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CITY OF KELOWNA

MEMORANDUM

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**Date:** November 21, 2007  
**File No.:** 4000-00  
**To:** City Manager  
**From:** Licensing & Bylaw Enforcement Supervisor  
**Subject:** Notice on Title – 750 Burne Avenue, Kelowna, B.C.  
East ½ of amended Lot 93 (DD64603F) Section 19, Township 26, ODYD Plan 700  
PID: 012-119-873 (The Property\_

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**RECOMMENDATION:**

THAT City Council direct the Chief Administrative Officer to file a notice on title to the Property pursuant to section 57 of the *Community Charter*.

AND THAT City Council consider and adopt the following resolution regarding the Property:

"BE IT RESOLVED that:

Council confirms the recommendations of the Building Inspector in the report dated November 20, 2007 under s.57 of the *Community Charter* and directs the Chief Administrative Officer to file a notice in the Land Title Office stating that:

- (a) a resolution relating to the property referred to in the Building Inspector's report has been made under s.57 of the *Community Charter*; and
- (b) further information about it may be inspected at the municipal hall."

**BACKGROUND:**

This report is prepared under the authority of section 57 of the *Community Charter*.

Staff has confirmed, and I have discovered in the course of carrying out my duties, that work requiring a building permit under the City of Kelowna Building Bylaw, 1993, No. 7245, as amended (the "Building Bylaw"), was done on buildings on the Property. No building permit was ever obtained from the City of Kelowna for that work. Specifically, the Property is zoned to permit two dwelling units, but as many as five dwelling units have been constructed on the Property without the necessary building permits.

The City has already commenced litigation against a former registered owner of the Property, Lyall Watson Grexton, relating to the Building Bylaw. The staff report that accompanied the recommendation to commence litigation is attached as Schedule "A" to this report.



The litigation was resolved by a Consent Order, whereby Lyall Watson Grexton specifically acknowledged that he was in violation of section 4.1.1 (b) of the Building Bylaw for altering buildings on the Property without a valid building permit. That Consent Order was filed with the B.C. Supreme Court on August 18, 2006. A copy of the Consent Order is attached as Schedule "B" to this report.

Since that time, the Property has been sold to Mr. Kenneth Wayne Kunzli. No building permits have been issued in relation to the Property since August 18, 2006. Inspections conducted by City staff on a variety of occasions, including January 27, 2007 and November 8, 2007 revealed that the work that was done without a building permit, in contravention of section 4.1.1 (b) of the Building Bylaw, remains in place.

**Internal Circulation To:**

City Clerk's Division

**Considerations that were applicable to this report:**

LEGAL/STATUTORY AUTHORITY: Section 57 of the Community Charter

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: Notice to be given to the registered owner of the land pursuant to Section 57(2) of the Community charter.

**Considerations that were not applicable to this report:**

EXISTING POLICY:

FINANCIAL/BUDGETARY CONSIDERATIONS:

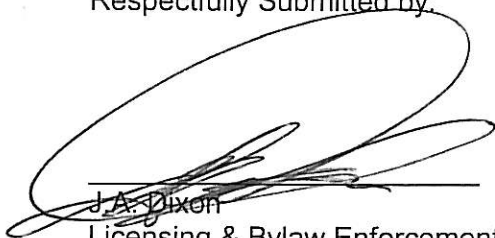
PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:

EXTERNAL AGENCY/PUBLIC COMMENTS:

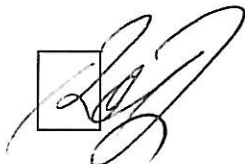
ALTERNATE RECOMMENDATION:

Respectfully Submitted by:



J.A. Dixon  
Licensing & Bylaw Enforcement Supervisor and  
Building Inspector

Approved for Inclusion:



Attachments: Exhibit A & Exhibit B

c.c.: David Shipclark – Acting Director, Planning and Development Services  
Ron Dickinson, Inspection Services

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**CITY OF KELOWNA**  
**MEMORANDUM**

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**Date:** November 14, 2007  
**File No.:** 4000-00  
**To:** City Manager  
**From:** Inspection Services Manager  
**Subject:** Notice On Title – Section 57 Community Charter  
750 Burne Avenue, Kelowna, B.C. (The Property)

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RECOMMENDATION

THAT City Council accept the report of the Building Inspection Supervisor concerning outstanding violations against the City of Kelowna Zoning Bylaw 8000 and Building Bylaw 7245.

AND THAT City Council approve the request of the Building Inspection Supervisor to file a Notice on Title against the property pursuant to Section 57 of The Community Charter.

BACKGROUND

In 1992 the property known as 750 Burne Avenue, Kelowna, B.C. and described as East ½ of amended Lot 93 (DD64603F) Section 19, Township 26, ODYD Plan 700, legally placed a detached accessory building at the rear of the lot and an Occupancy Permit was granted for a detached studio and workshop.

In October 1994, the property was purchased by the new owner. The property at that time was zoned R2 (now RU6) which permits two residential dwelling units. At the time of purchase there were Occupancy Permits for a single family dwelling and the rear accessory building to be used as a studio.

On or about November 30, 1994, Bylaw Enforcement received a complaint of illegal dwelling use and on attending found three (3) separate dwelling units within the house as well as the studio having been converted into living accommodations. Enforcement action was taken and compliance to the Zoning Bylaw was achieved.

In September 1995, the Bylaw Department received another illegal suite complaint and on investigation found that there were numerous illegal dwelling units, including two units in the former studio being used as living quarters. Enforcement action was taken with convictions in court at trial which resulted in a \$2,000.00 fine.

Enforcement action prompted the owner to obtain a business licence in 1996 plus an Occupancy Permit for a suite in the lower portion of the main house; however, in 1997 we again found illegal dwellings including the former studio at the rear of the building. An Information was laid but the charges dismissed in court as the City had not sufficiently shown ownership of the property.

In January, June and August of 2000, three more complaints of illegal suites were received by the Bylaw Department. A subsequent complaint received led to enforcement action. On February 28, 2006, inspections of the property were conducted by Bylaw Enforcement, Building Inspections and the Fire Department which determined numerous infractions including two illegal dwelling units at the rear of the property in the former studio, two legal and three illegal dwelling units in the main house, smoke detectors missing, debris piled around the gas furnace and construction completed without permits.

On or about March 13, 2006, City Council approved the request of the Inspection Services Manager to proceed with an injunction against 750 Burne Avenue to obtain compliance to the City of Kelowna Zoning and Building Bylaws. This enforcement action resulted in the property owner entering into a Consent Order on August 17, 2006 through the courts ordering that:

1. The owner and any other person with notice of this order cease using the property in violation of the Zoning Bylaw no later than four (4) months from the date of the order (December 17, 2006).
2. The owner is to apply within two (2) weeks of the date of this order (September 1, 2006) for any and all permits required to convert or alter the buildings on the property so the buildings conform to the Zoning Bylaw and the permits issued for the property.
3. The owner is to comply with the Zoning Bylaw and Building Bylaw as they relate to the property.

The Consent Order was entered into the Supreme Court Registry on August 18, 2006. This Order has authority upon the owner as long as he retains ownership of the property or subject to any new purchaser of the property.

On December 5, 2006 we had occasion to review this file as the owner had until December 17, 2006 to comply with the Consent Order which was registered at the Land Titles Office on August 18, 2006 and noted there had been no enquiries or permits issued to the owner accordingly. On further inspection it was determined that the property was sold to Mr. Kenneth Wayne Kunzli on or about August 24, 2006 just five (5) days after the Consent Order was registered.

On January 24, 2007 the Bylaw Officer and Building Inspector advised there has been no change in the property and all concerns remain the same. Mr. Kunzli was personally served with a letter dated January 22, 2007 outlining the zoning and building violations with a compliance date of thirty (30) days to respond.

On Friday, March 16, 2007 we conducted a file review with Inspection Services Manager and the City Solicitor who was brought up to date on the current status of our investigation of non-compliance. The new owner Mr. Kunzli had met with City Planning staff and given the information for rezoning. Mr. Kunzli was encouraged to decommission any illegal dwellings. Our records indicate there has been no movement towards compliance by Mr. Kunzli.

We continued to follow the file from April 2007 through July 2007 with no movement on the part of Mr. Kunzli. The property continues to be in violation of our City Zoning and Building Bylaws.

On Friday, July 13, 2007 we forwarded information of this matter to the City Solicitor requesting he move this file forward by way of the Consent Order or direct enforcement against the current owner. The City Solicitor forwarded a letter dated July 16, 2007 along with the Consent Order to be served to Mr. Kunzli requiring compliance accordingly. This letter was personally served by Officers on July 19, 2007.

On Wednesday, September 5, 2007 our review of this file indicated no movement towards compliance and the City Solicitor was advised accordingly. The City Solicitor requested a further inspection of the property to determine any changes. This inspection was completed by our investigating officer who found no change in the condition or use of the property.

On Wednesday, October 31, 2007 we forwarded the results of our inspection to the City Solicitor requesting we move this matter forward and to advise what our next step should be. The City Solicitor advised we should enforce the Consent Order and he will advise accordingly.

On Monday, November 5, 2007 we received a request from the City Solicitor to complete an on-site inspection of the property to determine actual use of the dwelling and their numbers. The inspection was completed on Thursday, November 8, 2007 by City Bylaw Officers, Building and Plumbing Inspectors along with RCMP officers. The results of our inspection were noted on our Service Requests and forwarded to the City Solicitor on Monday, November 13, 2007.

A search of City of Kelowna records on November 14, 2007 shows that Mr. Kunzli has not applied for any permits required to convert or alter the buildings on the property so they would conform to the Zoning Bylaw and building permit requirements as ordered by the court.

We are requesting that Council confirm the recommendations of the Building Inspection Supervisor as outlined in this report and authorize the City of Kelowna Inspection Services Department to place a Notice on Title under Section 57 of The Community Charter against the property located at 750 Burne Avenue, Kelowna, B.C. stating that:

- a) A resolution relating to the property referred to in the Building Inspection Supervisor's report has been made under Section 57 of The Community Charter, and
- b) Further information about it may be inspected at the Municipal City Hall.

**Internal Circulation To:**

City Clerk's Division

**Considerations that were applicable to this report:**

LEGAL/STATUTORY AUTHORITY: Section 57 of the Community Charter

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: Notice to be given to the registered owner of the land pursuant to Section 57(2) of the Community Charter.

**Considerations that were not applicable to this report**

EXISTING POLICY:

FINANCIAL/BUDGETARY CONSIDERATIONS:

PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:

EXTERNAL AGENCY/PUBLIC COMMENTS:

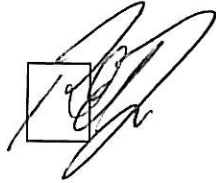
ALTERNATE RECOMMENDATION:

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to be 'J.A. Dixon'.

J.A. Dixon  
Licence and Bylaw Enforcement Supervisor

Approved for Inclusion:

A handwritten signature in black ink, with a small square box drawn over the beginning of the signature.

**Cc:** David Shipclark - Acting Director, Planning and Development Services  
Ron Dickinson; Manager, Inspection Services

OF BRITISH COLUMBIA

ME 1 8 03

KELOWNA  
REGISTRY

FORM 43 (2002/03/01)

NO. 72250

KELOWNA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

CITY OF KELOWNA

PLAINTIFF

AND

LYALL WATSON GREXTON

DEFENDANT

CONSENT ORDER

BEFORE THE HONOURABLE MR. JUSTICE *Boyd*  
or  
THE HONOURABLE MADAM JUSTICE  
MASTER  
THIS DAY, THE 17  
DAY OF August, 2006

ON THE APPLICATION of the Plaintiff, without a hearing and by consent,

THIS COURT DECLARED that

1. The Defendant, Lyall Watson Greston, is in violation of section 13.6.2 and section 4.3.2 of the City of Kelowna Zoning Bylaw No. 8000, as amended (the "Zoning Bylaw") for constructing and using more than two dwellings on the property with civic address 750 Burns Avenue, Kelowna, B.C. and legally described as PID: 012-119-873, the East 1/2 of amended Lot 93 (PID: 646059)-Section 19, Township 26, Okanagan Division-Vale District, Plan 700 (the "Property").
2. The Defendant, Lyall Watson Greston, is in violation of section 2.1.1 (b) of the City of Kelowna Building Bylaw, 1993, No. 7245, as amended (the "Building Bylaw") for altering the buildings on the Property without a valid building permit.

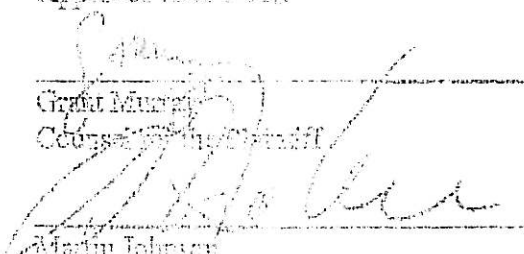

THIS COURT ORDERS that:

3. The Defendant, Lyall Watson Greston, and any other person with notice of this Order, cease using the Property in violation of the Zoning Bylaw no later than 4 months from the date of this Order.

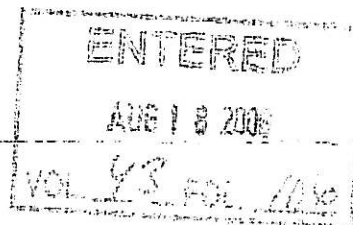
4. The Defendant, Lyall Watson Grevton, apply, within two weeks of the date of this Order, for any and all permits required to convert or alter the buildings on the Property so that the buildings on the Property conform with the Zoning Bylaw and the building permits issued for the Property.
5. The Defendant, Lyall Watson Grevton, complete the work necessary, within 4 months of the date of this Order, to convert or alter the buildings on the Property so that the buildings on the Property conform with the Zoning Bylaw and the building permits issued for the Property.
6. The Defendant, Lyall Watson Grevton, comply with the Zoning Bylaw and Building Bylaw as they relate to the Property.
7. The Defendant, Lyall Watson Grevton, pay the State of Alaska costs of this Order.

BY THE COURT

Approved as to form:

  
Grant Murray  
Clerk of the Court  
Martin Johnson  
Counsel for the Defendant

REGISTRAR



NO. 72250  
KELOWNA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF KELOWNA

PLAINTIFF

AND:

LYALL WATSON GREXTON

DEFENDANT

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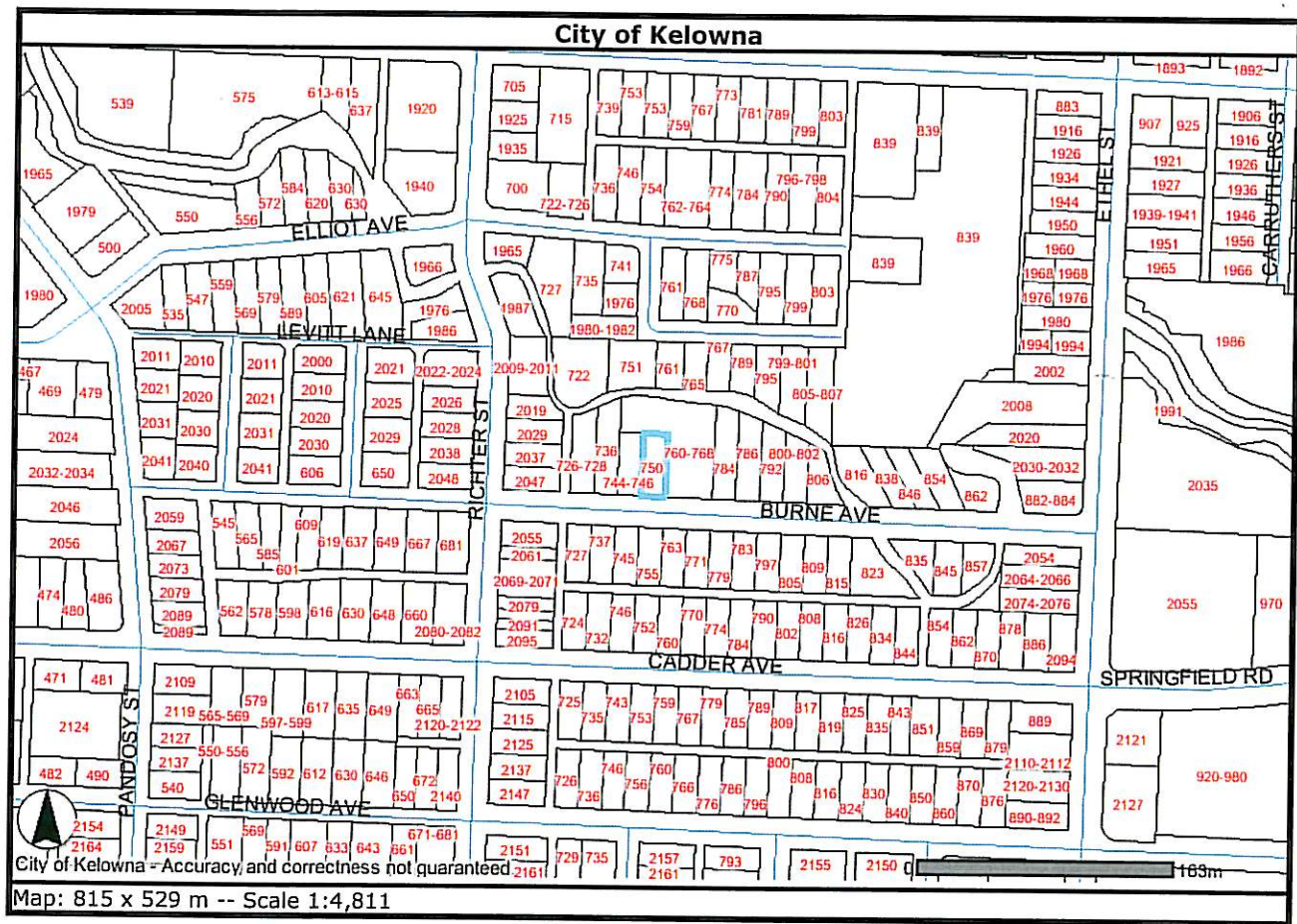
CONSENT ORDER

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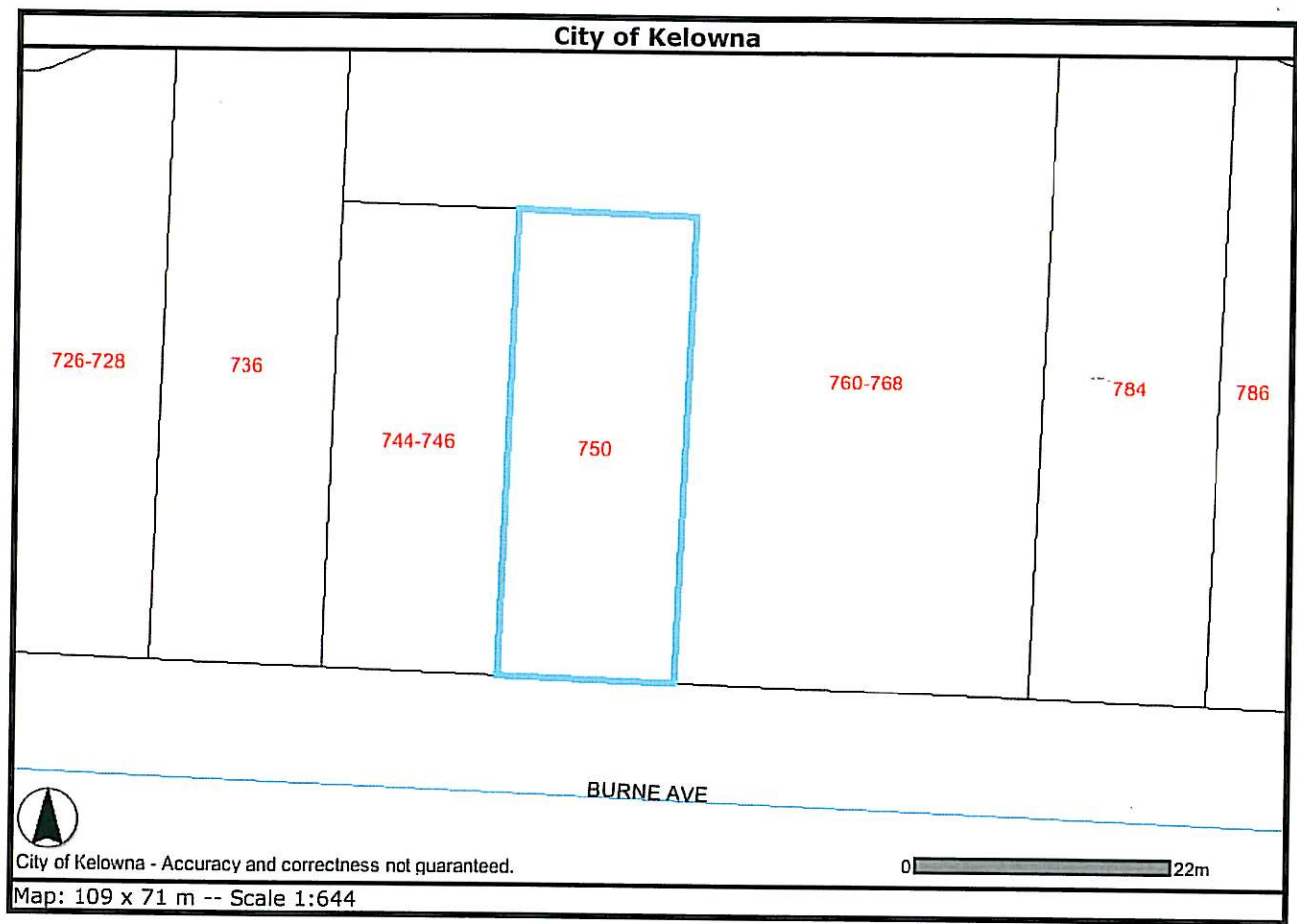
Grant Murray  
LIDSTONE YOUNG ANDERSON  
Barristers and Solicitors  
1616 - 808 Nelson Street  
Box 12147, Nelson Square  
Vancouver, B.C. V6Z 2H2  
Telephone: (604) 689-7400

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Our File No. 122-894



*This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.*



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