



Special Council Meeting

Monday, November 14, 2011

Time: 4:00 p.m.
Place: Anderson Room
Richmond City Hall
Present: Mayor Malcolm D. Brodie
Councillor Linda Barnes
Councillor Derek Dang
Councillor Evelina Halsey-Brandt
Councillor Greg Halsey-Brandt
Councillor Sue Halsey-Brandt
Councillor Ken Johnston
Councillor Bill McNulty
Councillor Harold Steves
Corporate Officer – David Weber
Call to Order: Mayor Brodie called the meeting to order at 4:00 p.m.

RES NO. ITEM

LAW AND COMMUNITY SAFETY DEPARTMENT

- 1. PROPERTY MAINTENANCE & REPAIR BYLAW NO. 7897
SPECIAL SAFETY INSPECTION FEE APPEAL # 170 – 2840
OLAFSEN DRIVE, RICHMOND, B.C.**
(File Ref. No.: 12-8080-30-2010527090) (REDMS No. 3252855, 3307467, 3208764, 2924961, 2922768, 2927932, 2928110, 2255809, 2255841, 2579974, 2740735, 2261254)
May K. Leung, Staff Solicitor, accompanied by Kim Howell, Deputy Chief – Administration, Richmond Fire-Rescue, provided background information in relation to the special safety inspection conducted on June 29, 2010 at Unit 170 – 2840 Olafsen Drive.



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Ms. Leung advised that Curt D'Altroy, Captain and Electrical Fire Safety Inspector, Lee Deweert, Constable, Richmond RCMP, and Wayne G. Mercer, Manager, Community Bylaws were in attendance and available to respond to queries. She made reference to Attachment 7 and Attachment 8 of the staff report dated August 12, 2011 from the Fire Chief, Richmond Fire-Rescue, noting that statements from Captain D'Altroy and Constable Deweert were provided.

Ms. Leung advised that the Electrical Inspector was unable to attend the hearing and stated that the appellant was made aware of this and voiced no concerns.

Ms. Leung briefly reviewed the sequence of events and the following information was noted:

- on June 18, 2010 the Richmond RCMP executed a search warrant at Unit 170 – 2840 Olafsen Drive;
- after the RCMP concluded the search warrant and secured the subject property, the City was notified of structural alterations and electrical fire safety concerns; as a result, the City's EFSI team initiated its process and requested that the owner contact the EFSI team in order to schedule an inspection;
- on June 29, 2010 the EFSI team conducted a special safety inspection on the subject property with Richard Ames, representative of 362076 B.C. Ltd. (the owner) in attendance;
- the special safety inspection revealed significant evidence of fire and safety hazards and unauthorized alterations; and
- the special safety inspection report was forwarded to the owner and explained the outcome of the inspection and the remedial work required to address the violations; also, \$4,200 was imposed pursuant Bylaw 7897 – Property Maintenance and Repair for the special safety inspection.



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Ms. Leung stated that the owner submitted that the \$4,200 fee for the special safety inspection was not applicable as it did not meet the criteria of a special safety inspection as defined by Bylaw 7897. Ms. Leung explained that staff disagree with the owner's submission as the EFSI team conducted the special safety inspection several days after the RCMP executed and completed its search warrant on the subject property. Therefore, the inspection was indeed a special safety inspection as defined in Bylaw 7897, and a \$4,200 fee was properly imposed.

She noted that Constable Deweert's attendance at the special safety inspection on June 29, 2010 was strictly to ensure the safety of the EFSI team. Ms. Leung commented that the special safety inspection report was not forwarded to the RCMP and did not make up any of the evidence for the RCMP's criminal investigation.

Ms. Leung stated that the purpose of the special safety inspection was to identify contraventions to provincial regulations and local bylaws, and as per the special safety inspection report, there was substantial evidence of contraventions.

Ms. Leung commented on the appellant's concerns regarding the imposed fee. She referenced a memorandum dated November 8, 2011 from the Deputy Chief – Administration, noting that the fee was established to ensure cost recovery of the total program delivery costs and that recent 2010 information indicates that the fee is in fact the average cost of a special safety inspection. In terms of this appeal, she commented that although the special safety inspection only took twenty minutes to conduct, the fee is on the average cost of an inspection and not per individual inspection.

In reply to queries from Council, Ms. Howell advised that (i) the special safety inspection conducted on June 29, 2010 followed the typical protocol as any other special safety inspection; and (ii) the special safety inspection fee was established under the context that it would ensure cost recovery of the overall program delivery.

Leslie Ames, Leslie J. Ames Law Corporation, representing the appellant, was joined by Richard Ames, Officer and Director of 362076 B.C. Ltd., doing business as Dara Properties, advised that his client was appealing the imposed special safety inspection fee on two bases.



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Mr. L. Ames stated that the imposition of \$4,200 was not lawful and justified because the inspection did not constitute a special safety inspection as defined by Bylaw 7897. Also, he commented that the \$4,200 fee imposed on his client was a penalty versus a fee, as the amount of the fee has no relationship with the work that was actually conducted as part the special safety inspection or other costs actually incurred by the City with respect to the special safety inspection.

Mr. L. Ames read the following points into the record from his submission dated November 2, 2011:

- set out as Attachment 6 of the staff report is a copy of the Warrant to Search (the "Warrant to Search") issued at 11:44 p.m. on June 17, 2010 to the RCMP pursuant to Section 487.1 of the Criminal Code and Section 11 of the Controlled Drugs and Substances Act ("CDSA") "in respect of an offence under the Controlled Drugs and Substances Act, namely: Marihuana, marihuana growing equipment documents pertaining to the tenancy and occupancy of Unit 170 – 2840 Olafson Road, Richmond, British Columbia relevant to the investigation of the following indictable offense(s): Production of a Controlled Substance CDSA 7(1)" and "Possession for the Purpose of Trafficking CDSA 5(2)" and for a search of the Commercial Property between 11:45 PM on Thursday, June 17, 2010 to 4:00 AM on Friday, June 18, 2010 as part of a criminal investigation;
- on June 29, 2010 the City's Electrical and Fire Safety Inspection ("EFSI") Team conducted an inspection (the "EFSI Inspection") of #170 – 2840 Olafsen Avenue, Richmond, BC (the "Property");
- on July 2, 2010, the City issued Invoice No. 35578 in the amount of \$4,200 to 362076 B.C. Ltd. (the "Owner") of the commercial Property as a special safety inspection fee (the "Special Safety Inspection Fee") with respect to the EFSI Inspection of the Property on June 29, 2010;
- on July 14, 2010, the City issued Invoice No. 10-20832 in the amount of \$6,974.34 to the Owner of the commercial Property for "service costs" with respect to the execution of the Warrant to Search by the RCMP;
- the Property is one of seven industrial-commercial units located at 2840 Olafsen Avenue, Richmond, BC;



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- a "special safety inspection" is defined in section 4.1.2 of Bylaw 7897 where it expressly states that it "...does not include an inspection pursuant to an emergency call for police, fire or ambulance services or an inspection carried out under a warrant as part of a criminal investigation";
- it is an undisputed fact that the Warrant to Search was issued on June 17, 2010 as part of a criminal investigation with respect to the Property and executed on June 17 and 18, 2010. That Warrant to Search and criminal investigation is directly linked to and forms part of a series of events that naturally flowed from the Warrant to Search and criminal investigation very soon thereafter and led to the EFSI Inspection on June 29th and the imposition of the \$4,200 Special Safety Inspection Fee on July 2, 2010;
- it is clear from a review of the Attachments to the City's Staff Report that the EFSI Inspection on June 29, 2010 and the imposition of the \$4,200 Special Safety Inspection Fee on July 2, 2010 would not have occurred had the RCMP not first been issued the Warrant to Search and conducted the criminal investigation; in such circumstances the owners of property are exempt from the \$4,200 Special Safety Inspection Fee; one reason may be that when Council passed section 4.1.2 of Bylaw 7897, it recognized that an exemption from the \$4,200 Special Safety Inspection Fee in such circumstances was appropriate and just because the owners of the properties are innocent victims who are property tax payers who pay for the fire and electrical safety services being provided as part of the EFSI Inspection as part of their property tax payments and other municipal assessments. Therefore, in such circumstances, the innocent Owner of the Property should not be financially punished by the imposition of the \$4,200 Special Safety Inspection Fee, in addition to incurring the additional costs of performing expensive remedial work on its Property in order to comply with the compliance work orders resulting from the EFSI Inspection as well as suffering the loss of rental revenue and the use of the Property for approximately 8 months;



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- alternatively, in this case, the \$4,200 "Special Safety Inspection Fee" is really a "penalty" imposed on the Owner rather than a "fee" because the "Special Safety Inspection Fee" bears no relation to the amount of time, effort, staffing requirements or other costs actually incurred by the City with respect to the subject inspection of the Property on June 29, 2010. The second page of Attachment 12 of the City's Staff Report entitled "Electrical and Fire Safety Inspection Team Fire Inspector – Inspection Day Report" (the "EFSI Fire Inspection Day Report") with respect to the EFSI Inspection of the Property on June 29, 2010 states: "Team Arrival Time: 11:00 AM" and "Team Departure Time: 11:20 AM", a mere 20 minutes to conduct the one and only EFSI Inspection for which the "Owner" is being charged an enormous "fee" of \$4,200. The EFSI Fire Inspection Day Report and the Electrical and Fire Safety Inspection Data Collection Form Report, the third page of Attachment 12 of the City's Staff Report dated June 29, 2010 (and other documentation in the City's Staff Report) regarding the EFSI Inspection confirm that the only persons in attendance at the Inspection were Curt D'Altroy, Captain, Electrical Fire Safety Inspector; the electrical inspector; and RCMP Constable Lee Deweert. We submit that the \$4,200 "Special Safety Inspection Fee" is really a form of penalty on the Owner that is extremely punitive in nature; and
- Bylaw 7897 sets out the authorization for conducting special safety inspections and the fee to be imposed for such inspections; the relevant provision and definitions in Bylaw 7897 are as follows: section 4.1.2, subject to the provisions of the *Community Charter*, an inspector may coordinate a special safety inspection of a parcel or parcels.

Mr. L. Ames referred to section 16, subsection 6 of the *Community Charter* and was of the opinion that Bylaw 7897 was passed with the sole purpose of giving the City additional powers to assess special safety inspection fees and service fees.

Mr. L. Ames referred to a memorandum dated November 8, 2011 from the Deputy Chief – Administration and stated that this memorandum was critical in demonstrating that the fee imposed on his client was a penalty in actuality and not a fee. He read an extract of the memorandum and commented that the fee was inappropriate as it was a penalty and not a fee on a cost recovery basis.



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Mr. L. Ames provided some approximate calculations in regards to the breakdown of the general program costs, and then on the inspection specific costs.

Mr. R. Ames expressed that he believed that based on the general program costs as provided in the memorandum dated November 8, 2011 from the Deputy Chief – Administration, the City could better allocate funds for this program.

Although other special safety inspections may take longer, Mr. L. Ames emphasized that the special safety inspection that took place at his client's property merely took twenty minutes to complete. He reviewed the costs for a Fire Inspection Officer, a vehicle, clerical work, and RCMP support, concluding that the fee imposed does not translate to the real costs of conducting a special safety inspection.

Mr. L. Ames read from an email dated March 22, 2011 between his client and the Manager, Community Bylaws (attached to and forming part of these Minutes as Schedule 1) and stated that based on this email, the \$4,200 fee is discretionary as it implies that those administering Bylaw 7897 can choose to charge or not charge a fee.

In regards to service cost, Mr. L. Ames pointed out that his client successfully challenged the City's invoice. He commented that the charges were inconsistent and on April 5, 2011, the City credited his client \$5,350.19 of a \$6,974.34 invoice.

The Chair highlighted that the average cost of a special safety inspection is approximately \$4,600 not \$4,200, which is what is being charged of the owner of the subject property.

Mr. L. Ames referred to a list of reported grow operations found on the RCMP's website and stated that the list indicates that Richmond only has two grow operations.

Mr. R. Ames spoke of the City's powers pursuant the *Community Charter*. He commented that the City has the authority to inspect and order remedial work on a property without the existence of Bylaw 7897. Therefore, he believed that the purpose of Bylaw 7897 was to add a layer of authority in order to be able to impose fees.



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Mr. R. Ames spoke of the scope of work required to remediate his property and stated that it cost him approximately \$15,000. He commented that based on the value of work done on his property, the City's building permit would only cost approximately \$200, as opposed to \$4,200.

In reply to queries from Council, Mr. R. Ames advised (i) he does not necessarily visit his commercial rental properties once a month; and (ii) he was not aware that the RCMP executed a search warrant and found a grow operation in one of his properties for several days after the execution of the warrant. Also, Mr. Ames stated that he did not believe that he had to continuously look after his tenants as his tenants are entitled to peaceful enjoyment of their leased space.

In reply to a query from the Chair, Ms. Howell confirmed the Chair's understanding that if the RCMP search warrant process were ongoing, perhaps the inspection would not have been a special safety inspection. However, the RCMP search warrant process was finished and therefore, the inspection was a special safety inspection. Moreover, Ms. Howell commented that although the actual time spent conducting the special safety inspection was approximately twenty minutes, staff conducted pre-inspection and post-inspection activity such as conducting research, driving by the subject site, preparing all the appropriate documentation, and scheduling arrangements for all the parties involved in the special safety inspection.

Ms. Howell advised that the Electrical and Fire Safety Inspection program has been downsized since its establishment. She noted that when initially launched, the program had a dedicated fire inspector, two RCMP members, and a clerical position. She commented that today the program only has half the resources it started with: a half-time fire inspector, a quarter-time clerical, and a quarter-time RCMP support.

In reply to a query from Council, Ms. Howell advised that a half-ton vehicle was utilized in this circumstance as it was the only unit available. She commented that the program also includes an educational component that includes pamphlets and other resources to help people identify grow operations. Ms. Howell noted that in the past Richmond Fire-Rescue staff have been invited to work with real estate agencies to provide verbal presentations.



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In reply to a query from Council, Ms. Leung advised that under section 16 of the *Community Charter*, the City may enter onto a property with or without an owner's consent to inspect and determine compliance with certain provincial regulations and local bylaws.

Discussion ensued regarding the special safety inspection and whether it was as a result of an emergency call to the RCMP. Ms. Leung stated that the amount time that had passed between the RCMP's execution of the search warrant and the actual inspection demonstrates that the inspection was not pursuant to an emergency call for fire or police services. Also, a concern was raised in regards to the fact that the property owner was unaware of activities at the subject site for several days.

SP11/10-1

It was moved and seconded

That the appeal by 362076 B.C. Ltd. (dba Dara Properties) of the special safety inspection fee imposed pursuant to Property Maintenance & Repair Bylaw No. 7897 against #170 – 2840 Olafsen Avenue, Richmond, B.C., be denied.

The question on Resolution SP11/10-1 was not called as discussion ensued and the following comments from Council were noted:

- Councillor E. Halsey-Brandt stated that she supported the staff recommendation to deny the appeal of the special safety inspection fee as the purpose of the Electrical and Fire Safety Inspection program is to ensure Richmond properties are safe for residents and tenants and ultimately, a grow operation was located at the subject property;
- Councillor E. Halsey-Brandt commented that when a special safety inspection is conducted and a property is found to be in compliance with provincial and City regulations, no fee is applied; therefore, it is reasonable to distribute the cost of the delivery of the Electrical and Fire Safety Inspection program on the properties that are found in violation of provincial regulations and local bylaws;
- Councillor E. Halsey-Brandt expressed that she was not concerned with the City's protocol surrounding special safety inspections as the EFSI team acted in a timely manner once notified that a fire and electrical safety inspection was needed at the subject property;



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- also, Councillor E. Halsey-Brandt expressed that she believed that a commercial landlord has the same duty to conduct inspections of leased spaces as does a residential landlord;
- Councillor Steves echoed Councillor E. Halsey-Brandt's comments and emphasized that based on the photographs provided of the subject property, there was a clear violation of provincial regulations and local bylaws;
- Councillor Steves noted that from the photographs, it was evident that a dangerous alteration had been made and that the costs for the City to remedy the situation should not have to be paid through taxpayer dollars;
- Councillor Barnes remarked that the subject property is part of a commercial building with other tenants leasing adjacent units; therefore, she was thankful that the special safety inspection was conducted in a timely manner as it protected the other tenants from potential electrical and fire hazards, noting that tenants of buildings are also protect by the bylaw as well as homeowners.

The question on Resolution SP11/10-1 was then called and it was **CARRIED** with Councillor G. Halsey-Brandt opposed.

ADJOURNMENT

SP11/10-2

It was moved and seconded
That the meeting adjourn (5:17 p.m.).

CARRIED

Certified a true and correct copy of the Minutes of the Special Meeting of the Council of the City of Richmond held on Monday, November 14, 2011.

Mayor (Malcolm D. Brodie)

Corporate Officer (David Weber)

----- Original Message -----

From: Mercer, Wayne

To: Richard M. Ames

Sent: Tuesday, March 22, 2011 12:22 PM

Subject: RE: Dara Properties - follow-up on Invoices

Schedule 1 to the Minutes of the
Special Council meeting held on
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Mr. Ames:

The issue that has produced a bit of a delay is corresponding is that fact that the original \$6,974.40 had been paid in full in 2010 and I believe well before the actual appeal process took place in November. Typically, property owners do not pay the invoice if it is being disputed as payment may be construed as agreement with the amount stated in the invoice.

We were not aware that the amount had been paid until we asked for a final accounting of this invoice in mid-February of this year – a different fiscal year - in support of the draft letter at the time.

We will try to clarify the refund process with the City's accounting section and get the letter out to you..

On the \$4,200 invoice, the billing is quite straight forward. If the electrical fire safety inspection (EFSI) is done and no grow-op is found, then there is no billing. If an operation is found, then the full \$4,200 is payable. To pursue this issue any further, you would have to talk to the EFSI coordination through RFR Deputy Fire Chief, Kim Howell at 604.303.2762 - Kim was present at the meeting we had to review both of your invoices.

Wayne G. Mercer
Manager, Community Bylaws