

DATE: March 27, 2018

FILE: 3800-40/BC 1086

TO: Chair and Directors
Electoral Areas Services Committee

Supported by Russell Dyson
Chief Administrative Officer

FROM: Russell Dyson
Chief Administrative Officer

R. Dyson

**RE: Request to Place Notice on Title, 2212 Coleman Road
Lazo North (Electoral Area B)
Lot 8, Block 29, Comox District, Plan 2261, PID 000-035-866**

Purpose

To recommend placement of a Notice on Title for failing to obtain the required permits and inspections for the construction of a new dwelling.

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 8, Block 29, Comox District, Plan 2261, PID 000-035-866 (2212 Coleman Road), 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 defer this matter to the Agricultural Land Commission (ALC) to conduct their own investigation and take enforcement action if necessary.

Executive Summary

- October 25, 2016 the Comox Valley Regional District (CVRD) Board resolved to support a second permanent dwelling on the property.
- March 29, 2017 the ALC decision denied an approval to construct the dwelling.
- November 2017 construction began on a building identified as a **low human occupancy farm building**, a listed exemption in Building Bylaw No. 142, that does not require a building permit.
- November 23, 2017 the owner disclosed to staff the intent to construct a dwelling within the structure in the future.
- Site inspections confirmed interior partitions and rough in plumbing intended to be used as a dwelling.
- February 9, 2018 “STOP WORK” order was issued.

Prepared by:

Concurrence:

D. Mirabelli

A. MacDonald

Dennis Mirabelli, RBO, CRBO
Manager of Building Services

Ann MacDonald, MCIP, RPP
General Manager of Planning and
Development Services Branch

Stakeholder Distribution (Upon Agenda Publication)

Daniel Cecil Cunningham	✓
Randy David Laws	✓
William Jason Wright	✓

Background/Current Situation

At its meeting of October 25, 2016, the CVRD Board resolved:

*That the agricultural land reserve non-farm use application ALR 2B 16 (Wright/Cunningham/Laws) to construct a second permanent house on lands known as Lot 8, Block 29, Comox District, Plan 2261 (2212 Coleman Road) be supported;
And further that the application be referred to the Agricultural Land Commission.*

On March 29, 2017 the ALC decision refused the proposal (Resolution No. 76/2017).

In November 2017, construction began on the property. The owner's representative, Mr. William Wright informed staff that the construction was for a **low human occupancy farm building**, a building which would not require a permit under Building Bylaw No. 142. Staff was also made aware of the intent to construct a residence in the building in the future.

The Manager of Building Services contacted Mr. Wright, and advised him that the ability to construct a residence in a building not previously permitted would be difficult to approve. A building permit for the structural of the building should have been obtained if the intent was to change the use of the building in the future. Mr. Wright was advised that the ALC and the Home Protection Office (HPO) approvals would still be required to construct the future residence.

On December 1, 2017 Mr. Wright was informed that the ALC and HPO were made aware of the construction taking place on the property and that they may contact him for clarification. Once again Mr. Wright confirmed that he was constructing a **low human occupancy farm building**.

On February 9, 2018, the Building Official attended the site to observe the construction, the structure contains a number of internal partitions as well as rough in plumbing for bathroom and kitchen fixtures (Appendix A). As the owner has stated the intention for future residential use and the construction noted clearly supports the capability of residential use a "STOP WORK" order was issued.

A legal opinion obtained by the CVRD supports the stop work order and recommends forwarding the information to the ALC as well as seek approval for a Notice on Title.

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 for construction of a building without the benefit of obtaining a building permit and failing to obtain the required inspections. Defer to the ALC for investigation.
- Option 2: Take no action.

Building services staff recommends proceeding with Option 1. The CVRD will have taken appropriate action by fulfilling our duty to warn, in the form of a notice on title. Defer to the ALC to conduct their own investigation and take enforcement action if necessary.

To take no action would expose the CVRD to potential risk.

Financial Factors

The CVRD will incur nominal fees associated with placing a notice on title.

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

Proceeding with placing a notice on title is consistent with the objectives and policies of Bylaw No. 120, being the "Comox Valley Regional District Regional Growth Strategy Bylaw No. 120, 2010", specifically (Goal 6-A) protecting the land for existing and future agricultural use and (Goal 6-A1) supporting the regulations outlined in the Agricultural Land Reserve.

Intergovernmental Factors

The construction of a single family dwelling on the property requires both the ALC and HPO support.

Interdepartmental Involvement

None.

Citizen/Public Relations

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

Attachments: Appendix A – "2212 Coleman Road Photos"







