



DISTRICT OF LAKE COUNTRY

REQUEST FOR COUNCIL DECISION

MEETING TYPE AND DATE: REGULAR COUNCIL MEETING, APRIL 19, 2022
AUTHOR: ZARA ROCKWELL, CHIEF BUILDING INSPECTOR
SUBJECT: 11695 MIDDLETON ROAD – NOTICE ON TITLE REQUEST

ESSENTIAL QUESTION:

Does Council wish to place a Notice on Title for the property located at 11695 Middleton Road for the failure to obtain an occupancy approval for the construction of single family dwelling, 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 11695 Middleton Road legally described as on Lot 18, Plan KAP55082, Section 22, Township 20, ODYD, P.I.D. 023-124-776 pursuant to Section 57 of the Community Charter and that the building permit file be closed.
- B. THAT a Notice on Title not be placed on the property at 11695 Middleton Road legally described as on Lot 18, Plan KAP55082, Section 22, Township 20, ODYD, P.I.D. 023-124-776 pursuant to Section 57 of the Community Charter and that the building permit file be closed.
- C. THAT a Notice on Title not be placed on the property at 11695 Middleton Road legally described as on Lot 18, Plan KAP55082, Section 22, Township 20, ODYD, P.I.D. 023-124-776 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 11695 Middleton Road legally described as on Lot 18, Plan KAP55082, Section 22, Township 20, ODYD, P.I.D. 023-124-776 pursuant to Section 57 of the Community Charter and that the building division start remedial action pursuant to Section 73 of the Community Charter.

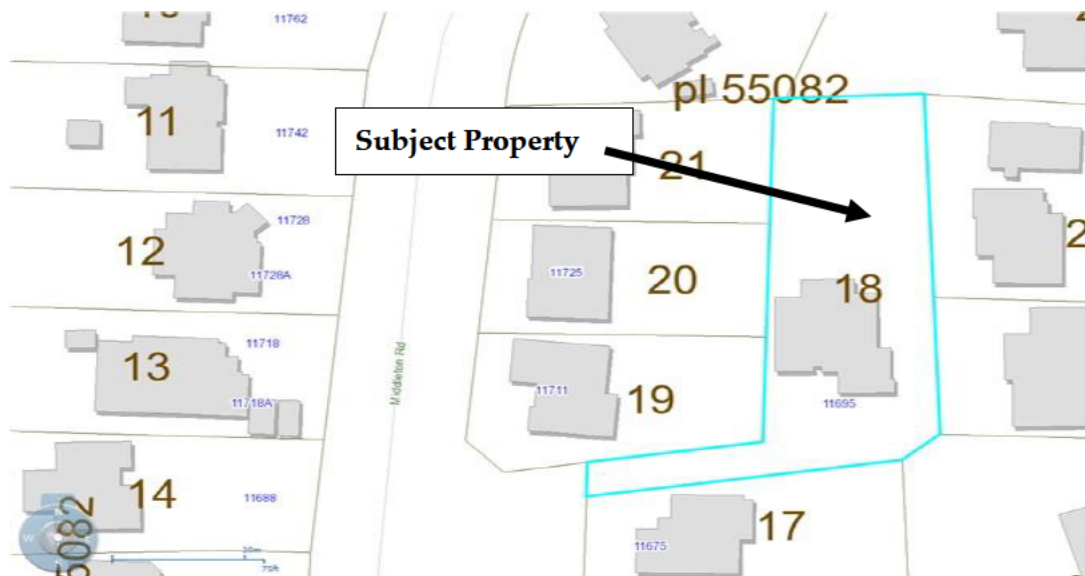
EXECUTIVE SUMMARY:

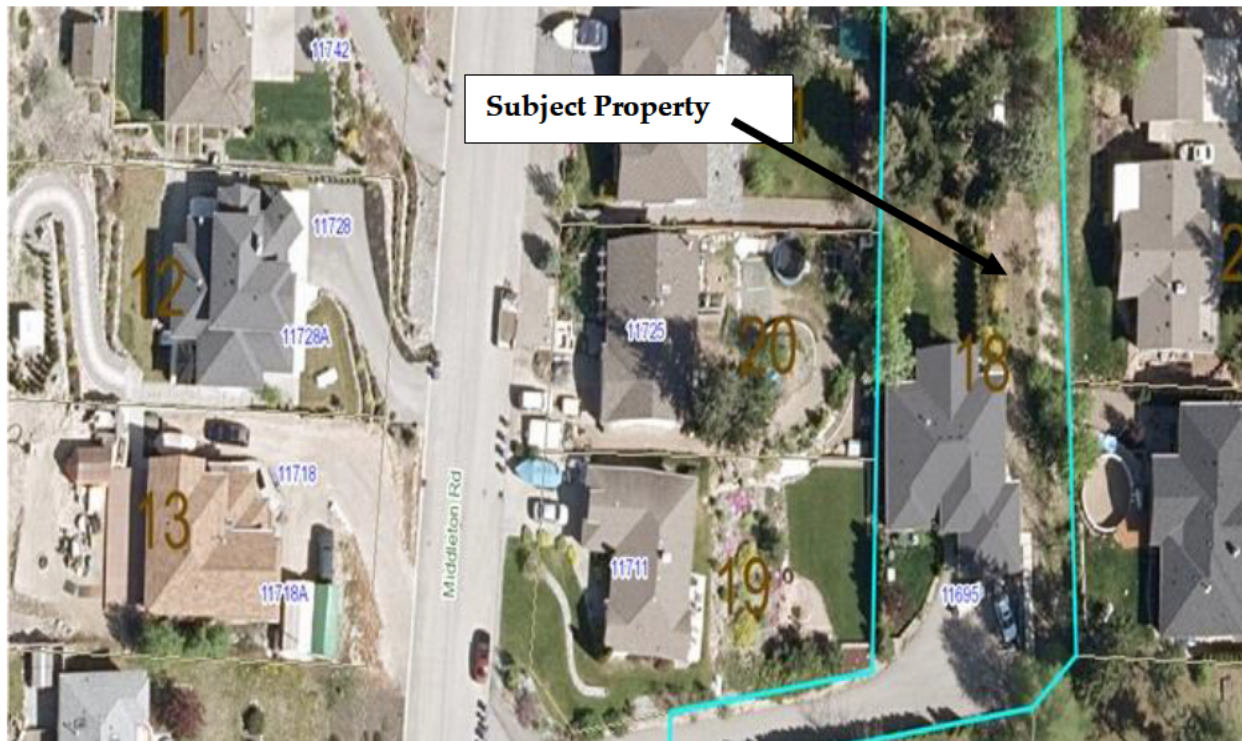
The property has received a building permit to construct a Single Family Dwelling. The sideyard setback does not conform to the zoning bylaw and a Development Variance Permit is required prior to final approval of the Building Permit. The owner has not completed the building permit at this time nor applied for the Development Variance Permit. This permit has not been finalized nor has occupancy been granted. Property owner was sent numerous letters notifying that the permit has expired, to call for a final inspection, to submit outstanding paperwork and to apply for a Development Variance Permit for the sideyard setback that does not meet the Zoning Bylaw.

Section 57 of the Community Charter (*Note Against Land Title that Building Regulations Contravened*) allows the District to place a Notice on Title when required permits (occupancy) are not obtained, and when a Municipal Bylaw is contravened. The property is a concern with respect to the BC Building Code 1998 Edition, and the District of Lake Country Building Regulation Bylaw, 435. 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:	NOT2022-003		
Roll Number:	02864.297		
Property Owner:	Chirkoff, Linda		
Legal Description:	Lot 18, Plan KAP55082, Section 22, Township 20, ODYD		
PID	023-124-776		
Civic Address:	11695 Middleton Road		
OCP Designation:	Urban Residential		
Zoning Designation:	RU1 – Single Family Housing		
Land Use Contract	No		
ALR:	No		
Parcel Size:	0.445 Acres		
DP Area(s):	Greenhouse Gas Reduction; Multiple Unit; Commercial; Industrial; Agri-Tourism		
Water Supply:	Beaver Lake		
Sewer:	Septic System		
Site Summary:		Zoning:	Use:
	<i>North:</i>	RU1 – Single Family Housing	Single Family Dwelling
	<i>East:</i>	RU1 – Single Family Housing	Single Family Dwelling
	<i>South:</i>	RU1 – Single Family Housing	Single Family Dwelling
	<i>West:</i>	RU1 – Single Family Housing	Single Family Dwelling





Relevant Observations:

Numerous attempts to have the property owner come in and apply for a development variance permit and to final the building permit for the single family dwelling 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 single family dwelling continues to be used without the required occupancy 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 development variance permit, submits required paperwork, inspections are completed, and the file is closed and that the Notice on Title be removed.

Background/History:

- Building Permit was applied for on June 17, 2002. The permit was issued July 5, 2002 and expired on July 6, 2005.
- The following documents are required to be submitted:
 - Letter of Certification – Septic System
 - Schedule C-b from Structural Engineer,
 - Schedule C-b from Geotechnical Engineer.
- The last inspection was occupancy/final on January 11/13, 2012. The following was a list of deficiencies:
 - Access Permit A2002-023: Final Access Approval required prior to occupancy,
 - Building not as per permit drawings, additional sub-basement and lower garage added – provide as-built drawings,
 - Survey shows encroachment at left rear corner (1.62 metre from foundation to property line + 2'-0" overhang) – does not conform to new or old bylaw. Development Variance Permit required.
 - Siding/Trim/Building Paper incomplete,
 - 2 ply posts and beam at side roof not to code,
 - Guard and Handrail missing at sub basement exterior stairs,
 - Pressure Treated posts required at lower deck,
 - Landscape grading incomplete (clearance and slope) ie. Front.
- Letters have been sent on the following dates: September 15, 2011, October 19, 2011, October 26, 2016, January 11, 2017, reminding to call for a final inspection and to submit outstanding paperwork and to apply for the Development Variance Permit.
- February 19, 2018, September 25, 2019, January 14, 2021 and April 6, 2021 letters were sent informing of a recommendation of placing a Notice on Title on the property.

This single family dwelling has been occupied without an occupancy permit and the property owner has not brought the property into compliance with relevant District bylaws and the BC Building Code. The lack of occupancy 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, 435,2002
 - No person shall occupy or use any *building* or *structure* unless a valid and subsisting occupancy permit has been issued by a *building official* for the *building* or *structure*, or contrary to the terms of any permit issued or any notice given by a *building official*.
- 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
Attachment B – Inspection Report



LAKE COUNTRY

Life. The Okanagan Way.

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

Sept 15, 2011

Linda Chirkoff



Our File: BP2002-1221

Dear Ms. Chirkoff;

Re: Construction Overdue for Inspections at 11695 Middleton Road, Lot 18, Plan kap55082.

Our records indicate that you still the owner of the above noted property. In July 2002 a building permit was issued, to you, for a Single Family Dwelling at 11695 Middleton Road. The last completed inspection was for Insulation in 2003. No Occupancy or Final inspections have ever been conducted. Please note that it is an offence under Building Bylaw 435, section 6.2 to occupy a building without an occupancy permit.

We request that you contact our office on or before October 17, 2011, so that arrangements can be made to resolve these issues. If a response is not received by this date, we may take further action without notice. This action may include, but is not limited to, registering a Notice on Title under section 57 of the Community Charter.

Your co-operation in this matter is appreciated. Please feel free to contact our office should you require any further information.

Yours truly,



Mark Stevens
Building Inspector II

cc: Chief Building Inspector, Bylaw Enforcement Officer

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

Oct 19, 2011

Linda Chirkoff

Our File: BP2002-1221

Dear Ms. Chirkoff;


Re: *SECOND NOTICE*** Construction Overdue for Inspections, 11695 Middleton Road, Lot 18, Plan KAP55082**

We have not yet received a reply to the Sept 15, 2011 letter sent to you regarding the building permit for the Single Family Dwelling located on this property (copy enclosed). We consider that the lack of an Occupancy or Final inspection represents a potentially significant safety concern and is an offence under building bylaw 709.

We request that you contact our office on or before November 21, 2011, so that arrangements can be made to resolve these issues. If a response is not received by this date, this file will be forwarded to the Chief Building Inspector to request District Council to authorize registering a Notice on Title under section 57 of the Community Charter. At this time he may also choose to issue Bylaw Offence Notices (\$100 fine per notice). Each day that the offence continues is considered a separate offence subject to an additional fine.

Your co-operation in this matter is appreciated. Please feel free to contact our office should you require any further information.

Yours truly,


Mark Stevens
Building Inspector II

cc: Chief Building Inspector, Bylaw Enforcement Officer

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

October 26, 2016

COPY

Linda Chirkoff


Roll No. 2864.297
BP2002-1221

Dear Sir/Madam:

Re: Building Permit #2002-1221, Single Family Dwelling at 11695 Middleton Road

A recent review of your file indicates that the building permit issued for a Single Family Dwelling has expired without final approval. The District of Lake Country Building Regulation Bylaw 709,2011 states: "19) Every permit is upon condition that the permit shall expire and the rights of the owner under the permit shall terminate if: c) work requiring a permit is started and not completed within three years of the original date of the permit."


In order to close this file we will require the following:

- Final Inspection. A final inspection was conducted on January 11, 2012 and the following deficiencies were noted:
 - Building not as per permit drawings, additional sub basement and lower garage added – provide as built drawings,
 - Survey shows encroachment at left rear corner (1.62 meter from foundation to property line). A Development Variance Permit is required,
 - Siding/Trim/Building Paper incomplete,
 - 2 Ply posts and beam at side roof not to code,
 - Guard and Handrail missing at sub-basement exterior stairs,
 - Pre-treated posts required at lower deck,
 - Landscape grading incomplete.

Please call 250-766-6676 to book a final inspection, prior to November 25, 2016.

For further information, contact the undersigned at 250-766-5650, Extension 239 or zrockwell@lakecountry.bc.ca

Yours truly,


Zara Rockwell, RBO
Chief Building Inspector



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

January 11, 2017

COPY

Linda Chirkoff

Roll No. 2864.297
BP2002-1221

Dear Sir/Madam:

Re: Building Permit #2002-1221, Single Family Dwelling at 11695 Middleton Road

This letter is a follow up to the letter sent on October 26, 2016. To date we have not received a request for final inspection.

In order to avoid enforcement action this file needs to be extended or closed. In order to close this file we will require:

- Final Inspection. A final inspection was conducted on January 11, 2012 and the following deficiencies were noted:
 - Building not as per permit drawings, additional sub basement and lower garage added – provide as built drawings,
 - Survey shows encroachment at left rear corner (1.62 meter from foundation to property line). A Development Variance Permit is required,
 - Siding/Trim/Building Paper incomplete,
 - 2 Ply posts and beam at side roof not to code,
 - Guard and Handrail missing at sub-basement exterior stairs,
 - Pre-treated posts required at lower deck,
 - Landscape grading incomplete.

OR, if more time is required to complete the work an extension will be required. In order to extend this permit we will require:

- An inspection to determine the extent of work required and timeline for completion.
- Payment of the \$100 extension fee.

Please call 250-766-6676 to book a final inspection or to arrange for a permit extension, prior to January 27, 2017.

For further information, contact the undersigned at zrockwell@lakecountry.bc.ca

Yours truly,

A black rectangular box redacting the signature of Zara Rockwell.

Zara Rockwell, RBO
Chief Building Inspector



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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

February 19, 2018

COPY

Linda Chirkoff

Roll No. 2864.297
BP2002-1221

Via: Registered Mail

Dear Sir:

Re: Single Family Dwelling at 11695 Middleton Road

On June 17, 2002 you applied for a building permit to construct a Single Family Dwelling.

July 5, 2002 this permit was issued. This permit expired July 6, 2005.

September 15, 2011, October 19, 2011, October 26, 2016 and January 11, 2017 were sent to you requesting that you call for a Final Inspection. The following submissions are required:

- Letter of Certification – Septic System,
- Schedule C-b from Structural Engineer,
- Schedule C-b from Geotechnical Engineer.

The deadline of January 27, 2017 to call for a final inspection 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 should you require any further information.

Yours truly,

Zara Rockwell, RBO
Chief Building Inspector



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

September 25, 2019

COPY

Linda Chirkoff

Roll No. 2864.297
BP2002-1221

Via: Registered Mail

Dear Sir:

Re: Single Family Dwelling at 11695 Middleton Road

On June 17, 2002 you applied for a building permit to construct a Single Family Dwelling.

July 5, 2002 this permit was issued. This permit expired July 6, 2005.


September 15, 2011, October 19, 2011, October 26, 2016, January 11, 2017 and February 19, 2018 were sent to you requesting that you call for a Final Inspection. The following submissions are required:

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- Schedule C-b from Geotechnical Engineer.

The deadline of January 27, 2017 to call for a final inspection 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 should you require any further information.

Yours truly,


Zara Rockwell, RBO
Chief Building Inspector



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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

January 14, 2021

COPY

Linda Chirkoff
11695 Middleton Road
Lake Country, BC
V4V 1G9

Roll No. 2864.297
BP2002-1221

Via: Registered Mail

Dear Sir:

Re: Single Family Dwelling at 11695 Middleton Road

On June 17, 2002 you applied for a building permit to construct a Single Family Dwelling.

July 5, 2002 this permit was issued. This permit expired July 6, 2005.

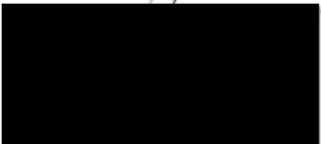
September 15, 2011, October 19, 2011, October 26, 2016, January 11, 2017 and February 19, 2018 were sent to you requesting that you call for a Final Inspection. The following submissions are required:

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The deadline of January 27, 2017 to call for a final inspection 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 should you require any further information.

Yours truly,



Zara Rockwell, RBO
Chief Building Inspector



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

April 6, 2021

COPY

Linda Chirkoff
11695 Middleton Road
Lake Country, BC
V4V 1G9

Roll No. 2864.297
BP2002-1221

Via: Hand Delivered

Dear Sir:

Re: Single Family Dwelling at 11695 Middleton Road

On June 17, 2002 you applied for a building permit to construct a Single Family Dwelling.

July 5, 2002 this permit was issued. This permit expired July 6, 2005.


September 15, 2011, October 19, 2011, October 26, 2016, January 11, 2017 and February 19, 2018 were sent to you requesting that you call for a Final Inspection. The following submissions are required:

- Letter of Certification – Septic System,
- Schedule C-b from Structural Engineer,
- Schedule C-b from Geotechnical Engineer.

The deadline of January 27, 2017 to call for a final inspection 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 should you require any further information.

Yours truly,


Zara Rockwell, RBO
Chief Building Inspector

*AFTER 2 PM Building Inspection Report

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District of Lake Country
10150 Bottom Wood Lake Road
Lake Country, BC V4V 2M1
t: 250-766-6675 f: 250-766-0200
Inspection Request Line: 250-766-6676
lakecountry.bc.ca

OWNER: CHIRKOFF PERMIT # 2002-1221
ADDRESS OF PROJECT: 11695 MIDDLETON RD
LEGAL: LOT 18 PLAN KAPSTADT2 WEATHER: _____
INSPECTION: OCCUPANCY / FINAL

OK to proceed	REJECTED - Please call office
OK to proceed subject to correction of items listed	RE-INSPECTION required after correction of items listed

DEFICIENCIES NOTED:

- * ① ACCESS PERMIT A 2007-023 ! FINAL ACCESS APPROVAL REQUIRED PRIOR TO OCCUPANCY
- ② BUILDING NOT AS PER PERMIT DRAWINGS, ADDITIONAL SUB BASEMENT & LOWER GARAGE ADDED → PROVIDE AS BUILT DWGS
- ③ SURVEY SHOWS ENVOACHMENT AT LEFT REAR CORNER (1.62m FROM FND TO PL + 2'-0" OH) DOES NOT CONFORM TO NEW OR OLD BYLAW
- ④ SIDING/TRIM/BLOG PAPER INCOMPLETE
- ⑤ 2 PM POSTS + BEAM AT SIDE ROOF NOT TO CODE
- * ⑥ GUARD + HANDRAIL MISSING AT SUBBASEMENT EXT STAIRS
- ⑦ PRES. TREATED POSTS REQ'D AT LOWER DECK
- ⑧ LANDSCAPE GRADING INCOMPLETE (CLEARANCE + SLOPE) RE: FRONT
- ⑨ WATER MANNER ARRESTORS MISSING
- * ⑩ GUARD + HANDRAIL REQ'D AT SUBBASEMENT INT. STAIRS

Occupancy Authorized	Final Inspection Complete
----------------------	---------------------------

* = REQUIRED FOR OCCUPANCY

Inspections made by the Building Inspector shall not in any way relieve the owner or builder from full responsibility for carrying out the work or having the work carried out in accordance with the requirements of the Building Code and relevant by-laws. Any information contained in this form will be subject to the Freedom of Information and Protection of Privacy Act.

INSPECTOR: _____

DATE: JAN 17, 2012

Building Inspection Report

District of Lake Country
10150 Bottom Wood Lake Road
Lake Country, BC V4V 2M1
t: 250-766-6675 f: 250-766-0200
Inspection Request Line: 250-766-6676
lakecountry.bc.ca

OWNER: CHIRKOFF PERMIT # 2002-1221
ADDRESS OF PROJECT: 11625 MIDDLINGTON RD
LEGAL: LOT 18 PLAN KAP55082 WEATHER: _____
INSPECTION: OCCUPANCY / FINAL (REFER TO JAN 12/12 REPORT)

<input type="checkbox"/> OK to proceed	<input type="checkbox"/> REJECTED – Please call office
<input type="checkbox"/> OK to proceed subject to correction of items listed	<input checked="" type="checkbox"/> RE-INSPECTION required after correction of items listed

REFER TO JAN 12/12 REPORT

ITEM

⑨ WATER MANNER ARRESTORS INSTALLED

⑩ SUB BSMT GUARD, HANDRAIL & SMOKE ALARM INSTALLED

CALL FOR RETNSP OF REMAINING ITEMS WHEN READY

<input type="checkbox"/> Occupancy Authorized	<input type="checkbox"/> Final Inspection Complete
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Inspections made by the Building Inspector shall not in any way relieve the owner or builder from full responsibility for carrying out the work or having the work carried out in accordance with the requirements of the Building Code and relevant by-laws. Any information contained in this form will be subject to the Freedom of Information and Protection of Privacy Act.

INSPECTOR: [REDACTED]

DATE: JAN 13 2012