

TO: MUNICIPAL MANAGER 1991 DECEMBER 31
FROM: DIRECTOR PLANNING AND BUILDING
SUBJECT: 4850 BOUNDARY ROAD
LOT 98, D.L. 35, GR. 1, PLAN 30640

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 A PROPERTY OBSERVED TO BE IN CONTRAVENTION OF MUNICIPAL BYLAWS.

RECOMMENDATION:

1. THAT Council direct the Clerk to file notice in the Land Title Office stating that:
 - (i) A resolution relating to the land at 4850 Boundary Road has been made under Section 750.1 of the Municipal Act, and
 - (ii) 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 Saiyaz and Saizad Khan at 4850 Boundary Road, Burnaby, B.C., V5K 4T9. Kalendra and Abida Khan at 3531 Wellington Avenue, Vancouver, BC. V5R 4Y2

Summary

While it may be necessary to take some additional form of legal action to cause the property owners to comply with Burnaby's bylaws, such an action would take several months to process through the courts. Since the property is now up for sale, it seems appropriate to file a notice on land title which will inform any potential buyers of the outstanding bylaw violations. The filing of notice can be done independently of any other legal action that we may wish to undertake.

The use of Section 750.1 of the Municipal Act to file notices in the Land Title Office is consistent with a Housing Committee Report adopted by Council on 1989 March 08.

Background

Section 750.1 of the Municipal Act (attachment 1) provides for the filing of notices in a title office pursuant to a resolution of Council upon recommendations of the Building Inspector where contraventions of the Building Code or other similar regulations have been discovered.

Conditions under which the Building Inspector can recommend that a notice be filed are:

1. A condition resulting from a bylaw or permit violation has been observed and is considered to pose a serious safety problem; or
2. Work that was done on a building without either permit or inspection that is required by bylaw or regulation.

Background cont'd

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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 the Clerk to 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.

If Council decides to file the notice, a resolution to that effect must be adopted.

The register 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.

REPORT

Chronology

As a result of a complaint on 1989 July 26, an inspection was conducted at the subject premises. During that inspection it was noted that the basement had been finished without a building permit.

At that time a "Notice of Suspension" was posted pursuant to Burnaby Bylaw No. 6333, Section 3.(5).

On 1989 July 28 the owner of the property, Mr. Authur Zedel was notified by double registered letter that he must apply for and obtain a building permit or remove all the unauthorized construction by 1989 August 31.

On 1989 August 15, Mr. Zedel applied for the necessary permits and on 1989 September 07, Building Permit No. B 68003 was issued for the first floor finishing, and Permit No. B 67988 was issued for a new set of stairs to connect the first and second floors of the single-family dwelling.

Having received no call from the property owner to inspect the finished work, on 1990 March 13 a building inspector attended at the subject property and noted that the house was not occupied and that it was probably up for sale.

During 1990 the property was sold to the present owners, Saiyaz, Saizad, Kalendra and Abida Khan.

Numerous additional attempts were made to inspect the premises during 1990 and 1991. On 1991 April 10, May 02, June 04, June 05, June 17, July 05, August 02, and September 16 letters were sent to the property owner requesting that they provide access to the premises so that the building inspector could complete the inspection of the construction initiated under Building Permits Nos. B 67988 and B 68003.

On 1991 October 01, staff from the Bylaw Services Section of the Building Department met with one of the property owners to discuss the problem of the outstanding permits. During that meeting staff explained that in order for the premises to conform with the Burnaby Building Bylaw, they would have to complete the construction initiated under the building permits. The property owner agreed to complete the work set out in the permits and call for re-inspection as soon as possible.

On 1991 October 07, a letter was delivered by hand to the property owners at 3531 Wellington Avenue, Vancouver. This letter confirmed the meeting of 1991 October 01 and reviewed the steps that must be taken to bring the building into compliance with Burnaby's bylaws. That letter also advised that the Bylaw Services staff would suspend any legal action until 1991 November 15 to give the owners time to complete the work required. It also noted that since the property is up for sale, staff would recommend to Municipal Council they act under the authority of Section 750.1 of the Municipal Act and pass a resolution filing notice on the Land Title which would notify any potential buyers of the outstanding bylaw violations.

Chronology cont'd

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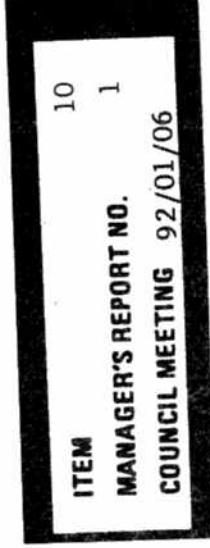
On 1991 November 13, November 19, and December 02, telephone messages were left at the Khan residence asking them to contact Bylaw Services staff regarding the outstanding permits. As of 1991 December 03, staff had received no response to these telephone calls.


DWM:lm
Enc.



A.L. Parr
DIRECTOR PLANNING
AND BUILDING

cc: CHIEF BUILDING INSPECTOR
MUNICIPAL SOLICITOR



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(2) A civil proceeding to enforce, or to prevent or restrain the breach of, a bylaw, resolution or regulation of the council or a provision of this Act, or relating to any damage to or interference with a highway or property of the municipality, may be brought in the name of the municipality. Neither the Crown, the Attorney General or an officer of the Crown is a necessary plaintiff to the proceeding, provided that in all cases a municipality shall, before the expiration of the time limited for appearance by the defendant, or within a further time that may be allowed by the court, serve a copy of the originating document on the Attorney General.

RS1960-25/734

Contravention of bylaws — filing in land title office

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,

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- (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.

1987-14-6.

Restraint of breach of bylaw

~~751. Where a building is erected or used, or land is used, in contravention of a bylaw adopted under this Act, in addition to any other remedy provided in this Act, and to any penalty imposed by the bylaw, the contravention may be restrained by a court proceeding at the instance of the municipality alone.~~

~~RS1960-255-735.~~

Recovery of gas, electric energy and water rates

~~752. In addition to any or all other remedies in this Act for the collection and recovery of gas, electrical energy or water rates authorized by this Act, the payment of those rates may be enforced by distress and sale of the goods and chattels of the person owing the rates wherever they are found in the municipality, and the costs chargeable shall, unless any other scale is provided under this Act, be those payable under the *Rent Distress Act*.~~

~~RS1960-255-736.~~

Scale of costs on distress

~~753. A council may by bylaw regulate and alter the scale of costs payable in cases of distress under this Act.~~

~~RS1960-255-737.~~

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Nov. 3, 1989

