

Report to Council



Date: 2018-09-24
File: 0100-01
To: City Manager
From: David Gazley, Bylaw Services Manager
Subject: Draft Council Report - final clean.docx

Recommendation:

That Council pass the following resolution:

WHEREAS the Council of the City of Kelowna has the authority under Section 72 (1) (a) and (b) of the Community Charter to impose a remedial action requirement in relation to hazardous/unsafe conditions or declared nuisances;

Council hereby considers that the buildings located at 1864 Harvey Avenue (the "Property") are in, and create, an unsafe condition, within the meaning of Section 73 (2)(a) of the Community Charter, as a result of the buildings being insecure on numerous occasions, the buildings being damaged by fire and continuing to deteriorate and/or the buildings contravening Bylaw 10760 and the BC Fire Code;

Council hereby declares the buildings on the Property are a nuisance, within the meaning of Section 74 (2) of the Community Charter, as Council considers that the buildings are so dilapidated and unclean as to be offensive to the community;

Council hereby declares the over-grown vegetation and debris on the Property to be a nuisance, as Council considers they contribute to the unclean and offensive condition of the Property that is offensive to the community;

Council hereby imposes on the owner of a requirement to take remedial action to (a) remove the buildings on the Property as the buildings are: (i) a nuisance (ii) in an unsafe condition, (iii)

contravene the BC Fire Code and Bylaw 10760 and (b) to remove and/or trim the over-grown vegetation and remove the debris on the Property no later than thirty (30) days after notice of this remedial action requirement under s. 77 of the Community Charter has been sent by the City to the owner of the Property.

Purpose:

This report provides the basis for the recommended resolutions requiring the owner of the Property, formerly operated as the Ponderosa Motel, to take the necessary remedial action(s) to remedy the hazardous, unsafe and nuisance conditions at the Property.

Background:

A 16 Unit motel, known as the former Ponderosa Motel ceased to operate in 2011, although it continues to hold an active business license. The owner of the Property and the business licensee is Witmar Holdings Ltd, 100-3195 Walnut Street, Kelowna, B.C.

The Property has generated a significant enforcement and complaint history over the past eight years. Focusing on the last three-year period, the Bylaw Services Department attended to the Property on December 15, 2015 in response to a complaint from a citizen who advised that in the course of driving by the building daily they observed people going in and out of the buildings all the time. Bylaw Services found transients had set up in one of the vacant buildings. The owner was called to have the building secured. On December 31, 2015 Bylaw Services attended again to find two males sleeping inside the middle, former office building, with a fire in the fireplace. The Fire Department was called to put the fire out and a restoration contractor was called to secure the building. On January 8, 2016 Bylaw Services re-attended to find a basement window and one of the units in front motel building broken into. Since January 1, 2016 the Bylaw Services Department have received 18 calls for service, including variously complaints regarding the presence of transients (three), discarded needles (one), graffiti (one) and unsightly premises and property nuisance (six).

The RCMP have recorded 110 files in regards to the Property. Of those, 21 complaints have been directly related to the fact of the property being vacated and involved the removal of occupants as a result of trespassing, drug activity, violent encounters and other nuisance type complaints.

The Kelowna Fire Department has responded to 4 structure fires and another minor fire at the Property as follows:

- February 20, 2018 – structure fire
- December 15, 2015 – structure fire
- February 1, 2012 – outdoor fire
- January 24, 2012 – dumpster fire
- October 19, 2011 – chimney fire

The Fire Department also responded to medical calls to the Property on October 27 and November 21, 2015. A separate report from Paul Johnson, Fire Prevention Officer, is attached as Schedule A to this report.

There are three buildings on the Property:

- A building comprising former motel units situated adjacent to the western boundary of the Property in the southwest quadrant at the front of the Property;
- The former office building located towards the center of the Property, just north of the motel units;
- A block construction building at the rear (north) of the Property, comprised of former motel units.

Condition of the Property and Buildings

The property owner took out a demolition permit in January of 2012 as the property had been in a significant state of disrepair. However the owner has failed to act on this permit to present day and the buildings remain on the property.

Each building is in a dilapidated condition, and has been so for some time as evidenced by the photographs of the Property, documenting conditions periodically from 2011 to September of this year, attached as Schedule B to this report. Most of the internal walls separating the motel units in the front building have been removed, along with much of the drywall and there is a hole providing internal access to the basement/crawl space.

The report of Paul Johnson, Fire Prevention Officer, refers to the circumstances of the February 20, 2018 fire, caused by a person squatting in one of the buildings. The lack of effective security to prevent entry to the Property, together with the buildings being abandoned, make the Property attractive as a site for transients to squat. In Mr. Johnson's assessment there is an ongoing fire risk to the buildings, as well as a risk of injury or death to any transient occupant.

In summary, staff consider that the insecure condition of the Property and buildings, the fact of the buildings being vacant (except for transients) and the lack of an onsite presence or management by the owner, create an unsafe condition and contravene the BC Fire Code and Bylaw No. 10760. The buildings are a nuisance by reason of their appearance and their dilapidated condition.

In addition to the dilapidated and unsightly condition of the buildings, there is over-grown grass, weeds and shrubs and rubbish and debris that contribute to the unsightly condition of the Property. Staff are of the view, again supported by the collection of photographs in Schedule B, that the over-grown vegetation and rubbish is part of the nuisance and that Council may also include a remedial action requirement in respect of these "matters or things" that are in or about any matter or thing – including buildings and structures that are also referenced in s. 74.

Recommended Remedial Action

Where Council has determined, under s. 73, that a building or a structure is in an unsafe condition or contravenes the BC Building Code or a local government building regulation, or where Council has declared, pursuant to s. 74, that (i) a building or other structure or a similar matter or thing, or (ii) a matter or thing that is in or about any matter or thing referred to in s. 74(1)(1)(a) to (c), is a nuisance, the options for imposing remedial action requirements include:

- (a) requiring the removal or demolition of the building or structure or similar matter or thing, per s. 72(2)(b)(i),
- (b) requiring the building, structure, matter or thing be brought up to a standard specified by bylaw, per s. 72(2)(b)(iii), and
- (c) requiring the owner or occupier to otherwise deal with the building, structure or similar matter or thing in accordance with the directions of council or a person authorized by council, per s. 72(2)(b)(iv)

Staff are not recommending that Council impose a remedial action requirement to bring the buildings on the Property up to a bylaw or Building Code standard for the following reasons:

- the Property has not been operated as a motel since before the owner obtained a demolition permit in 2012;
- the owner has shown no indication of an intention to recommence motel operations and Council cannot require the owner to operate a motel on the Property;
- the buildings have been vacant (with the exception of unauthorized occupation by transients) for several years during which time their condition has continued to deteriorate;
- the 2018 assessed value of the improvements (buildings and structures) on the Property is, according to BC Assessment, only \$100, as opposed to land value of \$1,568,000, indicating any expenses made towards bringing the buildings up to Building Code and bylaw standards will not be reflected (or only minimally reflected) in assessed building values in the future.

Accordingly, staff do not consider that imposing a requirement to bring the buildings up to standard to be a worthwhile exercise of Council's remedial action authority that would serve the public interest. Staff regard the dilapidated condition of the buildings and the visual eyesore/nuisance they present to be the primary concerns that should drive Council's choice of the appropriate remedial action measure. In this case, staff consider the appropriate measure is demolition of the buildings.

With respect to the over-grown vegetation and rubbish, the imposition of a remedial action requirement of removal would bring the condition of the Property, in relation to those matters, up to a standard specified in a bylaw. The Good Neighbour Bylaw No. 11500 provides in s. 4.2 that no owner or occupier of real property shall permit or allow real property to become or remain unsightly. Section 4.3 of the bylaw provides, more specifically, that an owner must not permit an accumulation of filth or rubbish on real property. Under section 3.1 of the Noxious

Weed and Grass Control Bylaw, all owners and occupiers of real property must prevent the infestation of noxious weeds on their property and prevent the growth of grass exceeding 8 inches.

Notice to Owner

Section 77 of the Community Charter provides that notice of the imposition of a remedial action requirement must be given by personal service or registered mail to (a) the person subject to the requirement, and (b) the owner of the land where the required action is to be carried out. In this case the person subject to the requirement is also the owner. Notice must also be mailed to each holder of a registered charge and any other person who is an occupier of the land. There are no chargeholders or occupants. The time limit for compliance with the remedial action requirement is a minimum of 30 days after the required notice is sent to the owner or person subject to the requirement.

A person who is subject to a remedial action requirement may, under s. 78 of the Charter, request that Council reconsider the imposition of the requirement. Notice of such request must be given within 14 days of the notice of the requirement being imposed. The issue is whether notice must also be given of Council's initial consideration of whether to impose the remedial action requirement. A 2009 BC Supreme Court decision involving the City of Vernon determined that it was not a breach of common law procedural fairness to not give the owner notice and an opportunity to be heard in respect of council considering whether to impose a remedial action requirement (in that case, demolition of a fire-damaged building). The reconsideration provisions in sections 77 and 78 of the Community Charter were determined to provide the affected person an opportunity to be heard and respond to the resolution. Staff are proposing that a similar course be followed here and, should Council decide to impose remedial action requirement(s), notice of the right to request reconsideration will be given to the owner, along with the required notice of the imposition of a remedial action requirement.

Correspondence was directed to the owner of the Property as recently as July 3, 2018 that staff would be proceeding to bring a remedial action request forward to Council for consideration. A copy of the July 3rd letter is attached as Schedule C. As noted in the July 3rd letter, Bylaw Services staff met with Mr. Tony Weistock, a director of the corporate owner, Witmar Holdings Ltd., on March 27, 2018. At that time Mr. Weistock committed to demolishing the buildings and cleaning up the site within one week. While an excavator was moved onto the Property, the buildings remain.

Cost Recovery

If a remedial action requirement is not satisfied by the date specified for compliance, the City may act in default, under section 17 of the Community Charter, and fulfill the requirements at the expense of the person in default. If the amount expended to effect compliance remains unpaid as of December 31 in the year the expense was incurred, it is deemed to be taxes in arrear.

Internal Circulation: L. Kayfish, Risk and Safety Manager

Legal/Statutory Authority:

Council may impose remedial action requirements under the Community Charter, section 72(1)(a) in relation to hazardous/unsafe conditions referred to in s. 73 and section 72(1)(b) in relation to declared nuisances in respect of the subjects referred to in s. 74.

The remedial action requirement

(a) may be imposed on one or more of

(ii) the owner or occupier of the land on which it is located, and

(b) may require the person to

(i) remove or demolish the matter or thing,

(iii) bring it up to a standard specified by bylaw, or

(iv) otherwise deal with it in accordance with the directions of council or a person authorized by council.

Declared nuisances

74 (1) A council may declare that any of the following is a nuisance and may impose a remedial action requirement in relation to the declared nuisance:

(a) a building or other structure, an erection of any kind, or a similar matter or thing;

(d) a matter or thing that is in or about any matter or thing referred to in para. (a)

The authority to declare a matter or thing to be a nuisance is extended by subs. 74(2) beyond nuisances at common law to include a thing that council considers "is so dilapidated or unclean as to be offensive to the community."

Legal/Statutory Procedural Requirements:

Notice of any remedial action requirement to be served on owner/person subject to requirement.

Time specified for carrying out remedial action must be no less than 30 days after notice provided.

Right to request reconsideration under s. 78 Community Charter.

Recovery of costs to achieve compliance in default under s. 17 and s. 258 Community Charter.

Existing Policy:

Financial/Budgetary Considerations:

Personnel Implications:

External Agency/Public Comments:

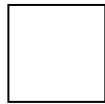
Communications Comments:

Alternate Recommendation:

Considerations not applicable to this report:

Submitted by: David Gazley, Bylaw Services Manager

Approved for inclusion



Joe Creron, Deputy City Manager

cc: **L. Kayfish, Risk and Safety Manager**