

REPORT

Development Services

To: Mayor Cote and Members of Council **Date:** September 27, 2021

From: Emilie K. Adin, MCIP **File:** 05.1010.55
Director of Development Services

Item #: 2021-353

Subject: Remedial Action Requirement: 509 Eleventh Street - Update

RECOMMENDATION

Staff are recommending that Council adopt the following resolution:

THAT in response to the failure of James William Richard Bell to fulfill the Remedial Action Requirement imposed by resolution of Council on November 20, 2017, the Council of the City of New Westminster authorize the City, by its staff, agents and contractors, to fulfill the requirement at James William Richard Bell's expense by entering the property civically and legally described as 509 Eleventh Street, New Westminster, BC, V3M 4G4, PID: 013-646-591, Lot 22 of Lot 15 Suburban Block 10 Plan 2620 (the "Property") and removing the scaffolding, demolishing the house and ensuring that all waste, debris and discarded materials are removed from the Property and disposed of at an appropriate waste disposal facility as required by paragraphs 4(b) and 5 of the November 20, 2017 Resolution.

AND THAT for the purpose fulfilling the Remedial Action Requirement at James William Richard Bell's expense City staff are directed to:

- (a) pursuant to Community Charter, s. 17, retain, in accordance with the City's procurement policy, all contractors necessary to perform the work; and
 - (b) pursuant to Community Charter, s. 258, add the unpaid costs to the property taxes for the Property, if any cost of the work remains unpaid after December 31st of the year that the cost was invoiced.
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PURPOSE

To update Council regarding the status of the November 20, 2017 Remedial Action Requirement (RAR) issued by Council for 509 Eleventh Street and the subsequent Supreme Court Consent Order, and to seek support for the staff recommendation.

BACKGROUND

The property located at 509 Eleventh Street is a residential rental investment property owned by Mr. James William Richard Bell. The property is occupied by a single tenant. Mr. Bell also owns, and resides in, the neighbouring property at 507 Eleventh Street. A third property that had been owned by Mr. Bell and his father (now deceased), located at 307 Seventh Avenue, was sold in 2020 and had an assessed value of over \$1,000,000.

On November 20, 2017 Council imposed a Remedial Action Requirement (RAR) on Mr. Bell requiring him to perform work at 509 Eleventh Street to address unsightly and unsafe conditions. The resolution ordered the owner to:

- remove scaffolding surrounding the house and graffiti on the garage within 60 days;
- apply for a permit or permits to remediate or demolish the house within 60 days; and
- complete other work identified in the RAR within 150 days.

A copy of the November 20, 2017 Council report and adopted resolution can be found in Attachment 1.

The timelines imposed by an RAR do not begin until the property owner is served. Personal service to Mr. Bell proved extremely difficult and as a result the 60 day deadline was established to be June 7, 2018 and the 150 day deadline was established by court-ordered alternative service to be September 6, 2018. The owner did not comply with either deadline.

Staff returned to Council on July 9, 2018 with a follow-up report. A copy of this report can be found in Attachment 2.

Council authorized staff to work with Senior Management and City Solicitors to proceed with necessary enforcement options to bring the property into compliance. Those steps included hiring a contractor to remove the graffiti and scaffolding at the property owner's expense and authorizing the solicitors to enforce the RAR by way of BC Supreme Court proceeding once the 150 day deadline has expired. Council's direction to staff was to seek compliance with any remaining outstanding issues under the November 2017 RAR.

Hiring Contractors

On November 2, 2018 staff attended the property with hired contractors to remove the graffiti and scaffolding from the property. Written notification was provided to the property owner and tenant one week prior to the date of scheduled work, thus providing the property owner one more opportunity to take care of the violations on his own accord. On that date, the graffiti located at the back of the property on the garage was successfully painted over by the contractor, however, the property owner and tenant refused to permit the contractor onto the front of the property to remove the scaffolding and discarded debris. The property owner agreed to remove some discarded material in the front yard, however continued to refuse to dismantle the scaffolding. Staff contacted police for assistance. Police officers attempted to negotiate with the property owner to allow the contractors access to the scaffolding, but without an entry warrant police did not have authority to force entry. As a result, staff and the contractors left the property without removing the discarded material nor dismantling the scaffolding.

The property owner was invoiced \$252.00 for the removal of graffiti, which was added to taxes, and the City paid the invoice of \$94.50 for the contractors who attended to remove the scaffolding but were not permitted access.

BC Supreme Court

City solicitors filed a Notice of Civil Claim in BC Supreme Court in May 2019. Both the property owner and the tenant were named as Defendants in the Claim. After several delays in serving documents, adjourned court dates, and a change of lawyers by the Defendants, a Summary Hearing was scheduled for February 14, 2020. This date was subsequently delayed due to an emerging COVID-19 pandemic outbreak, limited availability of court resources, and shut-down of non-essential court hearings.

On August 21, 2020, the Defendants and the City entered into a Consent Order to complete interior repairs by November 5, 2020 and to either finish all exterior repairs and remove the scaffolding or apply and obtain a demolition permit with the tenant vacating within 60 days by April 5, 2021. Mr. Bell also agreed to pay costs of \$4,200, which remains outstanding. The compliance dates were requested by Mr. Bell and agreed to by the City. The Consent Order can be found in Attachment 3.

Due to the health concerns associated with the COVID-19 pandemic, staff delayed inspecting the interior of the property to confirm completion of the repairs until April 7, 2021, thus enabling both the exterior and interior inspection to occur at the same time. Both the property owner and the tenant were notified in writing in advance of the inspection.

On April 7, 2021, the Senior Property Use Coordinator and a Building Inspector attended the property for inspection. A notice was posted on the door from Mr. Bell stating he was mourning the recent death of a friend and would not permit entry for inspection. The property owner did not attend and did not answer the door of his

residence next door at 507 Eleventh St. A visual inspection of the exterior was conducted by the Building Inspector and noted no discernible changes with the scaffolding or condition of the building. A copy of the Building Inspection Report can be found in Attachment 4

Due to hearing delays and a Consent Order, the Court has awarded the City a total of \$4,700 in costs that have been registered against the property as it remains unpaid. The property owner has also accumulated unpaid fines issued for parking violations totalling \$15,480.00 and for other bylaw violations totalling \$1,925.00. Currently, unpaid property taxes for 2021 are \$2,171.93 and utility fees (water and sewer) are \$2,675.85.

Tenant Assistance

In addition to the RAR imposed by Council on November 20, 2017, Council also directed staff to assist the tenant residing in the house to find alternate accommodation as per the *Tenant Relocation Policy*. Staff made many attempts including arranging meetings and providing resources to link the tenant with outreach workers from Lookout Society in 2018 and in late 2020/early 2021. The tenant has refused all attempts by staff and outreach workers to provide assistance and is resistant to relocating.

POLICY AND REGULATIONS

Community Charter

Division 12 of Part 3 of the Community Charter grants Council the authority to impose, by resolution, a requirement on an occupier or owner to take remedial action on a building or structure that Council identifies as hazardous or nuisance-causing. Section 73 authorizes Council to impose RARs in relation to hazardous condition 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) (l) [*spheres of authority — buildings and other structures*] or Division 8 [*Building Regulation*] of this Part.

Section 74 authorizes Council to impose RARs in relation to nuisance condition if Council considers the property to be so dilapidated or unclean as to be offensive to the community.

Division 12 sets out the procedural requirements for imposing a RAR, including requirements for giving notice to both the owner and the occupiers of the affected property. Affected persons are entitled to request reconsideration by Council. If a person ordered to perform an RAR fails to do so in the time required, Council may authorize City staff and contractors to perform the action and recover the cost from the owner of the affected property, including by recovering it as property taxes.

Section 17 of the Community Charter provides:

- 1) The authority of a council under this or another Act to require that something be done includes the authority to direct that, if a person subject to the requirement fails to take the required action, the municipality may:
 - (a) fulfill the requirement at the expense of the person, and
 - (b) recover the costs incurred from that person as a debt.
- 2) Division 14 [Recovery of Special Fees] of Part 7 [Municipal Revenue] applies to an amount recoverable under subsection (1) that is incurred for work done or services provided in relation to land or improvements.

Special fees under Division 14 are recoverable as property taxes.

DISCUSSION

Current status of property:

The condition of the property has continued to deteriorate since the RAR was issued in November 2017. It has been three and a half years and the property owner has not submitted application for permits to remediate or demolish the house and has made no attempt to improve the condition of the property despite agreeing to do so in the Consent Order.

All attempts to contact the owner and offer assistance in either effecting improvements on the property or proceeding with demolition have failed. Mr. Bell has been consistently evasive and uncooperative for the duration of the file. In addition, the house does not meet minimum standards for maintenance under the Business Regulations and Licensing (Rental Units) Bylaw and the tenant has refused all attempts made by staff to provide assistance in finding alternative accommodation in order to vacate the house.

Staff Recommendation:

City staff have consulted with Young Anderson solicitor Michael Moll and have identified and explored several options to address the concerns laid out in this report. However, in discussion on the range of options, staff have come to recognize that there is only one option that can be recommended by staff. Staff advises that the City retain the contractors necessary to remove the scaffolding and demolish the house.

The City can take action in default if Council passes a resolution under section 17 of the Community Charter authorizing such action. If necessary, entry warrants will be sought to ensure that the City can safely enter and take action on the property. A pre-demolition inspection will be necessary to determine if remediation of hazardous material in the house is required. The cost of demolition will depend on the extent of

hazardous material and access to the site. It is estimated the cost of demolition and removal of material to be in the range of \$30,000 to \$75,000. The cost of carrying out the work on the property is recoverable through property taxes.

As the property is tenant-occupied, the tenant should be provided reasonable notice of the House’s demolition. The tenant has already been served with the RAR and was a signatory to the Consent Order, so the tenant is aware that the owner could have decided to comply with the RAR by demolishing the House.

Since the recommended option involves the City demolishing the house because the owner failed to do so himself, staff recommend that the tenant and the owner be given at least 60 days notice of the scheduled demolition. This ensures that the tenant gets at least as much notice as the tenant would have received if the landlord had served a notice to end a tenancy under section 47(k) on the basis that the rental unit must be vacated to comply with an order of a municipal government authority. In this case, the RAR is a municipal order requiring the demolition of the unit to address hazardous and nuisance conditions.

The City may need to store any valuables left in the house for a period of time to give the tenant a chance to claim them. Extra costs may be associated with this process. This cost would not be recoverable. Staff have prepared a resolution regarding full demolition for consideration at the end of this report.

Another option is that the City pursue no more enforcement and no longer pursue compliance.

FINANCIAL IMPLICATIONS

To pursue action in default, the City would have to pay the cost of demolition and removal of material (estimated to be \$30,000 to \$75,000). The cost of carrying out the work on the property is recoverable through property taxes if the owner does not pay.

INTERDEPARTMENTAL LIAISON

The City solicitors were consulted in preparing this report and will be present to answer any questions regarding legal remedies and procedures associated with enforcement of the RAR.

OPTIONS

1. That in response to the failure of James William Richard Bell to fulfill the Remedial Action Requirement imposed by resolution of Council on November 20, 2017, the Council of the City of New Westminster authorize the City, by its staff, agents and contractors, to fulfill the requirement at James William Richard Bell’s expense by entering the property civically and legally described as 509 Eleventh Street, New Westminster, BC, V3M 4G4, PID: 013-646-591, Lot 22 of Lot 15

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2. That Council direct staff to no longer pursue compliance or enforcement on this property.
 3. That Council provide staff with alternative direction.

Staff recommends option 1.

ATTACHMENTS

Attachment 1: Council Report and copy of Adopted Resolution – November 20, 2017
Attachment 2: Report to Council - July 9, 2018
Attachment 3: Consent Order - July 31, 2020
Attachment 4: Building Inspection Report - April 7, 2021
Attachment 5: Photo History of Property 2012 - 2021

APPROVALS

This report was prepared by:
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This report was reviewed by:
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This report was approved by:
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Lisa Spitale, Chief Administrative Officer