



AGENDA

Special Council Meeting of the Tahsis Village Council
to be held on March 21, 2019 in the Council Chambers
Municipal Hall, 977 South Maquinna Drive

Call to Order Mayor Davis will call the meeting to order at 10:30

**Introduction of
Late Items** None.

**Approval of the
Agenda**

New Business **Property Maintenance Regulation Bylaw No. 573, 2014 - Appeal Hearing into Order to Comply issued December 19, 2018 to International Peak Properties Corp, owner 1 of VIP45564, Lot A, District Lot 443, Nootka Land District**

Adjournment

VILLAGE OF TAHSIS

Report to Council

To: Mayor and Council

From: Mark Tatchell, CAO

Date: March 14, 2019

Re: **Property Maintenance Regulation Bylaw No. 573, 2014 – Order to Comply issued to International Peak Properties Corp owner of 7 Barnacle Beach Road, VIP45564 Lot A District Lot 443 Nootka Land District (Appeal)**

PURPOSE OF REPORT:

To provide Council with Staff's information and recommendation regarding the above-referenced matter.

BACKGROUND:

Council adopted Bylaw No. 573 in 2014 to establish a scheme to compel property owners to ensure their buildings and lands meet particular standards of appearance and reduce hazards.

In response to a complaint, staff and the SRD Building Official conducted an inspection of 7 Barnacle Beach Road on December 18, 2018. The following day an Order was issued under the bylaw. The Order required the property owner to do the following:

- Remove the rubbish, garbage or other material that is noxious, offensive or unwholesome
- Repair the exterior finishing that is worn, chipped, cracked or dilapidated
- Remove or repair the dilapidated building

The property owner has filed an appeal of the Order (under s. 4.6 of the bylaw).

STAFF SUBMISSION:

Upon review and legal advice, Council is advised that the Bylaw is deficient in the context of the Order issued against the property owner due to the fact that it does not contain any provision which requires a person to ensure that the condition of real property (including an improvement on it) does not become "unsightly" (including through dilapidation). Numerous conditions which the Bylaw defines as "unsightly" (including those which focus on the condition of buildings) are listed in section 2.2.1 of the Bylaw, but the Bylaw does not include a corresponding requirement for an owner or occupier of real property to take such steps as are required to ensure that real property does not become unsightly or to remediate an unsightly condition.

The above information was provided to the property owner in a January 31, 2019 letter (attached).

Consistent with the January 31, 2019 letter to the property owner, Staff recommend that the property owner's appeal be granted which then would allow Council to address the issues presented by this property under the *Community Charter*, Part 3, Division 12 (attached).

Respectfully submitted:

Mark Tatchell
Chief Administrative Officer



January 31, 2019

International Peak Properties Corp.
206 – 1730 West 2nd Ave.
Vancouver, BC V6J 1H6

VIA EMAIL: um@axion.net

Dear Property Owner:

Re: 7 Barnacle Beach Road, Tahsis, BC
Lot A, District Lot 443, Nootka Land District, Plan VIP45564
(the "Property")

Thank you for your email dated January 28, 2019.

In order to abandon your appeal, I need a letter or email from you, as authorized representative of International Peak Properties Corp., in which you state that corporation abandons the appeal.

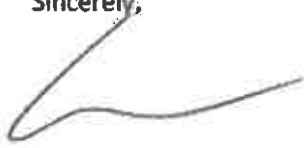
Conditional on the appeal being abandoned, I have indicated I will rescind the Order to Comply because, subsequent to it being issued, I became aware that the *Property Maintenance Regulation Bylaw* may not provide a clear basis for orders (b) and (c) set out in the Order to Comply. Rather than proceed with an appeal in which I will recommend to Council that either (i) orders (b) and (c) of the Order to Comply should be rescinded, or (ii) all of the Order to Comply should be rescinded, I would prefer to rescind the Order to Comply in its entirety now and avoid you making an unnecessary trip to Tahsis for an appeal which may not address the substance of the issues that exist with the Property.

Given the seriousness of the remedial actions that may be imposed by the Village in this instance (i.e. including potential demolition of the residence), I am now of the view that the Order to Comply should be rescinded and the issue dealt with by Council under Division 12 of Part 3 of the *Community Charter* (a link to which I have sent you).

If you wish to proceed with repairs to the Property, the Village requires that such repairs meet the requirements of the BC Building Code and are conducted in accordance with the Village's bylaws. Such repairs must be completed to a standard which would then qualify the residence on the Property for an occupancy permit. You must obtain an occupancy permit before the Village will consider the repairs to the Property to be completed. If you plan to undertake any works or other improvements on the foreshore and waterlot adjacent to the Property, you must, in addition to complying with the Village's bylaws (and any applicable federal and provincial laws), obtain a licence of occupation or other tenure from the Province for the impacted area of the foreshore and waterlot.

I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Tatchell', with a stylized flourish at the end.

Mark Tatchell
Chief Administrative Officer

cc: Jordan Hargrave, Building Official, Strathcona Regional District

- (3) After complying with subsection (2), the municipality may enter on property, including property outside the municipality, for the purpose of undertaking the proposed works.

Orders and awards respecting drainage or reclamation works

- 71** (1) This section applies if, on account of proceedings taken under this Act or the *Local Government Act* for drainage or reclamation works and local assessments for them,
- (a) damages are recovered against the municipality or parties constructing the drainage or reclamation works, or
 - (b) other relief is given by an order of a court or an award made under this Act or the *Local Government Act*.
- (2) In the circumstances referred to in subsection (1),
- (a) the council must make the changes in drainage or reclamation works necessary to comply with an order or award, and
 - (b) the money required for the municipality to comply with the order or award must be recovered by taxes imposed on the same basis as the existing assessments for those works.

Division 12 – Remedial Action Requirements

Council may impose remedial action requirements

- 72** (1) A council may impose remedial action requirements in relation to
- (a) matters or things referred to in section 73 [*hazardous conditions*],
 - (b) matters or things referred to in section 74 [*declared nuisances*], or
 - (c) circumstances referred to in section 75 [*harm to drainage or dike*].
- (2) In the case of matters or things referred to in section 73 or 74, a remedial action requirement
- (a) may be imposed on one or more of
 - (i) the owner or lessee of the matter or thing, and
 - (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,
 - (ii) fill it in, cover it over or alter it,
 - (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.
- (3) In the case of circumstances referred to in section 75, a remedial action requirement
- (a) may be imposed on the person referred to in that section, and
 - (b) may require the person to undertake restoration work in accordance with the directions of council or a person authorized by council.

Hazardous conditions

73 (1) Subject to subsection (2), a council may impose a remedial action requirement in relation to any of the following:

- (a) a building or other structure, an erection of any kind, or a similar matter or thing;
- (b) a natural or artificial opening in the ground, or a similar matter or thing;
- (c) a tree;
- (d) wires, cables, or similar matters or things, that are on, in, over, under or along a highway;
- (e) matters or things that are attached to a structure, erection or other matter or thing referred to in paragraph (a) that is on, in, over, under or along a highway.

(2) A council may only impose the remedial action requirement if

- (a) the council considers that the matter or thing is in or creates an unsafe condition, or
- (b) the matter or thing contravenes the Provincial building regulations or a bylaw under section 8 (3) (1) [*spheres of authority – buildings and other structures*] or Division 8 [*Building Regulation*] of this Part.

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;
- (b) a natural or artificial opening in the ground, or a similar matter or thing;
- (c) a drain, ditch, watercourse, pond, surface water, or a similar matter or thing;
- (d) a matter or thing that is in or about any matter or thing referred to in paragraphs (a) to (c).

(2) Subsection (1) also applies in relation to a thing that council considers is so dilapidated or unclean as to be offensive to the community.

Harm to drainage or dike

75 A council may impose a remedial action requirement if a person has

- (a) obstructed, filled up or damaged a ditch, drain, creek or watercourse that was constructed or improved under this Act or the *Local Government Act*, or
- (b) damaged or destroyed a dike or other drainage or reclamation work connected with it.

Time limit for compliance

- 76** (1) The resolution imposing a remedial action requirement must specify the time by which the required action must be completed.
- (2) Subject to section 79 [*shorter time limits in urgent circumstances*], the time specified under subsection (1) must not be earlier than 30 days after notice under section 77 (1) [*notice to affected persons*] is sent to the person subject to the remedial action requirement.
- (3) The council may extend the time for completing the required action even though the time limit previously established has expired.

Notice to affected persons

- 77** (1) Notice of a remedial action requirement must be given by personal service or by 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.
- (2) In addition, notice of the remedial action requirement must be mailed to
- (a) each holder of a registered charge in relation to the property whose name is included on the assessment roll, at the address set out in that assessment roll and to any later address known to the corporate officer, and
 - (b) any other person who is an occupier of that land.
- (3) A notice under this section must advise
- (a) that the person subject to the requirement, or the owner of the land where the required action is to be carried out, may request a reconsideration by council in accordance with section 78 [*person affected may request reconsideration*], and
 - (b) that, if the action required by the remedial action requirement is not completed by the date specified for compliance, the municipality may take action in accordance with section 17 [*municipal action at defaulter's expense*] at the expense of the person subject to the requirement.

Person affected may request reconsideration by council

- 78** (1) A person who is required to be given notice under section 77 (1) [*notice to affected persons*] may request that the council reconsider the remedial action requirement.
- (2) Subject to section 79 [*shorter time limits in urgent circumstances*], a request under subsection (1) must be made by written notice provided within 14 days of the date on which the notice under section 77 (1) was sent or a longer period permitted by council.
- (3) If the council receives a notice that complies with subsection (2), it must provide the person with an opportunity to make representations to the council.
- (4) After providing the opportunity referred to in subsection (3), the council may confirm, amend or cancel the remedial action requirement.

- (5) Notice of a decision under subsection (4) must be provided in accordance with section 77 (1) and (2) [*notice to affected persons*].

Shorter time limits in urgent circumstances

- 79** If the council considers that there is a significant risk to health or safety if action is not taken earlier, the resolution imposing the remedial action requirement may
- (a) set a time limit under section 76 [*time limit for compliance*] that is shorter than the minimum otherwise applicable under subsection (2) of that section, and
 - (b) set a time limit for giving notice under section 78 [*persons affected may request reconsideration*] that is shorter than the limit otherwise applicable under subsection (2) of that section.

Recovery of municipal costs through sale of property

- 80** (1) This section applies to remedial action requirements in relation to the following:
- (a) matters or things referred to in section 73 (1) (a) [*unsafe and non-complying structures*];
 - (b) matters or things referred to in section 74 (1) (a) [*nuisances in relation to structures*];
 - (c) matters or things referred to in section 74 (1) (d) [*nuisances in relation to things in or near structures*] that are in or about a matter or thing referred to in section 74 (1) (a).
- (2) Subject to this section, if a remedial action requirement has not been satisfied by the date specified for compliance, the municipality may sell the matter or thing in relation to which the requirement was imposed or any part or material of it.
- (3) The earliest date on which the municipality may sell property referred to in subsection (2) is the later of
- (a) the date specified for compliance, and
 - (b) 60 days after the notice under section 77 (1) [*notice to affected persons*] is given.
- (4) If a municipality sells property under this section, it
- (a) may retain from the proceeds
 - (i) the costs incurred by the municipality in carrying out the sale, and
 - (ii) if applicable, the costs incurred by the municipality in exercising its power under section 17 [*municipal actions at defaulter's expense*] that have not yet been paid by the person subject to the requirement, and
 - (b) must pay the remainder of the proceeds to the owner or other person lawfully entitled.
- (5) For certainty, the authority under this section is in addition to that provided by section 17 [*municipal action at defaulter's expense*].

