

ADMINISTRATIVE REPORT

TO: Board of Directors

FROM: B. Newell, Chief Administrative Officer

DATE: February 2, 2023

RE: Building Bylaw Infractions - Civic Address: 3574 Fruitvale Way, Area "C"

Administrative Recommendation:

THAT a Section 302 Notice on Title, pursuant to Section 302 of the *Local Government Act* and Section 57 of the *Community Charter* (made applicable to Regional Districts by Section 302 of the LGA), be filed against the title of lands described as Lot A District Lot 2450S Plan 38732 SDYD, that certain works have been undertaken on the lands contrary to the Regional District Okanagan-Similkameen Building Bylaw No. 2805, 2018;

AND THAT if by July 15, 2023 the property is not in compliance with the Regional District of Okanagan-Similkameen Building Bylaw No. 2805, 2018, injunctive action be commenced against the property owners.

<u>Civic:</u>	3574 Fruitvale Way	<u>Folio:</u> C-05887.010
<u>Legal:</u>	Lot A District Lot 2450S Plan 38732	<u>PID:</u> 008-537-135
<u>Zone:</u>	Agricultural One Zone (AG1)	

Purpose:

The purpose of this report is to seek direction from the Regional District Board regarding enforcement against the property owner(s) of 3574 Fruitvale Way, legally described as Lot A District Lot 2450S Plan 38732 in relation to:

1. Construction of an external bathroom addition to a farm building
2. Converting farm building into two dwelling units

Site Context:

The subject property is approximately 7.5 acres (3 ha) in area and is situated at 3570/3574 Fruitvale Way, approximately 8 km south of the Town of Oliver. The property is wholly within the Agricultural Land Reserve (ALR) and zoned Agricultural One Zone (AG1).

Regulatory Provisions:

1. Building Bylaw No.2805, 2018 (“Building Bylaw”).
2. Zoning Bylaw 2800 - Agricultural One Zone (AG1)

Background:

November 15, 2009 - A Farm Permit Exemption was issued for a Farm Storage/Shop building. The plans that were submitted and approved show one interior wall on the lower floor, a set of internal stairs to upper floor and no plumbing in the building. Under Building Bylaw #2453 (in place at that time), the building was not inspected. The only other building on the property is an older single family dwelling, not occupied by the owners.

January 25, 2021 – Building Official saw an addition being constructed on the north side of the farm building. A photo was taken and a Stop Work Letter was sent to the property owners requesting an application for a building permit for the addition by February 25, 2021.

May 5, 2021 – Building Official did a site visit. Work had continued on the addition, which is a large bathroom with no access into the building. Both floors of the building have been converted into dwelling units with bathrooms and kitchens.

May 7, 2021 – Final Notice letter to owners regarding the exterior bathroom addition. A Building Permit and Record of Sewerage is required. A Stop Work Letter was also sent to the owners regarding the conversion of the farm building into two dwelling units. This is not permitted by RDOS Zoning Bylaw or by the Agricultural Land Commission (ALC). Requested the building be decommissioned back into a farm building or application to the ALC for re-zoning be done by June 16, 2021.

June 25, 2021 – No response from owners on resolving contraventions. A Final Notice letter was sent to the owners with a Bylaw Offence Notice of \$500.

April 29, 2022 – Building Official did site visit with an ALC Compliance Officer and the owner’s son. The farm building consists of a two bedroom suite on the upper floor, which now has an exterior exit, and the lower floor is a three bedroom suite. Both suites were occupied by tenants. The lower level does appear to have some space dedicated to farm use.

May 20, 2022 – Letter sent to the owners advising of their options with regard to the building.

Options for Compliance

- Demolish the building (demolition permit required).
- Decommission the suites and return it to the approved use as a farm building (building permit required). A building permit also required for the bathroom addition.
- Apply to the ALC and RDOS to re-zone the property to allow for the two additional dwelling units. Building permits would be required if re-zoning was successful.

June 24, 2022 – An employee of the owners contacted the RDOS regarding the necessary steps to bring the property into compliance. She indicated that they would be applying to the ALC to start the re-zoning process.

December 19, 2022 - There has been no further contact from the owners, their family or representatives. They have not applied to the ALC for permission to allow these two additional dwellings on this property.

As the building has never been inspected, it is unknown whether health & safety related items such as smoke detectors and emergency exits meet the BC Building Code. It is also unknown if this building has a septic system or if it is tied into the septic system for the single family dwelling (not permitted by IHA Public Health).

In order to close the permit file one of the three available options must be actioned.

The Building Bylaw infraction is considered to be Category 3.

Analysis:

Reasonable time and efforts have been made to achieve voluntary compliance for both issues, with the property owners. Liability to the RDOS could be substantial as the two occupied dwelling units are in an uninspected building which was built to store farm equipment.

The ALC does not permit accessory dwellings to be larger than 125m² (410 ft²). The upper unit is 274m² (900 ft²) and the lower unit is 457m² (1500ft²). The ALC also does not permit secondary suites in accessory buildings, only in principal dwellings.

As the building has tenants, the owner would be required to give four months notice to end the tenancy (per the *Residential Tenancy Act*). Therefore we are proposing five months time for the owner to comply. If one of the three options are not completed or substantially underway, by that date, the RDOS should commence injunctive action to force resolution.

In July 2009 the Board adopted a Policy (Resolution B354/09) to provide for a consistent and cost effective approach to the enforcement of Building Bylaw violations. This policy provides the Board with three categories of infractions and the recommended action for each.

Category 1 (Minor Deficiencies) – Place notice of deficiencies on folio file.

Category 2 (Major Deficiencies) – Place Section 302 Notice on the property title.

Category 3 (Health & Safety Deficiencies/Building without Permit) – Place Section 302 Notice on title and seek compliance through injunctive action.

As there are potential construction and health and safety deficiencies on this property, a Section 302 Notice on Title and injunctive action are recommended by staff. The Notice on Title advises the current and future owners of the deficiency and injunctive action will require that the deficiencies be remedied and the property be brought into compliance with RDOS bylaws.

Section 6.6 of the Board’s “Bylaw Enforcement Procedures” Policy sets out that where unlawful activity has not ceased or where compliance is not being actively pursued within the time period provided for voluntary compliance, that legal proceedings or direct enforcement action should be initiated. This step towards legal action is always at the discretion of the Board.

Injunctive action will require an application be submitted to the British Columbia Supreme Court. Seeking a court injunction has a legal cost (approximately \$10,000) which, if successful, can partially be recovered from the property owners.

Alternatives:

- 1. Place a Section 302 Notice on property title (Category 2)
- 2. Place a notice of deficiencies on the folio file (Category 1) and abandon further enforcement action
- 3. Do not proceed with enforcement action

Respectfully submitted:

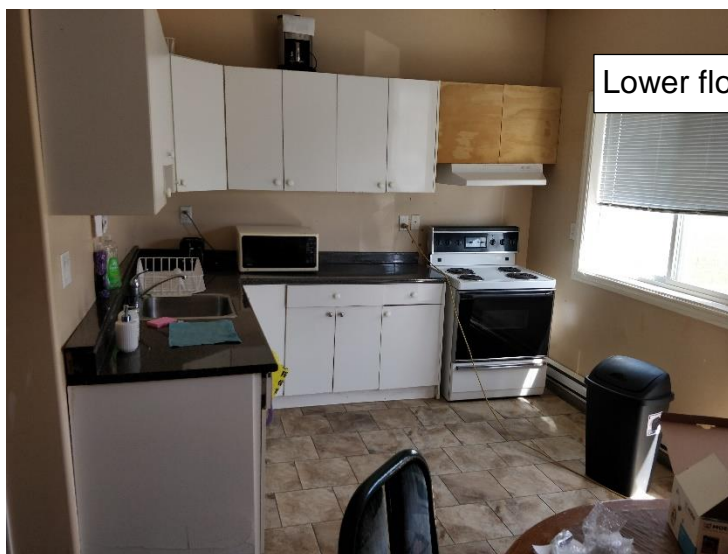
Mark Petry, Manager of Building and Enforcement Services

Attachments: Parcel Map
Photos





Exterior bathroom addition



Lower floor suite



Upper floor suite