



Planning and Land Use Committee Report

For the meeting of August 21, 2014

Date: July 24, 2014 **From:** Mike Wilson, Senior Planner – Urban Design
Subject: 80 Saghalie Road – Request to Waive Council's Clean Hands Policy for Site Office Building

Executive Summary

The purpose of this report is to present Council with information, analysis and recommendations regarding a request by Focus Equities to waive the Clean Hands Policy for illegal construction and occupancy at 80 Saghalie Road. The existing building on the property was established as a construction trailer in 2006 to facilitate the development of Bayview One at 100 Saghalie Road.

The City does not require Development Permits or Building Permits for construction trailers and it is expected that trailers be removed within six months of obtaining an Occupancy Permit for the building under construction. At some point in the past, the building was converted from a construction office to a general office and showroom for the Bayview Project. A separate construction trailer has also been placed on 83 Saghalie Road, by the construction contractor, to facilitate the development of the most recent building at Bayview, the Promontory.

The proponent has made application to subdivide the property; however, the existing building requires a Development Permit with Variances in order to move forward with this approval which triggers the need for the request to comply with Council's Clean Hands Policy (attached). Staff recommend that Council waive the Clean Hands Policy in this instance in order for the applicant to move forward with a Development Permit with Variances Application and a remedial Building Permit. If the Clean Hands Policy were applied in this case, the applicant would be required to complete the following, before the planning application "may be processed through to civic evaluation and approvals bodies:"

- the owner must obtain a Building Permit to restore the property to legal condition
- the owner's solicitor must provide a restrictive covenant registered on title stating that the illegal occupancy is vacated, all illegal construction will be removed if the application is declined and the property will be made safe.

Staff have no knowledge of any safety concerns within the building or on the site, so in this instance recommend that the Clean Hands Policy be waived.

Recommendation

1. That Council waive the Clean Hands Policy with respect to illegal construction and illegal occupancy for the building located at 80 Saghalie Road.

Respectfully submitted,




Mike Wilson
Senior Planner – Urban Design
Development Services Division



Deb Day, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager:


Jason Johnson

Date: August 12, 2014

MW:lw

S:\Tempest_Attachments\Prospero\PI\Apf\Apf00399\Plusc Planning Report 80 Saghalie.Doc

1.0 Purpose

The purpose of this report is to present Council with information, analysis and recommendations regarding a request by Focus Equities to waive the Clean Hands Policy for illegal construction and occupancy of a building at 80 Saghalie Road.

2.0 Background

2.1 Description of Proposal

The existing building on the property was established as a construction trailer in 2006 to facilitate the development of Bayview One at 100 Saghalie Road. The City does not require Development Permits or Building Permits for construction trailers and it is expected that trailers be removed within six months of obtaining an Occupancy Permit for the building under construction. At some point in the past, the building was converted from a construction office to a general office and showroom for the Bayview Project.

The building was constructed on a foundation and an asphalt parking area with landscaping was also constructed. The building is no longer used as a construction office and currently serves as a showroom and site office for employees. A separate construction trailer has been placed on 83 Saghalie Road, by the construction contractor, to facilitate the construction of the most recent building at Bayview, the Promontory.

2.5 Legal Description

Lot 4 District Lot 119 Esquimalt Plan VIP 74716

4.0 Issues and Analysis

The only issue associated with this application is the request to waive the *Clean Hands Policy for Planning Approvals*.

4.1 Waive Clean Hands Policy for Planning Approvals

The applicant has made application to subdivide the parcels; however, the existing building requires a Development Permit with Variances in order to move forward with this approval. A Development Permit approval is also required for subdivision. Given that the existing building was constructed without a Building Permit and does not have an Occupancy Permit, the *Clean Hands Policy for Planning Approvals* is applicable. Where illegal occupancy and illegal construction is evident the following requirements apply:

1. *The owner must obtain a building permit to restore the property to legal condition; and*
2. *The owner's solicitor must provide a restrictive covenant registered on title stating that:*
 - *the illegal occupancy is vacated (the case will also be referred to Development & Regulatory Services for enforcement follow up),*
 - *all illegal construction work has ceased pending approval decision (a section 700 notice may also be registered on the property title),*
 - *all illegal construction will be removed if approval is refused,*
 - *the property must be made safe.*

Staff have no knowledge of any safety concerns within the building or on the site. Staff recommend that Council waive the Clean Hands Policy in this instance in order for the applicant to move forward with a Development Permit with Variances Application and a remedial Building Permit Application to achieve an Occupancy Permit for the building.

5.0 Resource Impacts

There are no resource impacts anticipated.

6.0 Conclusions

The building and landscape improvements at 80 Saghalie Road were originally installed to facilitate the construction of Bayview Phase One which achieved Occupancy in February of 2009. The building was not removed from the site and was altered to create permanent project offices as well as a show suite for the sale of residential units in the development. The building does not have any City approvals with respect to Development Permits or Building Permits. Staff have no knowledge of any safety concerns within the building or on the site and therefore recommend that Council waive the Clean Hands Policy in this instance in order for the applicant to move forward with a Development Permit Application and a remedial Building Permit Application for the building.

7.0 Recommendations

7.1 Staff Recommendation

That Council waive the application of the *Clean Hands Policy for Planning Approvals* for the building located at 80 Saghalie Road.

7.2. Alternative Recommendation (adherence to the Clean Hands Policy)

That Council require the owner of 80 Saghalie Road to adhere to the *Clean Hands Policy for Planning Approvals*.

8.0 List of Attachments

- Zoning map
- Aerial map
- Letter from the Owner, dated May 6, 2014
- *Clean Hands Policy for Planning Approvals.*



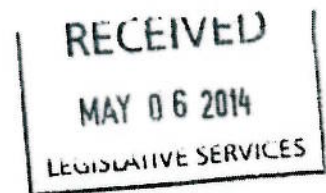


80 Saghalie Road





City of Victoria
1 Centennial Square
Victoria, BC V8W 1P6



Attention: Mayor and Council

Re: 80 Saghalie Road, Site Office Buildings, Development Permit Application with Variances

Dear Mayor Fortin and Members of Council:

We are writing with regard to two upcoming Development Permit applications to permit subdivision of the subject parcel and to regulate the existing site office trailers, allowing them to remain in support of the ongoing build-out of the Bayview Place project. Staff has raised the possibility of the application of the City's Clean Hands Policy with respect to these DP applications. The position of the applicant is that the policy does not apply. The improvements at issue were and continue to be temporary trailers, which were installed on site with disclosure to the City. Therefore, we do not concur with the suggestion that the temporary trailers are permanent buildings, the result of illegal construction or having illegal occupancy. By submitting these DP Applications, we request Council to permit the project to proceed by allowing subdivision of the property and retention of the temporary site trailers to continue in their function as the project site offices.

Subdivision Application

The property at 80 Saghalie Road is part of the Bayview Place lands and received rezoning approval on October 24, 2013 to include seniors' housing as a permitted use on the eastern parcel, proposed Lot A. The subdivision will create the seniors' housing Lot A and retain the remnant Lot B for future mixed-use (multiple residential and commercial) development in accordance with the zoning. The preliminary plan of subdivision was submitted and reviewed during the rezoning process and was designed specifically to allow for the interim retention of the trailers on proposed Lot B to serve as the temporary site offices for the project.

Construction History

As background, the site office trailers were originally installed on the property in 2006 to function as the development and construction site offices when the initial Bayview One building was under construction. The buildings are composed of pre-fabricated trailers, assembled together to create the commercial office space.

Prior to installation, the project team engaged with the City of Victoria Planning and Building Department to seek direction on the necessary approvals and was advised that the City does not require Development Permits or Building Permits for such site office trailers. Applications for the required electrical and infrastructure services connection permits were submitted and issued by the City. The project's civil, structural and geotechnical engineers all provided input to the siting, layout and installation of the trailers on site. The trailers were installed on a concrete foundation to account for the sloped topography. The exterior of the trailers were clad in metal siding to present a high quality finish, to be commensurate with the Bayview Place development and respectful of the surrounding residential neighbourhood. This work to transform the previously used trailers into an attractive site office was advanced at significant expense to the project and was made in a concerted effort to be a good neighbor to the community while the project is under construction.

As the master developers of approximately 20 acres of land at Bayview Place, which includes the Bayview and Roundhouse properties, Focus Equities is responsible for ongoing build-out through a multi-phase development process. Accordingly, the site office trailers have been and will continue to be utilized to support overall development management as well as serving as a presentation sales centre for individual phases of the project, including Bayview One and currently, The Promontory. It is anticipated that the site office trailers will be required to support the build-out of the project over the coming years and

that retention of the buildings in their current location would be less disruptive to the neighbourhood than relocating them around the site phase-by-phase. We believe Bayview Place is in a unique position relative to other development sites in Victoria in that the combined master plan includes at a minimum a further 8 future phases of construction. While we remain confident in the strength of Victoria's market, we also know from past and current experience that the uptake or absorption of units is achieved at a slower pace than in other markets.

Required Approvals

We understand the City is now suggesting that the buildings be regulated as permanent buildings, rather than temporary buildings as was the intent and classification at original installation. We have been advised that the Development Permit applications referred to below are required.

There are two separate trailer assemblages, with the eastern building encompassing approximately 178 m² on each of the main / ground floor and the lower / basement floor for a total of +/- 356 m². The western building encompasses approximately 260 m² on each floor for a total of +/- 520 m². Commercial use is permitted in the current zoning; the buildings do not exceed the permitted density of the zone; and, the buildings are sited according to the zoning regulations. Attached for your information is documentation from RJC structural engineers with respect to the trailer assemblages.

Two Development Permit applications will be submitted. The first will allow subdivision of the property, resulting in a freestanding parcel for seniors' housing use on Lot A. The second DP application with variances will regulate the site office trailers on Lot B allowing them to remain as temporary buildings. The following variances are necessary to allow the existing trailers to remain as currently constructed:

- Vary the maximum amount of commercial floor area permitted in any one building from maximum of 190 m² to the amount as constructed.
- Vary the location of the commercial use from being limited to the ground floor of a building only to allow both ground floor and basement commercial use locations.
- Vary the requirement for parking to be enclosed to allow retention of the current surface parking area.

We note that the intent of the Songhees Hillside Urban Design Guidelines is to ensure a high quality neighbourhood setting and to regulate the form and character of permanent buildings and landscapes. The temporary trailers and the surrounding entry landscape are finished to a high quality, beyond that typical of other development sites and in keeping with the intent of the guidelines. However, as temporary buildings, they were not designed nor intended to meet the full spectrum of the Songhees Hillside Urban Design Guidelines.

Clean Hands Policy

As noted above, we recently completed a comprehensive rezoning application process for the subject property, achieving approval to add seniors' housing use to the proposed Lot A (Development Area 3B) and to retain the existing zoning of proposed Lot B (Development Area 3A). The Clean Hands Policy was not invoked during the rezoning. Staff asked questions about the site office trailers during the rezoning process; however, these questions and comments were in response to an earlier iteration of the plan, which proposed a 3-lot subdivision, with the existing site offices spanning across then-proposed Lots B and C. The 3-lot plan proposed a phased subdivision to create Lot A for seniors housing and to later subdivide the remainder of the site to create Lots B and C, which would retain the existing zoning in terms of use and density. The need to remove the site offices was noted as a pre-condition of the subdivision creating Lots B and C, as the trailers would otherwise span that internal shared lot line. Staff did not indicate removal of the buildings as a requirement to create Lot A.

We believe this is an important clarification because the application was subsequently revised to propose the 2-lot subdivision - Lot A and Lot B (which was previously Lot B and Lot C), specifically with the intent to allow the interim retention of the temporary buildings. To our knowledge, the link between any concern with the existing trailers and subdivision to create Lot A was not raised during the subsequent staff review of the application and therefore we were not aware of any concern going forward.



Most importantly, we were not advised during the rezoning that the subdivision to create Lot A would trigger reconsideration of the site trailers nor application of the Clean Hands Policy. It was not until the zoning was completed and we were seeking advancement of the subdivision application that staff communicated concerns, indicating that the buildings were deemed to be permanent buildings, non-compliant relative to the Zoning Bylaw and that subdivision cannot proceed until the bylaw issues are resolved.

We ask that Council direct staff to waive the Clean Hands Policy and consider the DP applications on their own merit. Focus Equities is committed to advancing the Bayview Place development and achieving a positive community result, but asks that reasonable consideration be granted to allow retention of the temporary buildings to serve the build-out of the project. The trailers were never intended to be permanent buildings and they will be removed when development of this portion of the site is advanced.

We have worked at length with staff in recent months to collaboratively reach a proposed resolution to this matter. A Section 219 Restrictive Covenant has been drafted in consultation with staff and will be registered on title at issuance of the requested Development Permits. The covenant limits the commercial use of the buildings to offices for the purpose of the development and presentation/show suites, and guarantees future removal of the trailers.

Respectfully,

David Fullbrook, Acquisitions and Development
Focus Equities

cc: Mike Wilson, Senior Planner



Clean-hands Policy for Planning Approvals

When applying for planning approvals, all applicants must ensure that the building or structure in question conforms with previously approved plans.

The City of Victoria has a *Clean-hands Policy for Planning Approvals* to assist applicants with planning approvals where there is evidence of illegal construction or occupancy, and to outline the requirements for owners to come into compliance with current regulations.

The policy is as follows:

A. This relates to all applications involving rezoning, variance, and design or heritage approval in cases where enforcement action is pending.

B. All such applications will be required to be made by a registered architect or engineer (or other professionals as may be approved by the City).

C. Where illegal construction is in evidence, but not illegal occupancy, before the application may be processed through to civic evaluation and approvals bodies:

1. The owner must obtain a Building Permit to restore the property to legal condition, and
2. The owner's solicitor must provide a restrictive covenant registered on title that states:
 - All illegal construction work has ceased pending approval decision
 - All illegal construction will be removed if approval is refused

D. Where illegal occupancy is in evidence (without illegal construction), before the application may be processed through to civic evaluation and approvals bodies, the owner's solicitor must provide a restrictive covenant registered on title stating that the illegal occupancy is vacated (the case will also be referred to Legislative and Regulatory Services for enforcement follow-up).

E. Where illegal occupancy is in evidence (with illegal construction), before the application may be processed through to civic evaluation and approvals bodies:

1. The owner must obtain a Building Permit to restore the property to legal condition, and
2. The owner's solicitor must provide a restrictive covenant registered on title that states:
 - The illegal occupancy is vacated (the case will also be referred to Legislative and Regulatory Services for enforcement follow-up)
 - All illegal construction work has ceased pending approval decision (a section 57.3 notice may also be registered on the property title)
 - All illegal construction will be removed if approval is refused
 - The property must be made safe

FOR MORE INFORMATION:

Development Services

T 250.361.0536 or 250.361.0316

E zoning@victoria.ca

Permits and Inspections

T 250.361.0344

E permits@victoria.ca