

DATE: February 13, 2018

FILE: 3220-20 / 04696000

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

**RE: Request to Place Notice on Title, 5862 Aldergrove Drive (Paguin / Korpan)
Lazo North (Electoral Area B)
Lot 3, Block 29, Comox District, Plan 19922, PID 003-643-654**

Purpose

To recommend placement of a Notice on Title for failing to obtain the required permits for the construction of a deck and accessory structure (yurt).

Recommendation from the Chief Administrative Officer:

THAT pursuant to Section 57 of the *Community Charter*, the board approves filing a notice with the Land Title and Survey Authority of British Columbia against land legally described as Lot 3, Block 29, Comox District, Plan 19922, PID 003-643-654 (5862 Aldergrove Dr.), for failure to comply with Building Bylaw No. 142, being the “Comox Valley Regional District Building Bylaw No. 142, 2011”;

AND FURTHER THAT the board direct the owner of the property to remove the structure above the deck and adjust the grade to comply with Development Permit DP 4B 16, approved in 2016;

AND FINALLY THAT if the structure is not removed within 90 days, authorize proceeding with legal action in efforts to obtain compliance for known life safety infractions.

Executive Summary

- Owner obtained an aquatic development permit to construct a deck at grade (<600mm above ground) no building permit was required.
- Bylaw complaint received identified construction of staircase on the steep slope, the deck constructed over 600mm above ground and a structure on top of the deck (Yurt).
- Owner was contacted and advised of required permits and approvals.
- Staircase has been addressed, the deck and Yurt however remain non-compliant.
- Outstanding approvals include steep slope and aquatic DP, floodplain relaxation and building permit complete with a structural engineers review that the structure(s) are safe for intended use.
- Owner has been contacted numerous times but is unwilling to apply.
- Owner could remedy this by removal of the yurt and bringing in fill to ensure deck is at grade.
- The owner was issued a Municipal Ticket (MTI) on August 10, 2017. The ticket was paid on August 22, 2017, to date, the required application for the required permits have not be submitted.

Prepared by:

D. Mirabelli

 Dennis Mirabelli, RBO, CRBO
 Manager of Building Services

Concurrence:

A. MacDonald

 Ann MacDonald, MCIP, RPP
 General Manager of Planning and
 Development Services Branch
Stakeholder Distribution (Upon Agenda Publication)

Alexandre Paguin and Shane N Korpan	✓
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Background/Current Situation

In January 2016 the owners applied to construct a deck in an area that requires an aquatic and riparian development permit. As the proposed deck was to be built at grade level, no building permit was required.

In August 2016 the Comox Valley Regional District (CVRD) received a written bylaw complaint that questioned construction activity on the property. Planning and Bylaw Enforcement staff attended and noted stairs being constructed down the slope of the property to replace an existing set. Staff also took note of an accessory structure that had been constructed on top of the deck. It was noted that the accessory structure had been constructed without a required building permit and in fact the deck in the end had been constructed above grade, to an extent that a building permit was required (Figures 1 and 2).

Staff met several times with the property owners in an attempt to bring the property into compliance. In September 2016 the owners agreed to apply for the required aquatic and riparian area development permit and a building permit retroactively. These permits required the owners to append reports from their engineer and biologist for the work. In October 2016 the owners applied for the partially constructed stairs, deck and yurt. The owners later removed the yurt and deck from the application once staff advised that there was a discrepancy with the location of the structures and what was shown on the engineered drawings.

Given that the owners did not follow up with the application for a building permit and development permits based on the revised locations, staff sent a letter in April 2017 requesting the owner's confirm their proposed course of action. In response, the owner sent a written statement that they will wait for a board decision and are prepared to go to court if the CVRD chooses.

On July 19, 2017 staff sent another letter requesting that applications be submitted or the structures removed. This letter also informed the owner that failure to act would require that the CVRD begin enforcement.

On August 10, 2017 staff served a MTI in the amount of \$300.

On August 22, 2017 the owner paid the MTI. To date a building permit has not been issued for this work, efforts from staff to assist the owner with this matter have failed.

Policy Analysis

Section 302 of Part 9 of the *Local Government Act* (RSBC, 2015, c. 1) authorizes a regional district, through Section 57 of Part 3 of the *Community Charter*, to file a notice with the Land Title and Survey Authority of British Columbia indicating that a building regulation has been contravened.

Options

Option 1: Proceed with placing a notice on the legal title of the subject property and seek compliance through legal action if the owner fails to have the structure removed within 90 days.

Option 2: Proceed with placing a notice on the legal title of the subject property.

Option 3: Take no action.

Building services staff recommends proceeding with Option 1. The CVRD will have taken appropriate action by fulfilling its duty to warn, in the form of a notice on title. Due to the fact that there is a known life safety infraction the CVRD will also demonstrate it has taken appropriate steps in the interest of public safety.

Financial Factors

The CVRD will incur minimal fees associated with placing a notice on title. However, if there is a need for progressive legal action the cost can be expected to escalate.

Legal Factors

A local government that makes the choice to regulate building, and to provide inspection services, takes on the burden of a legal duty of care towards those who may suffer harm as a result of its negligence.

The CVRD needs to ensure it has acted appropriately by fulfilling its' duty to warn, and undertakes a policy decision on a case by case basis taking into consideration the social, political and financial factors.

Placing a notice on title through Section 57 of the *Community Charter* and seeking compliance through legal action would minimize the CVRD's exposure to risk by fulfilling our obligation of a duty to warn, and demonstrates it has taken appropriate steps with a policy decision.

Regional Growth Strategy Implications

The Regional Growth Strategy (RGS), Bylaw No. 120, being the "Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010", designates the subject property as Rural Settlement Area. Objective 2-B of the RGS aims to "*Frame environmental protection and policies around the principles of precaution, connectivity and restoration.*" The principle of precaution requires documentation about the proposed development and impacts on the environment.

Intergovernmental Factors

None.

Interdepartmental Involvement

Staff from bylaw compliance, planning services and building services have been involved with this file. Approximately 100 hours of combined building, planning and bylaw staff time has been spent on this file to date.

Citizen/Public Relations

Potential future purchaser of the property would be notified of a bylaw infraction on the certificate of title.



Figure 1: Deck and Accessory Structure



Figure 2: Deck Exceeding 600mm to the Adjacent Ground