

To: CAO for the Electoral Area Services Committee

Date: 2019-03-12

From: Louise Hinton, Bylaw Compliance and Enforcement Officer

File No: B05594.000/2

**Subject:** Building Bylaw, and BC Building Code Contraventions at 31236 Mary Street, Electoral Area B, legally described as: Lot 13 Block 5 Section 14 Township 7 Range 26 West of the 6th Meridian Yale Division Yale District Townsite of Yale (PID: 010-098-283), and

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## RECOMMENDATION

**THAT** the Fraser Valley Regional District Board direct staff to file a Notice in the Land Title Office in accordance with Section 57 of the *Community Charter* due to the contraventions of the *Fraser Valley Regional District Building Bylaw No. 1188, 2013* and the *BC Building Code*, at 31236 Mary Street Electoral Area B, Fraser Valley Regional District, British Columbia (Lot 13 Block 5 Section 14 Township 7 Range 26 West of the 6th Meridian Yale Division Yale District Townsite of Yale (PID: 010-098-283) and Lot 12 Block 5 Section 14 Township 7 Range 26 West of the 6th Meridian Yale Division Yale District Townsite of Yale (PID: 010-098-267).

## STRATEGIC AREA(S) OF FOCUS

Support Healthy & Sustainable Community

Provide Responsive & Effective Public Services

## BACKGROUND

April 11, 2017

Bylaw Officer receives complaint of a very high and long retaining wall being constructed without permits.

Bylaw Officer and Planner perform site inspection. Large retaining wall around existing former school house / residential structure is mid-construction stage. Stop Work Notice is posted on the property. Bylaw Officer discusses the following with the owner on site: (1) permit requirements and application process; (2) asked if the wall was engineered; and (3) warned that no further work is to occur until a building permit is issued.



April 19, 2017 Bylaw letter mailed to owner, deadline for response to FVRD is May 15, 2017.

Sept. 7, 2017 Bylaw Officers perform site inspection – no change in condition of property, retaining wall is still intact and the stop work notice is lying on a concrete block.

Sept. 27, 2017 Second Bylaw letter mailed to owner, deadline for response to FVRD is Nov. 1, 2017.

Nov. 15, 2017 Bylaw Officer attempts to contact owner by telephone, no response. Third Bylaw letter mailed to owner with a bylaw ticket attached (No. 28673) for building without a permit. New deadline for response to FVRD is Dec. 18, 2017.

Dec 19, 2017 Officer attempts to contact owner by telephone, spoke to relative – left a message.

Jan 23, 2018 Bylaw Officer performs site inspection – fresh gravel is found on the site, the retaining wall remains, and stop work / no occupancy orders are re-posted.

Jan 24, 2018 Fourth Bylaw letter mailed to owner, with a bylaw ticket attached (No. 28678) for building without a permit. New deadline is Feb 26, 2018.

Feb 4, 2018 Bylaw Officer spoke with owner on telephone and discussed the following: (1) building permit requirements; (2) lack of response to enforcement; and (3) the issued bylaw ticket.

Feb 8, 2018 Fourth Bylaw letter is returned to the FVRD, marked as refused. Building Inspector speaks with owner on telephone discusses bylaw file and permit requirements.

Feb 15, 2018 Building Permit Application form and fee submitted to FVRD –no site plan or drawings.

Mar. 14, 2018 Building Inspector performs follow-up site inspection – no change.

March 16, 2018 Building Department mailed letter to owner listing outstanding required items to complete Permit Application. Drawings are still outstanding.

April 12, 2018 Bylaw Officer informed that \$250 has been paid towards outstanding bylaw fines.

July 3, 2018 Bylaw Officer informed that new gravel has been brought onto property in violation of posted stop work order.

July 4, 2018 Building Inspector performs site inspection – postings have been removed, retaining wall remains, and confirms additional gravel works has occurred in violation of posted stop work order.

July 6, 2018 Fifth Bylaw letter mailed to owner, with two bylaw tickets attached (No. 28618 & No. 28619), for disobeying stop work order and building without a permit.

July 13, 2018	Owner contacts Building Department – is concerned about the enforcement tickets.
Oct. 22, 2018	Bylaw Officer receives information from FVRD staff that someone appears to be moving rocks behind a retaining wall on weekends.
Oct 25, 2018	Bylaw Officer attempts to contact owner by telephone, no response.
Oct 30, 2018	Bylaw Officer performs site inspection – confirms significant gravel works, new mental fence posts are in the ground, retaining wall remains, large stop work and no occupancy orders are re-posted.  Building Department informs Bylaw Officer that Engineering report has been received, but it has the wrong address on it and needs to be revised.
Nov 7, 2018	Owner attends FVRD office and discussed the following with Building Inspector and Planning Staff: (1) retaining wall does not meet multiple setbacks; (2) intentions to move forward with a Development Variance Permit and a covenant to tie the two lots together for any future sale, as the retaining wall crosses both property lines.
Dec 3, 2018	Bylaw Officer again receives information that the owner is working on site – in violation of the posted orders. Bylaw Officer performs site inspection – retaining wall remains, gravel and posts in place from previous inspection. There are <u>several new concrete lock blocks</u> on the left side of the area fronting the property indicating works on site have continued.  Bylaw Officer confirms that Development Variance Permit has not been applied for.
Dec 12, 2017	Bylaw Officer receives additional information from complainant that includes an image of a rear lock block that appears to be out of place indicating the rear portion of the retaining wall may be undermined.
Dec 13, 2018	Sixth Bylaw letter mailed to owner (cease and desist), with two bylaw tickets attached (No. 28894 & No. 28895), for disobeying stop work order and working without a permit.
Jan 22, 2019	Bylaw Officer confirms to date that a Development Variance Permit has not been applied for and that no further required documents have been provided for the building permit application.  Bylaw Officer confirms that the remaining amount (\$510) has been paid against the first issued Bylaw Ticket (No. 28678). The remaining five bylaw ticket fines remain outstanding totaling \$2,550 owing to the FVRD.

**TOTAL TICKETS ISSUED**

	Ticket No.	Date	Offence	Fine Amount	Disputed	Status
1.	BNE 28673	Nov. 15, 2017	Build without a Permit	\$500 + \$10 late fee	No	Collections
2.	BNE 28678	January 23, 2018	Build without a Permit	\$500 + \$10 late fee	No	Paid
3.	BNE 28618	July 4, 2018	Build without a Permit	\$500 + \$10 late fee	No	Final Notice
4.	BNE 28619	July 4, 2018	Disobey Stop Work Notice	\$500 + \$10 late fee	No	Final Notice
5.	BNE 28894	December 3, 2018	Build without a Permit	\$500 + \$10 late fee	No	Outstanding
6.	BNE 28895	December 3, 2018	Disobey Stop Work Notice	\$500 + \$10 late fee	No	Outstanding
<b>TOTAL FINES OUTSTANDING</b>				<b>\$2,550</b>		

Bylaw Notice Offence tickets that are issued by a Bylaw Enforcement Officer can be cancelled by a Bylaw Officer at his or her discretion at any time in favor of voluntary compliance on the part of the property owner. Bylaw tickets that remain undisputed and unpaid after a two week grace period are levied \$10 late fee per ticket. The property owner is then sent two separate follow-up letters – the first one serves as a reminder of the outstanding fines and the second one is a final notice to pay their outstanding fine owed to the FVRD. If after all the above avenues for payment have been exhausted and the property owner’s ticket fines remain outstanding then the tickets are referred to collections for payment.

**Inspection Photos**

April 2017



December 2017



March 2018



October 2018



December 2018



April 2017 – December 2018

Images below that depict the neighbouring property that is situated to the lower rear of the subject property. The structure/property to the rear would likely be impacted if the retaining wall had a failure or a slide.



## DISCUSSION

Section 57 of the Community Charter allows a Building Inspector to recommend a resolution to place a Notice on the Title of a property if a contravention of a bylaw or another enactment that related to the construction or safety of a building is observed. A Notice on Title serves as notice to anyone searching the title that the property may be in breach of local government bylaws or other enactments; provide disclosure to future owners; and protects against potential claims with regard to the contraventions.

Staff would like you to consider the following information:

### Building Bylaw

Staff is authorized to regulate minimum construction standards within electoral areas via the *Fraser Valley Regional District Building Bylaw No. 1188, 2013* (Building Bylaw) for health, safety and the protection of persons and property. The bylaw provides that no person shall commence any construction, alternation, reconstruction, demolition, removal, relocation or change the occupancy of any building.

Section 5.4 (q) of the *FVRD Building Bylaw* states that a building permit is not required for retaining walls if they are below 1.2 meters or (47 inches) above finished graded measured at any point within 1.2m from the face of the wall or structure. Therefore retaining walls built above 1.2 meters (47 inches) in height are required to obtain a building permit prior to start of construction.

A retaining wall over the height of 1.2 m was constructed around the existing school house / residential structure without a required building permit.

The retaining wall is constructed over the property lines. The Building Permit is required to ensure the stability of the wall, and that there will not be a failure of the retaining wall resulting in impact on the property to the south.

**A Building Permit is required for the construction works undertaken by the property owner.**

#### Zoning Bylaw

This property is in Electoral Area B, and is zoned Core Commercial (C-1) under the *Zoning Bylaw No. 90, 1977 for the Electoral Area B of the Regional District of Fraser-Cheam* (Bylaw 90). The primary purpose of this zone is to provide locations for those retail and commercial establishments.

The subject property has two separate parcels under the same street address, and the existing former school house / residential structure was historically built across the center property line of the two parcels. The retaining wall was built around the exterior of the existing former school house / residential structure, so in its current location does not meet rear, east interior, or west interior property line setbacks for construction.

A Development Variance Permit (DVP) is an approval from the elected board that is required to be able to vary the regulations of the Zoning Bylaw. An approved DVP is required vary the rear, east interior and west interior property line setbacks for the retaining wall to be permitted in its current location. To date there has been no application for a development variance permit for the unpermitted construction works that have occurred on the subject property.

**A Development Variance Permit is required for construction of the retaining wall that has taken place on the property.**

#### **COST**

Land Titles Office filing fee of approximately \$55.

The owner will be required to pay a removal fee of \$500 for each registration in accordance with the *Fraser Valley Regional Building Bylaw 1188, 2013*, after the unauthorized construction works on the retaining wall structure is either:

1. Demolished with a Building Permit issued by the FVRD, with a successful final inspection; or
2. A fully completed Building Permit for the construction works to the retaining wall is issued by the FVRD and receives a successful final inspection. The application requires the application and approval of a Development Variance Permit to vary the rear, east interior and west interior property line setback regulations of the *Zoning Bylaw No. 90* for the retaining wall to remain in its current location.

## CONCLUSION

It is the opinion of the Bylaw Compliance and Enforcement Officer/Appointed Building Inspector that the construction works on the retaining wall around the existing school house / residential structure without a Building Permit violates the Regional District *Building Bylaw*, and the *British Columbia Building Code*. Staff further notes that full compliance will only be achieved with the successful completion of a Building Permit for the works to construct the retaining wall above 1.2m in height or a Building Permit for demolition of the retaining wall, and the issuance of a Development Variance Permit.

Regrettably, but in the interest of full public disclosure and as incentive to achieving voluntary compliance, I, as an Appointed Building Inspector, believe that the filing of Notice is appropriate in this instance and submit the above recommendation in accordance with Section 57 of the *Community Charter*.

Electoral Area Services Committee (EASC) approval and Regional District Board resolution is required to assess Section 57 notices.

The process of filing a Section 57 notice on property title is conducted in accordance with the *Community Charter* and the *Local Government Act*.

Regional District requirements for Building Permit works are being administered in accordance with related Fraser Valley Regional District Building Bylaw, Policies, and the *BC Building Code*.

## COMMENTS BY:

<b>Margaret Thornton, Director of Planning &amp; Development</b>	Reviewed and supported.
<b>Mike Veenbaas, Director of Financial Services</b>	No further financial comment.
<b>Paul Gipps, Chief Administrative Officer</b>	Reviewed and supported.