

DATE: May 27, 2021**FILE:** 3800-40 / BC 1081, BC 1110**TO:** Chair and Directors
Electoral Areas Services Committee**FROM:** Russell Dyson
Chief Administrative OfficerSupported by Russell Dyson
Chief Administrative Officer**R. Dyson****RE: Request to Place Notice on Title
7390 Cougar Smith Road / 7460 Artella Drive
Baynes Sound – Denman / Hornby Islands (Electoral Area A)
Lot 6, District Lot 48, New Castle, Plan VIP34539, Except Part in Plan
VIP56837, PID 000-294-721****Purpose**

To recommend registration of a notice against the property title for contravention of Comox Valley Regional District (CVRD) bylaws and failing to obtain the required permits and inspections for the construction activity on the property.

Recommendation from the Chief Administrative Officer:

THAT pursuant to Section 57 of the *Community Charter*, the Comox Valley Regional District Board approves filing a notice with the Land Title and Survey Authority of British Columbia against land legally described as Lot 6, District Lot 48, New Castle District, Plan VIP34539, Except Part in Plan VIP56837, PID 000-294-721 (7390 Cougar Smith Road / 7460 Artella Drive) for failure to comply with Building Bylaw No. 142, being the “Comox Valley Regional District Building Bylaw No. 142, 2011”.

Executive Summary

- Sept 2011, permit issued to move a dwelling onto the property - work was never completed.
- July 2015, work being done to a mobile home - no permit
- Nov 2017, work being done to moved on house – no permit
- Nov 2017, BP application submitted to complete moved on house – incomplete
- Apr 2019, addition to existing shop – no permit
- Aug 2020, accessory building being used as dwelling
- Stop Work Orders and Do Not Occupy Orders have been posted
- The property remains non-compliant
- The CVRD has initiated Provincial Court Action on this property

Prepared by:

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Manager of Building Services

Concurrence:

A. Mullaly

Alana Mullaly, RPP, MCIP
General Manager of Planning and
Development Services

Government Partners and Stakeholder Distribution (Upon Agenda Publication)

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Background/Current Situation

In Sept 2011, building permit No. 9052 was issued for a house to be moved onto the property. The building was moved onto the property and supported on cribbing in preparation for the construction of the permanent foundation. The work was never completed and the permit expired in 2015.

On Nov 7, 2017 a CVRD building official attended the site and confirmed work had taken place without a valid building permit, a Stop Work order was issued.

On Nov 10, 2017 an application for a new building permit to complete the work noted above was submitted, however the owner was unable to provide all the documentation required for a permit to be issued.

To date the building remains elevated and supported on cribbing. (See attached)

Additionally, outstanding at 7390 Cougar Smith there remains a Stop Work order on the addition to the existing shop, which was placed on April 9, 2019. The Do Not Occupy order that was posted on August 12, 2020 remains on an accessory building that is being used as a dwelling. Lastly, the Stop Work order that was placed July 5, 2015 regarding work on the mobile home, also remains in place and has never been rectified through our office.

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 Title of the subject property.

Option 2: 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 Provincial Court prosecutions have been initiated the CVRD also demonstrated 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.

Section 57 of the *Community Charter* of the Province of British Columbia was provided to local governments as a tool to administer and enforce the BC Building Code and building bylaws. It enables the Regional District to register a Bylaw Contravention Notice, through the Land Titles Office registrar, on the title of a property where there is an infraction of the Building Code or CVRD Building Bylaw.

”After providing the Building Inspector and the owner an opportunity to be heard, the board 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 CVRD office.”

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.

Once the situation or condition on the property that gave rise to the filling of the notice on title has been corrected and has been given approval from the building inspector, the notice on title can be removed through a cancellation or discharge notice filed with the registrar of land titles.

Regional Growth Strategy Implications

None

Intergovernmental Factors

Island Health and The Royal Canadian Mounted Police have attended this property on multiple occasions to assist CVRD staff.

Interdepartmental Involvement

Staff from, bylaw services and building services have been involved with this property.

Citizen/Public Relations

A Notice on Title is an effective way of informing any interested party that there are outstanding issues with a particular property. It is also an effective tool that assists staff in gaining compliance with CVRD bylaws and the BC Building Code.

