

**DISTRICT OF LAKE COUNTRY**  
**REQUEST FOR COUNCIL DECISION**

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**MEETING TYPE AND DATE:** REGULAR COUNCIL MEETING, APRIL 19, 2022  
**AUTHOR:** ZARA ROCKWELL, CHIEF BUILDING INSPECTOR  
**SUBJECT:** 10390 OKANAGAN CENTRE ROAD E – NOTICE ON TITLE REQUEST

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**ESSENTIAL QUESTION:**

Does Council wish to place a Notice on Title for the property located at 10390 Okanagan Centre Road East for the failure to obtain a building permit for the construction of an accessory building (carport), to protect the District from any liability regarding the property and to inform any potential purchasers of the deficiencies?

**OPTIONS:**

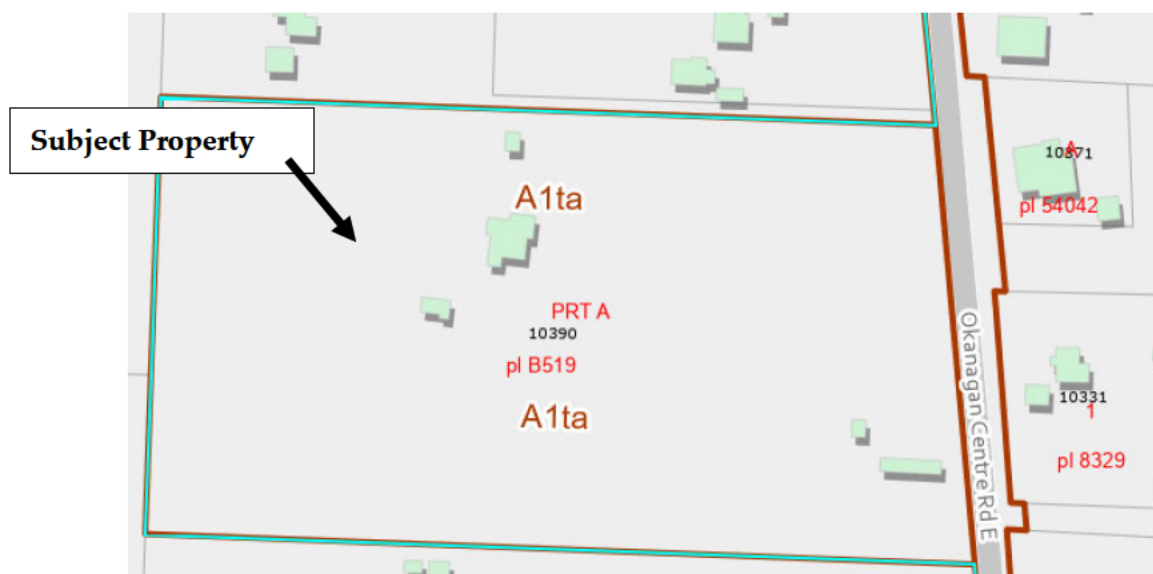
- A. THAT Notice on Title be placed on the property at 10390 Okanagan Centre Road East legally described as Lot A, Plan KAP457, Part S1/2, Section 10, Township 20, ODYD, P.I.D. 012-322-326 pursuant to Section 57 of the Community Charter and that the enforcement file be closed.
- B. THAT a Notice on Title not be placed on the property at 10390 Okanagan Centre Road East legally described as Lot A, Plan KAP457, Part S1/2, Section 10, Township 20, ODYD, P.I.D. 012-322-326 pursuant to Section 57 of the Community Charter and that the enforcement file be closed.
- C. THAT a Notice on Title not be placed on the property at 10390 Okanagan Centre Road East legally described as Lot A, Plan KAP457, Part S1/2, Section 10, Township 20, ODYD, P.I.D. 012-322-326 pursuant to Section 57 of the Community Charter and that the building division continue to work with property owner to bring the property into compliance.
- D. THAT Notice on Title be placed on the property at 10390 Okanagan Centre Road East legally described as Lot A, Plan KAP457, Part S1/2, Section 10, Township 20, ODYD, P.I.D. 012-322-326 pursuant to Section 57 of the Community Charter and that the building division start remedial action pursuant to Section 73 of the Community Charter.

**EXECUTIVE SUMMARY:**

During the regular course of duties, the Building Official noted that an accessory building (carport) had been constructed without a valid building permit in place. The owner has not made a building permit application at this time. The property is a concern with respect to the BC Building Code 2018 Edition, and the District of Lake Country Building Regulation Bylaw, 1070, 2018. As such, staff is recommending a that a Notice on Title be placed on the property and that the enforcement file be closed.

**Key Information:**

File Number:	NOT2022-002		
Roll Number:	02265.000		
Property Owner:	S. Sundhar Orchards Ltd		
Legal Description:	Lot A, Plan KAP457, Part S1/2, Section 10, Township 20, ODYD		
PID	012-322-326		
Civic Address:	10390 Okanagan Centre Road East, Lake Country, BC V4V 1K9		
OCP Designation:	Agricultural		
Zoning Designation:	A1ta; Agricultural 1 (Agri-Tourism Accommodation)		
Land Use Contract	No		
ALR:	Yes		
Parcel Size:	10 acres		
DP Area(s):	Greenhouse Gas Reduction; Multiple Unit; Commercial; Industrial; Agri-Tourism		
Water Supply:	Beaver Lake		
Sewer:	Septic System		
Site Summary:		Zoning:	Use:
	North:	A1; Agricultural 1	Residential
	East:	A1; Agricultural 1	Residential
	South:	A1; Agricultural 1	Residential
	West:	A1; Agricultural 1	Residential





#### **Relevant Observations:**

Numerous attempts to have the property owner come in and apply for a building permit have been unsuccessful to date, and so the placement of a Notice on Title may aid in protecting the District from liability. The placement of a Notice on Title may make it difficult to obtain a mortgage or sell the property. The placement of the Notice on Title will lower the liability of the District if there is public exposure to the potential health and safety risks posed by any deficiencies.

#### **Strategic Questions:**

Will placing a Notice on Title achieve the desired outcome of being in compliance with the Building Regulation Bylaw and mitigating liability to the District?

#### **Strategic Relevance and Community Sustainability:**

The placement of the Notice on Title and the closing of the file will enable staff to work more closely on strategic priorities of Council and to ensure liability is minimized to the District.

#### **Key Result:**

Ultimately, District staff would prefer that the structure be brought into compliance with the District of Lake Country Building Regulation Bylaw and BC Building Code and the file closed. However, the placement of a Notice on Title on the property will limit the liability of the District of Lake Country if members of the public are exposed to the risk posed by non-compliant buildings.

#### **Desired Benefit of Key Result:**

Adherence to the District of Lake Country Building Regulation Bylaw and BC Building Code.

#### **Unintended Outcomes:**

That the accessory building (carport) continues to be used without the required building permit and inspection approvals, placing the District in a position of potential liability.

#### **Preferred Strategy:**

That the proposed Notice on Title be placed, that the owner obtains a building permit, inspections are completed, and the file is closed and that the Notice on Title be removed.

## Background/History:

During the course of duties, the Building Official noted that an accessory building (carport) had been constructed without a building permit in place.

- November 26, 2019 – letter was sent to property owner advising of the requirement to apply for a building permit.
- January 13, 2020 – A second notice letter was sent to property owner advising of the requirement to apply for a building permit.
- April 6, 2020 – A third notice letter was sent to property owner advising of the requirement to apply for a building permit.
- January 15, 2021 – A fourth letter was sent to property owner advising of the requirement for a building permit and warns of further legal action including the possibility of registration of a Notice on Title.

This accessory building (carport) has been constructed without a building permit and the property owner has not brought the property into compliance with relevant District bylaws and the BC Building Code. The lack of building permit and final approval is a concern to staff and as such, staff recommend a Notice on Title be placed on the property and that the enforcement file be closed.

## Discussion/Analysis

### Legislation & Applicable Policies:

- District of Lake Country Building Regulation Bylaw, 1070, 2018
  - Subject to Section 11 of this bylaw, every owner must apply for and obtain a permit, prior to
    - (a) construction or placement of new buildings and structures
- Community Charter Section 57 (*Note Against Land Title that Building Regulations Contravened*)
- Community Charter Section 73 (*Remedial Action Requirements – Hazardous Conditions*)

### Impact on Staff Capacity and Financial Resources (Cost/Benefit Analysis):

Significant staff time has been used attempting to bring this property into compliance.

Registering a Notice On Title is a small fee that will allow staff to direct their attention elsewhere. If in the future the property owner wishes to have the Notice On Title removed there is a \$300 fee for staff processing time.

### Legal Implications:

Council has the authority to pass a resolution to file a Notice against the land title through the Community Charter. Courts tend to defer to the expertise of municipal Building Officials advice, and local Council decisions with respect to Notice against the land title.

A municipality owes a duty of care to subsequent owners of a building, which was made clear in *Kamloops vs. Nielsen* [1984]. The Court held that once the municipality had made a policy decision to regulate building construction, the municipality owed a duty to enforce the bylaw provisions to prevent injury to persons such as third-party purchasers. As the Building Regulation Bylaw requires the property owner to obtain a building permit and it is unknown to what extent the building meets or does not meet the requirements of the BC Building Code, placing a Notice on Title will at minimum inform potential purchasers of the risk.

### Analysis of Option for Consideration:

- Option A - This option will allow staff to place the Notice on Title. This will limit liability to the District and will allow staff to close enforcement file and to direct their attention to other tasks.
- Option B – This option will allow staff to close the enforcement file and to direct their attention to other tasks. However, this option does not limit liability to the District.

- Option C – This option will require staff to direct more staff time to attempt to bring this property into compliance and will reduce the time allocated to other tasks. This option does not limit the liability to the District.
- Option D – This option will allow staff to place the Notice on Title, and to investigate the remedial action process to bring the property into compliance. This will limit liability to the District and will allow staff to start actions that will bring the property into compliance.

Respectfully Submitted,

Zara Rockwell, RBO  
Chief Building Inspector  
Planning and Development Department

This report has been prepared with the collaboration of the following individuals:

COLLABORATORS	
TITLE	NAME

This report has been prepared in consultation with the following departments:

CONCURRENCES	
DEPARTMENT	NAME
Chief Administrative Officer	Tanya Garost
Director of Corporate Services	Reyna Seabrook
Director of Planning & Development	Jared Kassel

ATTACHMENTS:

Attachment A – Previous Correspondence to Owner



Municipal Hall  
Community Services Department  
Building Division  
10150 Bottom Wood Lake Road  
Lake Country, BC V4V 2M1  
Tel: 250-766-6675  
Fax: 250-766-0200  
[building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca)

November 26, 2019

S. Sunher Orchards Ltd  


**COPY**

**Re: Accessory Building (Carport) - Construction without a Building Permit**

Dear Sir or Madam:

Our records indicate you are the registered owner of the property located at Lot A, Plan KAP457, located at 10390 Okanagan Centre Road East, Lake Country BC.

The Building Division staff has been made aware of possible bylaw contraventions on the above noted property. Specifically, information was received of construction of a carport structure without the benefit of a building permit. Please be aware that the District of Lake County Building Regulation Bylaw 1070, 2018 states:

"5. PROHIBITIONS A person must not commence or continue any construction, alteration, excavation, reconstruction, demolition, removal, relocation or change of use or occupancy of any building or structure, including other work related to construction

- (a) except in conformity with the requirements of the Building Code and this bylaw; and
- (b) unless a building official has issued a valid and subsisting permit for the work under this bylaw."

The Building Regulation Bylaw encourages owners to comply with the minimum standards established by the BC Building Code, as well as other enactments which relate to health, safety, and use of land.

The District of Lake Country Building Division wishes to work with you to ensure your property is compliant with all current regulations. Please contact our Building Division staff no later than December 15, 2019. Building Division staff are available to help you at the Community Development counter. Our office hours are Monday through Friday from 8:30 am to 4:30 pm.

Should you wish any additional information or if we can be of further assistance do not hesitate contacting [building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca). Thank you in advance for your co-operation.

Yours truly,



Zara Rockwell RBO  
Chief Building Inspector





**LAKE COUNTRY**  
Life. The Okanagan Way.

Municipal Hall  
Community Services Department  
Building Division  
10150 Bottom Wood Lake Road  
Lake Country, BC V4V 2M1  
Tel: 250-766-6675  
Fax: 250-766-0200  
[building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca)

January 13, 2020

S. Sunher Orchards Ltd.  


**COPY**

**Re: SECOND NOTICE – Accessory Building (Carport) at 10390 Okanagan Centre Road East - Without a Building Permit**

Dear Sir/Madam:

Our records indicate you are the registered owner of the property located at Lot A, Plan KAP457, located at 10390 Okanagan Centre Road East, Lake Country BC.

It has come to our attention that an Accessory Building (Carport) has been constructed without proper approval and permits.

**You are hereby requested to either remove the Building or apply for the appropriate permits no later than February 7, 2020 in order to avoid any further legal action.**

Should you wish any additional information or if we can be of further assistance do not hesitate contacting our office at [building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca)

Yours truly,



Zara Rockwell RBO  
Chief Building Inspector

LAKE COUNTRY



Municipal Hall  
Community Services Department  
Building Division  
10150 Bottom Wood Lake Road  
Lake Country, BC V4V 2M1  
Tel: 250-766-6675  
Fax: 250-766-0200  
[building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca)

April 6, 2020

S. Sunher Orchards Ltd.

**COPY**

**Re: THIRD NOTICE – Accessory Building (Carport) at 10390 Okanagan Centre Road East - Without a Building Permit**

Dear Sir/Madam:

Our records indicate you are the registered owner of the property located at Lot A, Plan KAP457, located at 10390 Okanagan Centre Road East, Lake Country BC.

It has come to our attention that an Accessory Building (Carport) has been constructed without proper approval and permits.

**You are hereby requested to either remove the Building or apply for the appropriate permits no later than May 1, 2020 in order to avoid any further legal action.**

Should you wish any additional information or if we can be of further assistance do not hesitate contacting our office at [building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca)

Yours truly,

Zara Rockwell RBO  
Chief Building Inspector

LAKE COUNTRY





Municipal Hall  
Development Services Department  
Building Inspections  
10150 Bottom Wood Lake Road  
Lake Country, BC V4V 2M1  
Tel: 250-766-6675  
Fax: 250-766-0200  
[building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca)

January 15, 2021

**COPY**

S. Sunher Orchards Ltd.  
2951 Old Vernon Road  
Kelowna, BC  
V1X 6P1

Roll No. 2265.000

Via: Registered Mail

Dear Sir/Madam:

**Re: Accessory Building (Carport) at 10390 Okanagan Centre Road East – without a building permit**

November 26, 2019, January 13, 2020 and April 6, 2020 letters were sent requesting that you obtain a building permit for the Accessory Building.

**The deadline of May 1, 2020 to obtain a building permit has passed and we will be asking the District of Lake Country Council to place a Notice On Title for a building bylaw infraction.**

Please feel free to contact our office at [building@lakecountry.bc.ca](mailto:building@lakecountry.bc.ca) should you require any further information.

Yours truly,

Zara Rockwell, RBO  
Chief Building Inspector