



CITY OF RICHMOND

REPORT TO COUNCIL

TO: Richmond City Council

FROM: A.L. (Rick) Bortolussi
Manager, Building Approvals Department

RE: **SECTION 57 OF THE COMMUNITY CHARTER ACT**
7400 No. 5 ROAD

DATE: February 02, 2004

FILE:

STAFF RECOMMENDATION

1. That Council adopt a resolution attached as **Appendix "A"** to this report under Section 57 of the Community Charter Act with respect to the property at 7400 No. 5 Road.
2. That Council authorize the payment of any prescribed fees required by the Registrar of Land Titles.

A.L. (Rick) Bortolussi
 Manager, Building Approvals Department
 (4114)
 Attachments

FOR ORIGINATING DIVISION USE ONLY		
ROUTED TO:	CONCURRENCE	CONCURRENCE OF GENERAL MANAGER
Law	Y <input checked="" type="checkbox"/> N <input type="checkbox"/>	

STAFF REPORT

ORIGIN

The property records indicate that the Registered Owner of the property located at North ½ of the North ½ of the North ½ of the South West ¼, Section 18, Block 4, North Range 5 West, Except: Firstly : Parcel H (Bylaw Plan LMP12615) Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323) having the civic address of 7400 No 5 Road, Richmond, BC, is Gurcharan S. Johal, 6400 No. 5 Road, Richmond, BC V6Y 2T9/

A copy of the Zoning Map 18-4-5 is attached as **Appendix "B"**.

ANALYSIS

Building Permit & Inspection Activity

A building permit application for a new single family dwelling to be located at 7400 No.5 Road was received by Building Approvals Department on September 5,2004. Various processes required resubmissions or additional information from the applicant. This incomplete submission of information or other approvals being processed (for example, septic tank and disposal field permit form Richmond Health and demolition approvals), delayed the ability of staff to issue the permit.

On August 14, 2003 the owner applied for and was issued a permit for demolition. No inspections were requested by the owner, however on November 3, 2003 a site visit was carried out. During that site visit it was observed that the demolition appeared to have been carried out, however a full inspection could not be undertaken as the site area was preloaded. The inspector left a notice on site requesting that the Geotechnical Engineer's field inspection approval and reports be provided as well as informing the applicant that the Structural Engineer's field inspection approval is required prior to requesting the City's form inspection.

The Structural Engineer attended City Hall on November 12, 2003 to pay the outstanding permit fees and obtain the building permit. During this transaction, he indicated that the concrete for the forms and the foundation had commenced earlier that morning. It is to be noted that the Structural Engineer conducted a field review of the formwork on November 5, 2003. Notwithstanding, he has previously conducted work in Richmond and is experienced with the requirements for building permits and inspections.

An inspection notice was left on November 25, 2003 indicating the construction had commenced without City inspections and that full detailed field reports and reviews were to be submitted by the Geotechnical Engineer and the Structural Engineer. In addition, the survey of non-encroachment was to be submitted by the BC Land Surveyor prior to any wood frame construction commencing.

Commencement of preload prior to the demolition receiving final approval; construction commencing prior to obtaining the building permit and placement of concrete prior to obtaining inspection approval are contraventions with the Building Regulation Bylaw #7230.

Case Law PrecedenceIn the Ontario Supreme Court case, *Ingles v. Tukuluk Construction*, a building inspector conducted a non-permit inspection and observed that structural renovation work on an existing single family dwelling had commenced without the owner or contractor obtaining a building permit or required inspections. When the inspector arrived on site, the remedial work of underpinning the foundation was completed and the concrete slab-on-ground was placed and the inspector was unable to perform a complete inspection. The contractor verbally indicated the method of construction undertaken and the inspector accepted the information and took no further action. Subsequent to the site visit, a permit was obtained and the balance of the scope of work was completed and inspections undertaken on the subsequent portions of the renovation. Sometime later, the foundation failed and the owners initiated a claim against the contractor and local government authority.

The judge ruled that the inspector breached the duty he owed to the owner by failing to use powers available to satisfy himself that the underpinning was satisfactory. The Supreme court ruled that the local authority:

- had made the decision to inspect construction, including construction that commenced before the issuance of a building permit;
- owed a duty of care to the owner to conduct the inspection without negligence;
- would be liable in negligence for those construction defects where it could reasonably be expected to detect; and
- could easily have invoked available bylaw enforcement action to confirm compliance.

Regulatory Enforcement Options

(a) Take No Action and Accept the Engineers' Field Reports

The Building Regulation Bylaw 7230, indicates in Section 12.1.1 (a):

"12.1.1 The owner must obtain an inspection of the construction after each of the following:

- (a) forms for the footings and foundations are complete, but prior to the placing of concrete;"*

This option assumes that the field reviews conducted by the respective engineers and the work performed by the contractor will result in the construction being in full compliance with the BC Building Code. It is to be noted in the geotechnical engineer's reports, reference was made to addressing the fill should it rain between the time of his last site visit and the time immediately prior to the concrete being placed. He indicated in his field memo, dated October 28, 2003 that,

"House footing excavations have accumulated water, contractor has placed clear crushed gravel prior to rain. If areas become soft, these areas should be sub-excavated and replaced with compacted fill."

To our understanding the concrete for the forms and foundation was placed on November 12, 2003. There is a high probability that the City could be found liable should there be a failure in the foundation and it only relied on the site visits carried out by the engineers. This is the similar scenario as in the *Ingles vs Tukuluk Construction*.

(b) Initiate Bylaw Contravention Action Through Provincial Court

This option requires staff to initiate a summary conviction charge through the Court. It can take a minimum of six months to have the case heard. Court penalties are generally minimal (\$50 - \$100 per charge/count). Items of contravention are not generally required to be resolved to a safe condition by the Court.

(c) Mandatory Injunction

A mandatory injunction is an injunction that requires the performance of a positive act to address a serious hazard. This option requires a BC Supreme Court application. When ruled in the City's favour by the Court, the defendant is required to address the hazard within a specified period of time and failure to do so, could allow the City to enter onto the property and correct the hazard and charge costs to the defendant. This option is used mainly for serious fire and life safety situations. Legal costs associated with such action would be in excess of \$10,000.

(d) Section 57 Processing

Section 57 of the "Community Charter Act" allows Council to pass a resolution directing the City Clerk to file Notices, attached as **Appendix "C"**, against the property in the Land Title Office stating that a resolution relating to land has been made under Section 57 and that further information regarding the resolution may be inspected at the City Clerk's Office. Prospective purchasers will have the opportunity to check out the violation list occurring on the property and will be effectively warned that non-compliance with City bylaws exists.

Before Council passes the resolution under Section 57 of the "Community Charter Act", the owners of the property must be advised in writing by the City Clerk that Council is considering such resolution and be given the opportunity to appear before Council and be heard as to what the resolution should not be passed. This procedure has taken place.

Where a resolution has been passed by Council and the noted bylaw violations are corrected, the owner may request Council to pass a further resolution directing the City Clerk to file a Cancellation Notice.

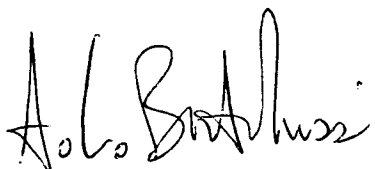
It is recommended that a Notice in the Land Title Office be filed to advise potential purchasers of the problem at this property. The Building Regulation Bylaw #7230 requires the owner obtain permits prior to commencing construction and obtain inspection approval at various stages during the construction. Should this not occur and there are deficiencies in the construction which are in contravention with the Building Code, failure to take action consistent with the provisions of the "Community Charter Act" and City Bylaws may leave the City at risk in the event of a third party action. A general list of deficiencies, as of February 2, 2004 is attached as **Appendix "D"**.

FINANCIAL IMPACT

Potential of \$100.00 per title for anticipated prescribed fees to the Registrar of Land Titles.

CONCLUSION

The construction at 7400 No. 5 Road is in contravention of the Richmond Building Regulation Bylaw #7230 in that construction commenced without the benefit of a building permit and the placement of concrete for the forms and foundation of the building occurred without the owner obtaining inspection approval from the City. This may result in liability on the part of the City in the event of a foundation failure occurring. A Notice on the property in the Land Title Office will effectively discharge the City's legal liability with respect to the property and will alert prospective purchasers of the potential problem.



A.L. (Rick) Bortolussi
Manager, Building Approvals Department
(4114)
ALB:afb

Appendix "A"

RESOLUTION

WHEREAS the Building Inspector has observed conditions in relation to land or buildings, namely the property located at 7400 No.5 Road and legally described as North ½ of the North ½ of the North ½ of the South West ¼ , Section 18, Block 4, North Range 5 West, Except: Firstly : Parcel H (Bylaw Plan LMP12615) Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323), that he considers to be in contravention of City Bylaws and regulations under Division (8) of Part 3 of the Community Charter Act, Chapter 26;

AND WHEREAS the Building Inspector has given a recommendation to the City Clerk, in writing, relating to the above conditions;

AND WHEREAS the City Clerk has notified the registered owner of the property concerning the nature of the recommendation and of the time, date and location of the Council meeting at which the recommendation will be considered;

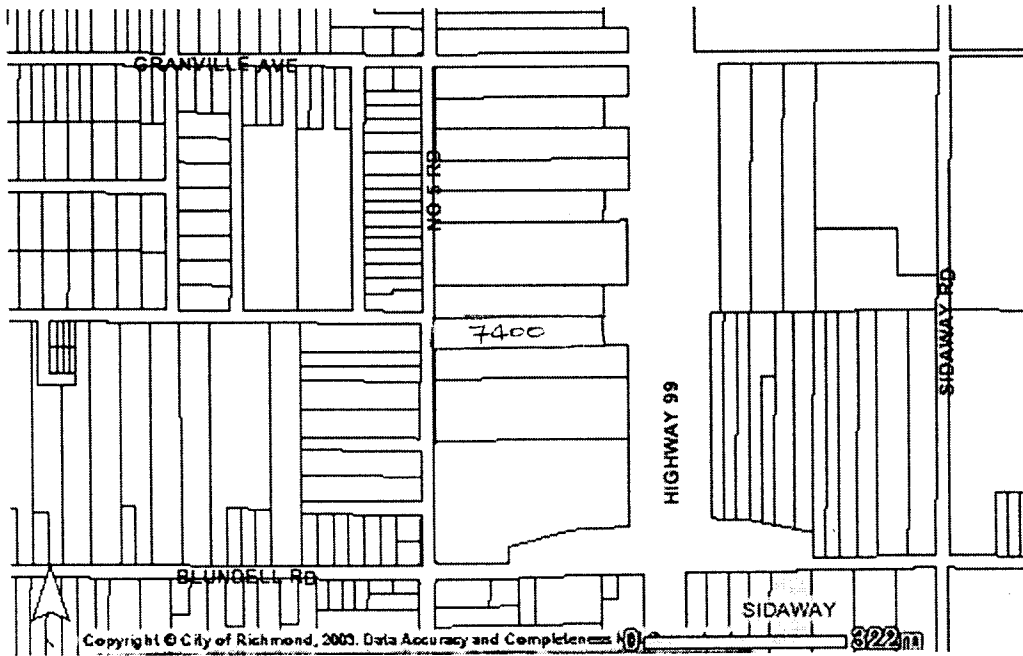
AND WHEREAS the registered owner of the property was given full opportunity to be heard, prior to adoption of this resolution;

NOW THEREFORE;

The City Clerk is hereby directed to file a Notice in the Lower Mainland Land Title Office, New Westminster, indicating that the Council of the City of Richmond has passed a resolution pursuant to Section 700 of the Local Government Act related to land located at North ½ of the North ½ of the North ½ of the South West ¼ , Section 18, Block 4, North Range 5 West, Except: Firstly : Parcel H (Bylaw Plan LMP12615) Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323) having the civic address of 7400 No 5 Road, Richmond, BC, that the Building Inspector considers to be in contravention of City bylaws and regulations under Division (8) of Part 3 of the Community Charter Act, Chapter 26;

The City Clerk is further directed to ensure that all records relating to the matter are available for inspection.

*7400 Number 5 Road
Richmond, BC*



ZONING SEC. 18, 4 - 5

BYLAW CONTRAVENTION NOTICE

IN THE MATTER OF SECTION 700 OF THE LOCAL GOVERNMENT ACT

AND IN THE MATTER OF North ½ of the North ½ of the North ½ of the South West ¼ ,
Section 18, Block 4, North Range 5 West, Except: Firstly : Parcel H (Bylaw Plan LMP12615)
Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323)

TAKE NOTICE that in confirmation of the recommendation of the Building Inspector, the Council of the City of Richmond passed a resolution pursuant to Section 700 of the Local Government Act with regard to lands located at 7400 No. 4 Road more particularly know as North ½ of the North ½ of the North ½ of the South West ¼ , Section 18, Block 4, North Range 5 West, Except: Firstly : Parcel H (Bylaw Plan LMP12615) Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323)

The City of Richmond hereby gives Notice that the owners of the said lands have allowed and continue to allow the buildings and structures to contravene provisions of City bylaws and regulations, under Division (8) of Part 3 of the Community Charter Act, Chapter 26; namely the construction building without first obtaining building inspection approvals of the construction of the footings and foundation. Further information regarding this Notice may be inspected at the offices of the City Clerk, 6th Floor, Richmond City Hall, 6911 No. 3 Road, Richmond, B.C. during regular working hours.

Appendix "D"

GENERAL LIST OF DEFICIENCIES noted as of February 2, 2004

7400 NO. 5 ROAD, RICHMOND, BC

Legal Description: North ½ of the North ½ of the North ½ of the South West ¼ , Section 18, Block 4, North Range 5 West, Except: Firstly : Parcel H (Bylaw Plan LMP12615) Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323)

OBSERVATIONS AS OF NOVEMBER 25, 2004.

BUILDING PERMIT: 03-246463

1. Concrete placed for the footings and foundation prior to building permit issuance and without inspection approval from the City of Richmond.



City of Richmond

6911 No. 3 Road, Richmond, BC V6Y 2C1
Telephone (604) 276-4000
www.city.richmond.bc.ca

February 11, 2004
File: 8000-02

City Clerk's Office
Telephone: (604) 276-4007
Fax: (604) 278-5139

REGISTERED MAIL

Mr. Gurcharan S. Johal
6400 No. 5 Road
Richmond, BC
V6Y 2T9

Dear Mr. Johal:

**Re: Serving Notice Under the Provisions of Section 57 of the Community Charter
Regarding 7400 No. 5 Road, Richmond**

This is to advise you that Richmond City Council will be considering a recommendation from the Building Inspector in connection with the above matter, based on conditions which he observed, which are in contravention of bylaws and regulations adopted pursuant to Division (8) of Part 3 of the *Community Charter*, Chapter 26, in relation to the following property of which you are the registered owner(s):

7400 No. 5 Road - North ½ of the North ½ of the North ½ of the South West ¼, Section 18, Block 4, North Range 5 West, Except: Firstly: Parcel H (Bylaw Plan LMP12615) Secondly: Part of SRW Part 21735 New Westminster District (P.I.D. 003-682-323)

On Monday, March 8th, 2004, at 7:00 p.m., in the Council Chambers, Richmond City Hall, 6911 No. 3 Road, Richmond, B.C., City Council will consider a recommendation that the City Clerk be directed to file a notice against the above land in the Land Title Office. This notice would state that a resolution relating to the land has been adopted under Section 57 of the *Community Charter*, and that further information respecting the resolution may be inspected at the City Clerk's office. The purpose of the notice is to advise interested parties of violations that are occurring on the property and to provide warning that the City intends to pursue this matter until compliance is achieved.

You are encouraged to attend this March 8th, 2004 Council meeting to make representation to Council, prior to its consideration of the recommendation. Should you have any questions concerning the procedures for appearing before Council, please contact the City Clerk's office at 604-276-4007.

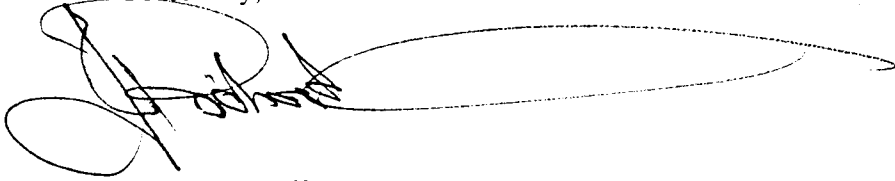
For your information, we are enclosing:


RICHMOND
Island City, by Nature

1. A copy of the proposed Resolutions recommended by the Manager, Building Approvals Department;
2. A copy of the proposed Notices to be filed in the Land Title Office; and
3. A copy of Section 57 of the *Community Charter*.

Further documentation relating to this matter may be inspected at this office during regular business hours.

Yours truly,

A handwritten signature in black ink, appearing to read "J. Richard McKenna", written over a horizontal line. The signature is stylized and includes a large loop on the left side.

J. Richard McKenna
City Clerk

JRM:alb
Att. 2

pc: Manager, Building Approvals Department

RESOLUTION

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AND WHEREAS the Building Inspector has given a recommendation to the City Clerk, in writing, relating to the above conditions;

AND WHEREAS the City Clerk has notified the registered owner of the property concerning the nature of the recommendation and of the time, date and location of the Council meeting at which the recommendation will be considered;

AND WHEREAS the registered owner of the property was given full opportunity to be heard, prior to adoption of this resolution;

NOW THEREFORE;

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The City of Richmond hereby gives Notice that the owners of the said lands have allowed and continue to allow the buildings and structures to contravene provisions of City bylaws and regulations, under Division (8) of Part 3 of the Community Charter, Chapter 26; namely the construction of the building without first obtaining building inspection approvals for the construction of the footings and foundation. Further information regarding this Notice may be inspected at the offices of the City Clerk, 6th Floor, Richmond City Hall, 6911 No. 3 Road, Richmond, B.C. during regular working hours.

Note against land title that building regulations contravened

57. (1) A building inspector may recommend to the council that it consider a resolution under subsection (3) if, during the course of carrying out duties, the building inspector

- (a) observes a condition, with respect to land or a building or other structure, that the inspector considers
 - (i) results from the contravention of, or is in contravention of,
 - (A) a municipal bylaw,
 - (B) a Provincial building regulation, or
 - (C) any other enactmentthat relates to the construction or safety of buildings or other structures, and
 - (ii) that, as a result of the condition, a building or other structure is unsafe or is unlikely to be usable for its expected purpose during its normal lifetime, or
 - (b) discovers that
 - (i) something was done with respect to a building or other structure, or the construction of a building or other structure, that required a permit or an inspection under a bylaw, regulation or enactment referred to in paragraph (a) (i), and
 - (ii) the permit was not obtained or the inspection not satisfactorily completed.
- (2) A recommendation under subsection (1) must be given in writing to the corporate officer, who must
- (a) give notice to the registered owner of the land to which the recommendation relates, and
 - (b) after notice under paragraph (a), place the matter before the council.
- (3) After providing the building inspector and the owner an opportunity to be heard, the council may confirm the recommendations of the building inspector and pass a resolution directing the corporate officer 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 about it may be inspected at the municipal hall.
- (4) The corporate officer must ensure that all records are available for the purpose of subsection (3) (b).
- (5) If the registrar of land titles receives a notice under subsection (3) and payment of the prescribed fee, the registrar must make a note of the filing against the title to the land that is affected by the notice.
- (6) The note of a filing of a notice under this section is extinguished when a new title to the land is issued as a result of the deposit of a plan of subdivision or a strata plan.
- (7) In the event of any omission, mistake or misfeasance by the registrar or an employee of the registrar in relation to the making of a note of the filing under subsection (5), or a cancellation under section 58, after the notice is received by the land title office,
- (a) the registrar is not liable nor is the Provincial government 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*.
- (8) 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 or section 58 that would have, but for this subsection, constituted a breach of duty to any person.
- (9) The authority under this section is in addition to any other action that a building inspector is authorized to take in respect of a matter referred to in subsection (1).