the structure posed a safety hazard to unauthorized persons.

1985 September 11

In a letter from the Building Inspection Division, the owners were advised of the fire and safety hazard posed by their unfinished house. The owners were further advised what steps would be necessary to resolve the matter as follows:

- (1) render the structure inaccessible; and
- (2) complete the exterior channel siding to relieve the unsightliness.

The owners were further advised that failure to complete the above by 1985 September 30 may result in a request to Council, pursuant to Section 936 of the Municipal Act, to declare it a nuisance and order its removal.

1985 October 01

A site visit by Building Inspection Division staff revealed that steps were not taken by the owner to render the building safe.

1985 October 08

Report submitted to Council requesting that the building be declared a nuisance and that the owner be ordered to repair the building as necessary, complete the exterior siding, render it inaccessible and clean debris from site. This was to be completed within 30 days after which time the work would be completed by the municipality or others with the associated charges being added to and form part of the taxes payable.

1985 October 15

Council adopted the recommendation in the report dated 1985 October 08.

1985 October 22

The owners were served with the Order of Council.

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1985 October 23

Staff of the Building Inspection Division and the Municipal Manager met with Mr. Nemeth and were informed that he intended to apply for reinstatement of the Building Permit and complete the items identified in the Order.

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1985 December 20

The owner expressed problems in obtaining a contractor to complete the work, however, obtained Building Permit B-59491 to reinstate Building Permit B-56756 which had been voided.

1986 January 10

The Building Inspection Division received a further complaint from a Spruce Street resident regarding continuance of the unsightly and unsafe building on the subject site.

1986 January 30

After several unsuccessful attempts to contact the owners, the Building Inspection Division hand delivered a letter to the owners re-stating the conditions of the Council Order and requiring completion of same by 1986 February 17. They were informed that failure to complete would result in the municipality completing the terms of the order.

1986 February 17

Due to owners' inaction and the delays incurred, a report to Council was submitted requesting an update on the Order issued by Council on 1985 September 15.

1986 February 24

Council adopted the recommendations to update the Order.

1986 March 12

The owners were served with the Order of Council.

1986 May 21

The Building Inspection Division visited the site and confirmed that work had not proceeded and the condition of the Order of Council had not been complied with. Tenders for completion of the work were requested by the municipality.

1986 June 06

Letter sent to owners advising that the municipality was at the point of executing a contract for completion of the work and requesting the owners to provide substantial proof of intention to immediately initiate the project and follow through to completion prior to 1986 June 16.

1986 June 17

As the owners made no attempt to satisfy the condition of the Order of Council, a requisition was completed to have A. S. Brown & Associates Ltd. complete the work.

1986 August 06

Work outlined in the Order of Council completed.

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1989 May 15

Letter sent to owners confirming that Building Permit B-59491 was void and that a new application with revised drawings would have to be submitted should they wish to continue with construction.

1989 May 23

The Building Inspection Division received a complaint from a Spruce Street resident concerned with entry of the building from unprotected upper storey openings. Crews of the Engineering Department visited site and secured all openings.

1989 August 30

The Building Inspection Division received a complaint concerning the subject property from a Spruce Street resident. Engineering crews again secured the building, cleaned the site and posted a "No Dumping" sign on the boulevard in front of the property. Cost of the work was placed on the property taxes.

1990 September 30

Petition submitted to Council expressing concern for the safety of children relative to the deteriorating condition of the subject building and site.

1990 October 30

Staff of the Building Inspection Division visited site and reported that the building had again been vandalized, resulting in an unsightly and dangerous situation.

A letter was sent to owners by certified mail advising of complaint and unacceptable condition of site and building. Owners were informed that considering all circumstances to date and the obvious reluctance to complete the building, a report was being submitted to Council to declare the building a nuisance and order its demolition under Section 936 of the Municipal Act.

REPORT

To date, construction at the subject address has received Building Inspection Division approval for the foundation only. Although the framing of the structure is nearly complete, building construction approval has not been requested or provided above the foundation. As no construction has taken place for years, the latest Building Permit B-59491 has been voided requiring a new application to be submitted for approval. Any new application would have to be reviewed under the provisions of the revised Zoning Bylaw incorporating floor space ratio and reduced height requirements. All attempts to have the owners complete the building or, alternatively, secure the building in an appropriate sightly manner have been unsuccessful.

Section 936 of the Municipal Act states that:

- "(1) The council may declare a building, structure or erection of any kind, or a drain, ditch, watercourse, pond, surface water or other matter or thing, in or on private land or a highway, or in or about a building or structure, a nuisance, and may direct and order that it be removed, pulled down, filled up or otherwise dealt with by its owner, agent, lessee or occupier, as the council may determine and within the time after service of the order that may be named in it.

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- (2) Service of the order shall be effected by sending a copy by return registered mail to the owner of the land where the nuisance exists, and to all other persons whose names appear on the records of the land title office as having an interest in the land, and to the agent, if known, of the registered owner, and to any lessee and occupier of the land, the notice to be sent to the last known address of each interested person referred to in this subsection.
- (3) The council may further order that, in case of default by the owner, agent, lessee or occupier to comply with the order within the period named in it, the municipality, by its employees and others, may enter and effect the removal, pulling down, filling up or other dealing at the expense of the person defaulting, and may further order that the charges for doing so, including all incidental expenses, if unpaid on December 31 in any year, shall be added to and form part of the taxes payable on that land or real property as taxes in arrear.
- (4) Where the nuisance so declared is a building, structure or erection, the council may, after the expiration of 60 days from the date of the mailing of the notice to the owner under subsection (2) and after the expiration of the period named in the order, sell by auction, or by public or private tender, or otherwise dispose of the building, structure or erection so ordered to be dealt with, or any part or material in it. From the proceeds of the sale or disposal, there shall be deducted for municipal use the actual costs, including incidental expenses, incurred by the municipality in carrying out the order, and the remainder of the proceeds shall be paid by the municipality to the owner or other person lawfully entitled.
- (5) This section applies to any building, structure or erection of any kind which the council believes is so dilapidated or unclean as to be offensive to the community."

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Is the building "so dilapidated, unclean or unsafe as to be offensive to the community"? That this is the case is established primarily by the unsafe condition of the building, and is corroborated by a petition from the neighbourhood that is appearing on the 1990 November 05 Council agenda and site inspection by staff of the Building Inspection and Environmental Health Divisions.

The building has again been vandalized to the extent that siding along the east and north sides has been torn off with jagged boards and nails being exposed, allowing entry to the building by unauthorized persons. The roof has been broken open in several locations and the site is littered with broken glass and other dangerous construction debris.

The Building Inspection Division has ordered the owner to secure the building against unauthorized entry and to either repair, complete or demolish the building under permit on several occasions since original construction in 1980. The owner has not demonstrated any intention of complying with these orders and, in fact, municipal staff have had to secure the building a number of times. This action by municipal staff may have increased municipal liability in the event of an accident in that the municipality is demonstrating a responsibility to keep the premises secure.

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Re: 5321 Spruce Street
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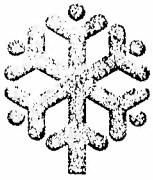
The option of immediately cleaning the site, securing the premises and applying for and obtaining a new building permit to complete the construction prior to enforcement of an Order by Council, remains for the owner. However, considering the inaction of the owners to date and the fact that the building has remained in an unfinished, unoccupied, unsightly and unsafe condition for almost 10 years, it is recommended that Council act under the authority provided in Section 936 to have the building at 5321 Spruce Street removed.


A. L. PARR
DIRECTOR PLANNING &
BUILDING INSPECTION

GRH
GRH/jce
Attach.

cc: Chief Building Inspector
Municipal Solicitor
Chief Public Health Inspector

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THE CORPORATION
OF THE DISTRICT OF
BURNABY

4949 Canada Way, Burnaby, B.C. V5G 1M2

Planning & Building Inspection Department
Building Inspection Division

Telephone (604)

294-7158

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DOUBLE REGISTERED

1990 November 01

J. S. & M. C. Nemeth
5222 Sussex Avenue
Burnaby, B. C.
V5H 3B1

Subject: Unightly, Unsafe Premises
Construction Discontinued - Permit Void
5321 Spruce Street, Burnaby, B. C.

This Division advised you by letter dated 1989 May 15 that construction of a new single-family residence authorized under Building Permit No. B-59491 was no longer valid as construction had been discontinued for more than 90 days.

Although amending permits have subsequently been issued to permit construction to proceed, each has been voided as there has been no activity on site for over 8 years. On several occasions since the commencement of construction in 1980 November, this Division has received complaints relating to a structure which was unightly and unsafe.

The most recent complaint was submitted to Council in the form of a petition expressing a continuing concern for the deteriorating condition of the building and the safety of the neighbourhood children. Investigation of the site by staff of the Environmental Health Division on 1990 October 23 and this Division on 1990 October 30 confirmed that the building has again been vandalized and is open to unauthorized entry. The building and site in its present and continually recurring condition is considered to be unightly and unsafe.

As a result of numerous past complaints, the municipality has, on several occasions, utilized municipal crews to secure the structure and clean the site. The latest event took place in 1989 September at which time municipal crews secured the premises, removed debris and cut back overgrown shrubs.

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It is apparent from the lack of action to date that your intention is not to complete the construction or adequately secure and maintain the structure and site. Therefore, please be advised that this Division is submitting a report to Council for its meeting of 1990 November 05 requesting the building be declared a "nuisance" under Section 936 of the Municipal Act and issuance of an Order for its removal.

Should Council adopt the recommendation of this Division to order removal of the building, you will be provided 30 days in which to complete the following should you wish to continue with the construction of the building:

- (1) submit revised drawings in application for a building permit;
- (2) submit a notarized letter of commitment outlining scheduled starting and completion dates for construction of the residence;
- (3) obtain the required permit.

Please note that recent amendments to the Burnaby Zoning Bylaw may preclude development as originally approved which may necessitate revisions to the drawings or application to the Board of Variance.

Should you require further information, please contact the undersigned at 294-7158 or Mr. R. B. McWilliam at 294-7311.


George R. Humphrey, B. Arch.
CHIEF BUILDING INSPECTOR

GRH/jce

cc: Director Planning & Building Inspection
Municipal Solicitor
Chief Public Health Inspector
Supervisor, Building Inspections

