

COLUMBIA SHUSWAP REGIONAL DISTRICT

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December 13, 2019

File No.: 3880 18 58
PR20180000098

REGISTERED MAIL

Evelyn Fairbairn and Peter Murphy
[REDACTED]

Evelyn Fairbairn and Peter Murphy
7517 Castle Heights
ANGLEMONT BC V0E 1M8

**Re: Lot 58 Section 21 Township 23 Range 9 West of the 6th Meridian Kamloops Division Yale
District Plan 25318
7517 Castle Heights, Anglemont**


Please be advised that I have received a recommendation pursuant to Section 57 (1) of the Community Charter.

Pursuant to Section 57 (2)(a) you are hereby advised that this matter will be placed before the Columbia Shuswap Regional District (CSR D) Board of Directors for its consideration at its Thursday January 16, 2020, Regular Board meeting, which commences at 9:30 AM, in the Board Room of the Columbia Shuswap Regional District, 555 Harbourfront Drive NE, Salmon Arm, BC.

You are invited to attend the Board meeting to be heard. You are permitted to make a written presentation or to be represented by legal counsel if you so wish.

Enclosed for your information is a copy of the recommendation of the Building Official and a copy of Section 57 of the Community Charter.

Yours Truly,
COLUMBIA SHUSWAP REGIONAL DISTRICT
Per:


Charles A. Hamilton
Corporate Officer, Deputy

Enclosures

ELECTORAL AREAS

A GOLDEN-COLUMBIA
B REVELSTOKE-COLUMBIA

C SOUTH SHUSWAP
D FALKLAND-SALMON VALLEY

E SICAMOUS-MALAKWA
F NORTH SHUSWAP-SEYMOUR ARM

MUNICIPALITIES

GOLDEN
REVELSTOKE

SALMON ARM
SICAMOUS



MEMORANDUM

TO: Charles Hamilton
Corporate Officer

FROM: Michelle Boag
Building Official

SUBJECT: Community Charter Section 57; Note Against Land Title that Building Regulations Contravened, 7517 Castle Heights, Electoral Area F

File No: 3880 18 58
PR20180000098

Date: December 13, 2019

LEGAL DESCRIPTION: Lot 58 Section 21 Township 23 Range 9 West of the 6th Meridian Kamloops Division Yale District Plan 25318

OWNERS NAMES: Evelyn Fairbairn and Peter Murphy

RECOMMENDATION: Whereas, during the carrying out of my duties, it was noted, in accordance with Section 57 subsections (1) (b) (i) and (1) (b) (ii) of the *Community Charter*, that the registered property owners had commenced construction of a building without the necessary permits; I am recommending, in accordance with Section 57 (2) of the *Community Charter*, that the Corporate Officer give notice to the registered owners of Lot 58 Section 21 Township 23 Range 9 West of the 6th Meridian Kamloops Division Yale District Plan 25318, and further that the matter be placed on the January 16th, 2020 CSR D Board Agenda for consideration by the CSR D Board of Directors.

SHORT SUMMARY: The property is in contravention of the Columbia Shuswap Regional District Building Bylaw No. 660. On May 16, 2018, staff became aware that the owners of the property had commenced construction, in the absence of the necessary Building Permits. Despite numerous correspondence with staff, the owners have failed to apply and obtain the Building Permit required in order to comply with Bylaw No. 660. In addition, work has progressed through a posted Stop Work Order, and a Compliance Letter.

Placing a Section 57 Notice on Title serves as an efficient way to note a structure's potential non-compliance to the BC Building Code and CSR D's building bylaw and also serves as an appropriate disclosure mechanism to potential future owners and other parties that may have an interest in the property. This notice also serves to protect tax payers from potential claims with regard to the BC Building Code and building bylaw contraventions. In addition to the Section 57 Notice on Title, the Board may impose remedial action requirements in relation to hazardous conditions. This action may require the owner to remove or demolish the deficiency, bring it up to the bylaw standard and/or deal with the issue in a manner acceptable to the Board. The resolution imposing a remedial action would specify a time frame in which the action must be completed. If the action is not completed as required, the District may finish the required work at the expense of the owner.

POLICY:

Building Regulation Bylaw No. 660:

Part 4: Prohibitions

4.1 A person must not commence or continue any *construction, alteration, excavation,*

re-construction, demolition, removal, relocation or change the use or *occupancy* of any *building* or *structure*, including other work related to construction:

- (a) except in conformity with the requirements of the *building code* and this bylaw; and
- (b) unless a *building official* has issued a valid and subsisting *permit* for the work under this bylaw.

4.2 A person must not *occupy* or *permit* the *occupancy* of any *building* or *structure* or part of any *building* or *structure*:

- (a) unless a subsisting final inspection notice has been issued by a *building official* for the *building* or *structure* or the part of the *building* or *structure*; or
- (b) contrary to the terms of any *permit* issued or any notice given by a *building official*.

4.9 A person must not contravene a notice of a *building official* issued under section 6.6.

Part 6 Powers of a Building Official

6.6 Subject to applicable enactments, a *building official* may by notice in writing require

- (a) a person who contravenes any provision of this bylaw to comply with that provision within the time ordered;
- (b) an *owner* to stop work on a *building* or *structure*, or any part of a *building* or *structure*, if the work is proceeding in contravention of this bylaw, the *building code*, or any other enactment of the Regional District or other applicable enactments, or if there is deemed to be an *unsafe condition*, and may enter on property to affix or post a stop work order in the form prescribed by the *building official*;
- (e) an *owner* to have work inspected by a *building official* prior to covering;
- (f) an *owner* to uncover any work that has been covered without inspection contrary to this bylaw or an order issued by a *building official*;
- (g) a person to cease any *occupancy* in contravention of a provision of this bylaw;
- (h) a person to cease any *occupancy* if any *unsafe condition* exists because of work being undertaken but not complete and where the *building official* has not issued a final inspection notice for the work;
- (i) an *owner* to correct any *unsafe condition*; and
- (j) an *owner* to correct any work that contravenes this bylaw, the *building code*, or any other enactment.

Section 57 of the *Community Charter*

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 enactment
- (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) (1) 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 council.

FINANCIAL:

Additional costs may include a legal review for options regarding further enforcement and compliance.

KEY ISSUES/CONCEPTS:

2018

- May 16 - An email indicating that a building permit was required was sent to the property owners. Further information regarding how to successfully complete an application along with the property report and technical information from the BC Building code was attached to this email.
- May 29 - Photos were taken by staff at the property to confirm the extent of the contravention.
- July 17 - Photos were taken by staff at the property to confirm if any further construction had occurred.
- August 29 - CSRD received a partial building permit application from the owners.
- September 4 - Photos were taken by staff at the property to confirm if any further construction had occurred.
- September 4 - A Stop Work Order, required by the Building Bylaw, was placed on the property by the Building Official due to additional construction taking place on site.
- September 5 - A planning review was additionally conducted by staff for the largely incomplete building permit. Staff confirmed that based on our mapping data, a steep slopes development permit was required.
- September 5 - The Building Inspection Assistant notified the owners via email of the substantially incomplete building permit application and noted the missing items below:

- The application form only included page one of two and no signatures from the owners;
 - The Owners Undertaking form only contained the second page of three and no signatures from the owners;
 - The Title and legal documents (covenants, Easements, etc.) were not submitted;
 - The required plan drawings and site plan were not submitted;
 - Engineering was required, therefore engineered drawings and a Letter of Assurance was required to be submitted;
 - BC Housing warranty registration was required to be submitted;
 - Confirmation of Record of Sewerage from Interior Health to be submitted; and,
 - Reminder that a Stop Work Order had been placed on the property September 4, 2018 and that work on the building was not to continue.
- September 7 - The Building Official received an offensive and argumentative email response from the owners that didn't offer any solutions.
 - September 10 - The Building Official stopped at the property to review the progress and photos were taken.
 - September 13 - The Building Official sent a reply email to the owners email of September 7, 2018, after conducting a site visit, regarding the building project and Stop Work Order reminding them that they are in contravention to the building and zoning bylaw and also that they require a Hazardous Lands, Steep Slopes Development Permit. The Building Official made it very clear that all work was to stop and not commence further until the Building Permit and Development Permits were issued.
 - September 14 - The Building Official called the owners and left a voice mail requesting a return call to discuss the building project and Stop Work Order.
 - September 19 - The Building Official sent a second email regarding contravention after no response received from the owner to the September 13, 2019 email.
 - November 23 - The Building Official received a phone call complaint regarding the property about concerns that children were occupying a structurally unsafe building.
 - November 27 - Staff conducted a site visit and photos were taken to confirm that the Stop Work Order was still visibly posted and the site was safe.
 - December 5 - The Bylaw Enforcement Officer was on site and took photos. A Bylaw Enforcement file was opened.
 - December 6 - The Bylaw Enforcement Officer and the Building Official sent a compliance letter to the owners via email.
 - December 10 - The Bylaw Enforcement Officer took photos on a site visit.
 - December 13 - The Building Official and the Bylaw Enforcement Officer attended the property to issue a Municipal Ticket but were unsuccessful as the owners were not on site. (Municipal tickets must be personally served to the owner).

2019

- May 9 - A Site visit was conducted by the Building staff and site photos were taken to document construction proceeding beyond the stop work order and ensure that the stop work order was still posted.




- June 24 - An email attached with lot slope photos from the owners suggested the owner's property terrain did not trigger a development permit.
- August 23 - Staff sent a letter to the owners via registered mail and email regarding the building contravention.
- August 25 - Staff received an email response to our August 23 email. This email noted that the home owners feel they have complied with our requests by submitting all the required information necessary for the building permit.
- August 26 - The Building Official sent an email to the owners with information regarding the time line of the application and detailing the missing building permit information still required.
- September 9 - The owners notified the CSRD building staff that Syme Engineering would be acting on their behalf.
- September 9 - To assist the owners, the Building Official sent site photos to Syme Engineering at the consent of the owners.
- October 4 - The Building Official contacted the owners via email to inform them that the CSRD has had no contact from Syme Engineering or any other engineer and would be going to the Board to request a placing a Section 57 on Title. No response was received from the owners.
- November 13 - The Building Official sent an email to the owners noting that we had not had contact from any engineer supposedly engaged by the owner. The email subsequently informed the owner that it was our intent to proceed with a Section 57 Notice for the December Board. The owners responded that they have just found an engineer they are comfortable with and acknowledged that they will have the engineer submit a Schedule B-Letter of Assurance to us in order to have staff hold off proceeding to the December Board.
- No further communication has been received by the property owners as of December 13 2019.

COMMUNICATIONS:

The Corporate Officer will give notice to the registered owners of Lot 58 Section 21 Township 23 Range 9 West of the 6th Meridian Kamloops Division Yale District Plan 25318 in accordance with Section 57 (2)(a) of the *Community Charter*, and once notice has been given to the owner the matter will be placed on the January 16, 2020 CSRD Board Agenda for consideration by the CSRD Board of Directors in accordance with Section 57 (2)(b) of the *Community Charter*.

LIST NAME OF REPORT(S) / DOCUMENT(S):

Location Map	Attached to Memorandum: <input checked="" type="checkbox"/>	Available from Staff: <input type="checkbox"/>
Section 57 of the <i>Community Charter</i>	Attached to Memorandum: <input checked="" type="checkbox"/>	Available from Staff: <input type="checkbox"/>
Photographs of the site dated	Attached to Memorandum: <input checked="" type="checkbox"/>	Available from Staff: <input type="checkbox"/>

REVIEWED BY:	Date Signed Off (MO/DD/YR)	Approval Signature of Reviewing Manager or Team Leader
Corporate Administration Services	12/13/19	
Manager, Development Services	12/13/19	
Team Leader, Building & Bylaw Services	12/13/19	

(4) A building inspector may issue a building permit in accordance with subsection (5) if a qualified professional certifies that the land may be used safely for the use intended if the land is used in accordance with the conditions specified in the professional's report.

(5) A building permit under subsection (4) may only be issued on the following conditions:

- (a) the owner of the land covenants with the municipality to use the land only in the manner certified by the qualified professional as enabling the safe use of the land for the use intended;
- (b) the covenant contains conditions respecting reimbursement by the owner for any expenses that may be incurred by the municipality as a result of a breach of a covenant under paragraph (a);
- (c) the covenant is registered under section 219 of the *Land Title Act*.

(6) If a building inspector is authorized to issue a building permit under subsection (4) but refuses to do so, the council may, on application of the owner, direct the building inspector to issue the building permit subject to the requirements of subsection (5).

2003-26-56, 2003-52-537

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 enactment

that 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.

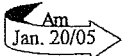
(4) The corporate officer must ensure that all records are available for the purpose of subsection (3) (b).

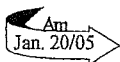
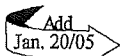
(5) If the registrar of land titles receives a notice under subsection (3) and payment of the prescribed fee, the registrar must make a note of the filing against the title to the land that is affected by the notice.

(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 and neither the Provincial government nor the Land Title and Survey Authority of British Columbia is liable vicariously,





(a.1) the assurance fund or the Land Title and Survey Authority of British Columbia as a nominal defendant is not liable under Part 19.1 of the *Land Title Act*, and

(b) the assurance fund or the minister charged with the administration of the *Land Title Act* 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).

2003-26-57, 2004-66-49

Cancellation of note against land title

58. (1) On receiving a report from a building inspector that the condition that gave rise to the filing of the notice under section 57 (3) has been rectified, the corporate officer must file a cancellation notice and, on receiving the notice, the registrar of land titles must cancel the note against the title to which it relates.

(2) An owner of land with respect to which a notice has been filed under section 57 (3), may apply to the council for a resolution that the note be cancelled.

(3) After hearing an applicant under subsection (2), the council may pass a resolution directing the corporate officer to file a cancellation notice.

(4) If a resolution has been passed under subsection (3), the corporate officer must file a cancellation notice in the land title office and, on receiving the notice, the registrar of land titles must cancel the note against the title to which it relates.

(5) If the council does not pass a resolution under subsection (3), the owner may apply to the Supreme Court and notify the municipality to attend before the court to show cause why the note should not be cancelled.

(6) On an application under subsection (5), after reviewing any evidence that the owner and the municipality may adduce, the court may make an order directing the registrar to cancel the note made under section 57 (5) and, on receiving the order, the registrar of land titles must cancel the note accordingly.

2003-26-58

Division 9 – Business Regulation

Powers to require and prohibit

59. (1) A council may, by bylaw, do one or more of the following:

(a) require operators of premises in which rooms or suites are let for living purposes to maintain, in accordance with the bylaw, a register of persons living there;

(b) in relation to persons engaged in the business activity of purchasing, taking in barter or receiving used or second hand goods,

(i) require such persons, after purchasing, taking in or receiving used or second hand goods, to notify the chief constable who has jurisdiction in the municipality within the time period established by the bylaw, and

(ii) prohibit such persons from altering the form of, selling, exchanging or otherwise disposing of those goods during the time period established by the bylaw;

(c) require manufacturers and processors to dispose of the waste from their plants in the manner directed by the bylaw;

(d) prohibit the operation of a public show, exhibition, carnival or performance of any kind or in any particular location;

(e) prohibit the operation of places of amusement to which the public has access, including halls and other buildings where public events are held;

(f) prohibit professional boxing, professional wrestling and other professional athletic contests.

(2) Before adopting a bylaw under subsection (1) or section 8 (6) [*business regulation*], a council must

(a) give notice of its intention in accordance with subsection (3), and

(b) provide an opportunity for persons who consider they are affected by the bylaw to make representations to council.





Location Map



Dec 03, 2019

This map is for reference only. Not to be used for navigation. The data in this map is compiled from numerous sources and may not be complete or accurate. No warranty, expressed or implied, is made as to the accuracy of this information.



Scale: 1:8,000

0 90 180 270 360 Meters

7517 Castle Heights,
Anglemont

PID: 005-539-129

1:200,000



Subject Property

