

Report to Council



Date: July 26, 2021
To: Council
From: City Manager
Subject: 424 Gibson Road – Remedial Action
Department: Property Standards Compliance Team

Recommendation:

THAT Council receives, for information, the report from the Property Standards Compliance Team dated July 26, 2021 regarding remedial action at 424 Gibson Road;

AND THAT Council considers that the House and the Retaining Walls are in and create an unsafe condition, and that the renovations made to the House and the construction of the Retaining Walls do not comply with the structural requirements of the BC Building Code and were done without permits contrary to the requirements of City of Kelowna Building Bylaw No. 7245, 1993;

AND THAT Council hereby declares that the House and the Retaining Walls are a nuisance, within the meaning of Section 74 of the *Community Charter*;

AND THAT Council hereby declares that the imported earthen material used to create a tiered / raised podium area from the rear yard and east side yard down to native undisturbed soils and the area restored with native plantings. All construction debris is to be removed from site and sent to the landfill or recycling center with the outdoor storage of materials and equipment removed from site to an approved location if kept within City boundaries as this earthen fill and materials stored in the rear and side yards is a nuisance, within the meaning of Section 74 of the *Community Charter*, and so dilapidated and unclean as to be offensive to the community;

AND THAT Council hereby requires the Owner to, upon Council resolution date, perform the following actions to the property as prescribed under Section 77: of the *Community Charter* (the "Remedial Action Requirement"). The scope of the work shall include the following:

- 1) Apply for Demolition Permit for the dwelling within 14 days, and
- 2) Remove all personal contents in and around the dwelling unit within 42 days to an approved location if within City of Kelowna boundary, and

- 3) Remediate the house and temporary structures including construction debris of any hazardous materials with 60 days, and
- 4) Remove all construction debris, house and house foundations, exterior deck(s), swimming pool, asphalt from the tennis court area, retaining wall(s), landscape wall(s), temporary structures, vehicles, equipment and imported material, earthen fills imported into the lot within 120 days, and
- 5) Restoration of the lot, including lot grading and planting of native grass and plants with 180 days.

AND THAT under Section 77 (1) notice of the Remedial Action Requirement be sent to the persons entitled to notice under s. 77 of the *Community Charter*, including a copy of this resolution;

AND THAT the City shall notify the persons entitled to notice under s. 77(1) of the *Community Charter* that they may request that Council reconsider the Remedial Action Requirement pursuant to s. 78 of the *Community Charter*, by providing the City with written notice within 14 days of the date on which notice under s. 77 of the *Community Charter* was sent to them;

AND FURTHER THAT if any or all of the actions required in this Resolution are not completed by the corresponding dates set out above, the City may, through its staff, contractors or agents, undertake any or all of those actions required by the Remedial Action Requirement without further notice to and at the expense of the Owner, and recover the costs of doing so in accordance with sections 17, 80, 258, and 259 of the *Community Charter*.

Purpose:

To impose a Remedial Action Requirement (RAR) in relation to structures located at 424 Gibson Road pursuant to Sections 72, 73 and 74 of the *Community Charter*.

Background:

The subject property, 424 Gibson Road, is located in the agricultural bench area of Rutland and has been owned by the current owner since 2010. Since 2010 there have been 24 attendances at the Property by City Bylaw, Planning and Building Department staff members in response to complaints about the Property being unsightly, construction-related traffic, solid waste storage, construction noise, and other nuisance contraventions. The Property currently has unpermitted structures, retaining walls, hard surfacing and exterior storage which is beyond what is permitted by relevant City bylaws. Currently identified outstanding bylaw infractions on the Property include the following:

- Zoning Bylaw No. 8000, Sec. 1.7.1 outdoor storage contrary to zone.
- Zoning Bylaw No. 8000, Sec 13.1.6(a) site coverage contrary to zone.
- Zoning Bylaw No. 8000, Sec 8.1.9(a) front yard parking contrary to zone.
- Zoning Bylaw No. 8000, 7.5.9 retaining walls in excess of 1.2 m contrary to zone.
- Building Bylaw No. 7245 (2.1.1) Construction Not to Requirements of Building Code

The Property is improved with a single-family dwelling, a two-storey wood frame residence with a walkout basement level, originally constructed in 1969 (the "House"). Since about the year 2010 the Owner has carried out renovations and modifications to the House, without applying to the City for or receiving permits, as required by Section 2.2.1(a) of the City's Building Bylaw. These renovations and modifications include: retaining wall permits (not completed), front veranda (not completed) building additions and building renovations (not completed), roof repair for the past decade (not completed).

In or about the year 2010, the Owner began constructing three retaining walls on the Property, also without permits as required by the Building Bylaw. After construction, the Property was backfilled to create two terrace levels behind the retaining walls, altering the Property's original configuration of a downhill slope from east to west. Appendix B to this report consists of seven photographs of the Retaining Walls taken by Bylaw staff on June 13, 2017.

Multiple enforcement actions and compliance efforts have been made between 2010 and the present to attempt to have the Owner bring and have the Property remain in compliance. These efforts have involved coordinated inspections by the Building, Planning and Bylaw Departments and include several incomplete Building Permit applications and 3 separate compliance letters, with the most recent issued in 2017. A copy of the 2017 compliance letter is attached as Appendix C to this Report.

The Owner has made some efforts toward compliance on a number of occasions, most recently in 2017. However, such compliance has either been incomplete and or temporary in nature. The owner has hired consultants to help facilitate the life safety issues with no resolve which resulted in permits be expired due to incomplete work by the owner. The consultants were not retained by the owner to completion of any of the issued permits

In August of 2017, due to the ongoing compliance issues and safety concerns, two qualified professional consultants were commissioned by the City to assess the unpermitted modifications to the House and the Retaining Walls.

Paul Heinrichs, M.Eng P.Eng PE of Read Jones Christofferson Ltd., attended the Property on July 24, 2017 and performed a visual review of the structural condition of the House and Retaining Walls. Mr. Heinrichs produced a structural engineering report for the City summarizing his observations and opinions arising from this visit, dated August 4, 2017 (the "RJC Report"). The RJC Report is attached as Appendix D.

The RJC Report concludes that "there are numerous life safety concerns" for the Property's occupants and for adjacent property owners and the general public, arising from the open roof structure being susceptible to large winds that could result in either partial collapse of the building or debris flying onto adjacent properties or the street; the lack of lateral stability for the deck causing it to be susceptible to full or partial collapse; and the cracking and settlements as well as poor construction of the Retaining Walls demonstrating a risk of potential damage to the adjacent properties in the event of wall movement or failure. The RJC Report concludes that the modifications and additions made to the original building structure of the House, as well as the new or modified structural Retaining Walls, do not comply with the structural requirements of the British Columbia Building Code and therefore are unsafe.

A geotechnical engineer from Tetra Tech Canada Inc. also attended at the Property on July 24, 2017 to conduct a visual geotechnical assessment of the Retaining Walls. Tetra Tech produced a technical

memo with their findings, opinions and recommendations as a result of this visit, dated August 15, 2017 (the "Tetra Tech Report"). The Tetra Tech Report is attached as Appendix E and notes that the lower of the two retaining walls appears to be bulging midway along the length of the wall, suggesting that the fill installed above it is exceeding its retaining capacity. The Tetra Tech Report also notes that the lower wall has been constructed in a manner that has resulted in "extreme honeycombing" or voids in the bottom third of the top wall, which suggests a weak bond in the aggregate material which makes up the wall structure in this area and indicates that the wall may fall and collapse. Tetra Tech recommends that "workers not be allowed to within 2.5 m of the wall without further shoring or protection".

The partially constructed and deteriorating nature of the additions and alterations to the House creates an aesthetically displeasing view for nearby property owners and the public, as depicted in the photographs attached as appendices to this Report. With the roof being off the structure and only covered by a polyethylene tarp the interior of the building would be exposed to effect of weather (snow and rain) and access to animals like birds, racoons and squirrels which have an associated health concerns. The Retaining Walls, in addition to having structural stability shortcomings, are constructed in part from discarded materials such as garage doors and are unsightly. As a result of these aesthetic and sanitary concerns, as well as the fact that the House and Retaining Walls are hazardous to persons venturing on to the Property and to neighbors and the public in the event of their collapse or deterioration, staff recommends that Council also declare the House and Retaining Walls to be a nuisance.

Discussion:

Given the lengthy history of the Building Bylaw and Code infractions identified in this Report, and the Owner's failure to address these issues to the City's satisfaction despite having multiple opportunities to do so in the context of the City's progressive enforcement steps, as well as the serious nature of the potential public health and safety risks created by the structural and geotechnical deficiencies extant in the unauthorized works on the Property, staff recommends that Council consider the use of its remedial action powers under the *Community Charter*.

Part 3, Division 12 of the *Community Charter* allows Council to declare the House and Retaining Walls on the Property to be structures which are a nuisance and are in or create an unsafe condition and contravene the City's Building Bylaw and the BC Building Code, and to order that specific actions be taken by the Owner at their own expense to remediate the nuisance and hazardous conditions. If the Owner fails to comply with the remedial action requirement as ordered by Council, the *Community Charter* also permits Council to make an order that the City by its agents, contractors or City staff may enter on to the Property and take steps to carry out the remedial action requirements in default at the Owner's expense and bring the Property into compliance.

Conclusion:

Staff recommend that Council proceed with imposing a remedial action requirement for the Property in the suggested terms, since the above noted progressive enforcement steps have not been effective, there are ongoing life-safety concerns, and there is significant impact to the public and adjacent landowners.

Internal Circulation:

K. Hunter, Bylaw Services Supervisor

T. Kowal, Building Inspection & Licensing Manager

S. Fleming, City Clerk

Legal/Statutory Authority:

Pursuant to s. 73(1)(a) of the *Community Charter*, Council may impose a remedial action requirement in respect of “a building or other structure”. Pursuant to s. 73(2), Council may only impose such a remedial action requirement if Council considers that the building is in or creates an unsafe condition, or contravenes the provincial building regulations or the City’s Building Bylaw.

Section 2.2.1(a) of the City’s Building Bylaw prohibits work from being done on buildings or structures in the City without applying for and receiving a building permit in advance, or contrary to the requirements of the BC Building Code. Given that the Owner has not applied for or received a building permit for the modifications to the House or the construction of the Retaining Walls, and given that the work does not comply with the structural requirements of the BC Building Code, the House and the Retaining Walls are in violation of the Building Bylaw and the Building Code, as well as being in an unsafe condition.

Pursuant to s. 74(1)(a) of the *Community Charter*, Council may also impose a remedial action in respect of a “building or other structure” if Council considers that it is a nuisance or is “so dilapidated or unclean as to be offensive to the community”.

Pursuant to s. 72(2)(b), the remedial action requirement may require the owner of a structure to undertake the following measures with respect to the structure:

- i. Remove or demolish it,
- ii. Fill it in, cover it or alter it,
- iii. Bring it up to the standard specified by bylaw, or
- iv. Otherwise deal with it in accordance with the direction of council or a person authorized by council.

Legal/Statutory Procedural Requirements:

Community Charter Sections 76-80 outline procedural requirements necessary to impose remedial action. This includes owner notification, Council consideration of the declaration and remedy at a public meeting, and time limits for remedial action.

Section 77 of the *Community Charter* establishes that notice of a remedial action requirement must be given by personal service or registered mail to the person subject to the requirement, the owner of the land where the action was to be carried out, any other person who is an occupier of the land, and any registered charge-holder (for example, mortgage holders).

Section 79 empowers the City to give less than 30 days’ notice where Council considers there to be a “significant risk to health or safety.” In this case, staff suggest that 30 days should be an appropriate amount of time for the Owner to remedy the situation.

Under Section 78 of the *Community Charter*, a person affected by a remedial action requirement may seek reconsideration of Council's decision to impose the requirement by submitting a written request within 14 days of the notice of the remedial action requirement being sent to the owner. Council must

then provide an opportunity to the owner or other party having an interest in the property to make representations before Council. After hearing the owner or other party, Council may confirm, amend, or cancel the remedial action requirement

Section 17 of the *Community Charter* permits Council to resolve that if the remedial action requirement has not been satisfied by the property owner within the designated time limit, the City, through its staff, agents or contracts, may complete the work required at the Owner's expense and recover the costs incurred from the Owner as a debt. Section 258 and 259 of the *Community Charter* permit the recovery of this debt by way of adding it to the taxes owing for the Property.

Financial/Budgetary Considerations:

If any work required by a remedial action requirement were ultimately completed by the City after the Owner's default, all of the direct costs associated with carrying out this work on the Property could be charged to the Owner and added to the Property's taxes if unpaid by the end of the calendar year in which they were imposed.

Considerations not applicable to this report:

Existing Policy

External Agency/Public Comments

Communications Comments

Submitted by:

Ryan Smith, Divisional Director, Planning & Development Services

Approved for inclusion:



Ryan Smith, Divisional Director

Appendices:

Appendix A : 16 photographs of the House on the Property taken by Bylaw staff on June 13, 2017

Appendix B : 7 photographs of the Retaining Walls on the Property taken by Bylaw staff on June 13, 2017

Appendix C: Compliance letter to Property Owner, April 19, 2017

Appendix D: RJC Report, August 4, 2017

Appendix E: Tetra Tech Report, August 15, 2017

cc:

K. Hunter, Bylaw Services Supervisor

T. Kowal, Building Inspection & Licensing Manager

S. Fleming, City Clerk