

Report to Council



Date: 17 July 2019
To: Council
From: City Manager
Subject: Reconsideration Authority and Considerations – 130 McCurdy Rd
Department: City Clerk

Recommendation:

THAT Council receive, for information, the report from the City Clerk dated 17 July 2019 with respect to Reconsideration Authority and Considerations – 130 McCurdy Rd.

Purpose:

To provide Council background regarding legislative authority for reconsideration and procedural and legal implications for reconsideration of the development application for 130 McCurdy Rd.

Background:

On June 17, Council adopted the OCP and rezoning bylaws for 130 McCurdy, and then considered and issued a Development Permit for the property – see [Council minutes items 3.3, 3.4 and 3.5](#)

Council can reconsider these decisions from the June 17, 2019 Regular Council meeting. This would be accomplished by Council adopting a motion to direct the City Clerk to place the bylaws and development permit on a future Council agenda, and to instruct the Chief Building Inspector to not issue the building permit for 130 McCurdy Rd.

Reconsideration authority is contained in the Community Charter and in the Council Procedure Bylaw – the Charter gives the Mayor the authority to direct the City Clerk to place an item on an agenda for reconsideration; the Council Procedure Bylaw provides that Council may “consider a motion to reconsider a matter” by majority vote. Reconsideration, whether brought forward by the Mayor or voted on by Council, must occur within 30 days of the original motion, and the facts for each reconsideration should be considered, to determine the implications of any reconsideration resolution.

Discussion:

In the McCurdy case, following the June 17th Council meeting, a building permit was applied for and accepted as a complete application and is being processed by the Building Department. This gives the owner/applicant certain rights as of the date the application was accepted by the City. Should, for example, Council decide to direct the Building Inspector to not issue the building permit, the owner/applicant could challenge this Council decision in Court to compel the City to issue the permit. The City Solicitor stated this would likely be successful. Should a Court order the City to issue the Building Permit, the building could then be constructed and operated as currently proposed and would be considered legally non-conforming.

There is also the question of what reason(s) Council is relying upon to bring forward a reconsideration motion:

1. The reason(s) must relate to land use as defined in Zoning Bylaw 8000 (as opposed to land tenancy); and
2. The reason(s) must not be “new information” received by Council since the closing of the public hearing.

Land Use

Council determines changes in land use through a rezoning bylaw and public hearing process. The decision to approve or defeat such bylaws must be based on the proposed new land use as defined in Zoning Bylaw No. 8000. Making decisions for other reasons (developer identity, who will reside in the building, what the building looks like, etc.) are not valid grounds either to approve or to defeat a zoning bylaw and relying upon such reasons would call into question the lawfulness of such a decision.

Council determines the form and character of a building through the development permit process. The decision to approve or to deny the issuance of a development permit must be based on whether the building meets any development permit guidelines, including building design, on-site landscaping and parking layout. Making decisions for other reasons (developer identity, who will reside in the building, land use, etc.) are not valid grounds either to approve or to defeat a development permit and doing so would call into question the lawfulness of such a decision.

New Information

The community has presented a great volume of information to members of Council in the past month, and Council members should consider whether any decision to reconsider is based upon “new information” – i.e. information, that is pertaining to land use, that was not presented in some manner during the public hearing. If the answer is yes, then the application should be sent back to public hearing; if no then the bylaws could be reconsidered at 3rd reading.

Conclusion:

There are other implications that could arise as well, from a Council decision to reconsider, such as the City’s relationships with the Provincial government and Ministers; BC Housing and other supportive housing partners, the development industry and the public. There is no BC Case Law regarding

Council's use of its reconsideration authorities with respect to reconsidering adopted OCP and zoning bylaws and the City would be in uncharted legal territory.

Internal Circulation:

Development Planning

Considerations applicable to this report:

Legal/Statutory Authority:

Community Charter section 131

Council Procedure Bylaw No. 9200 sections 5.33, 5.34 and 5.35

Legal/Statutory Procedural Requirements:

The authority to reconsider is limited to 30 days from the date of the original Council decision. Council could adopt a resolution directing the City Clerk to place the OCP Bylaw 11460, Rezoning Bylaw 11461, and/or Development Permit DP17-0052 on a future agenda for reconsideration, and then adopt a second resolution instructing the Chief Building Inspector not to issue the Building Permit for 130 McCurdy Rd.

Considerations not applicable to this report:

Existing Policy:

Financial/Budgetary Considerations:

External Agency/Public Comments:

Communications Comments:

Submitted by:

Stephen Fleming, City Clerk