

THE CORPORATION OF THE DISTRICT OF BURNABY

August 24, 1964.

HIS WORSHIP, THE REEVE
AND MEMBERS OF THE COUNCIL

Gentlemen:

REPORT OF THE POLICY COMMITTEE

Your Committee met on Monday, August 17th and discussed the matter of a request by Mr. S. Young that the Municipality give consideration to the enclosure of a natural watercourse contained within his land at 6211 Halifax Street, legally described: Block 132 Except Explanatory Plan 13337, D.L. 129, Plan 1492. Mr. Young's claim is that his land is being eroded, endangering his house, due to the diversion of surface drainage into the watercourse by the Municipality.

This matter was the subject of Item 4 of Report No. 38 of the Municipal Manager dated May 29, 1964 and was referred by the Council to the Policy Committee on June 1st. The Manager recommended that the portion of the watercourse through the "Young" property be enclosed at a cost of \$14,800.00.

At the time of referral, the Solicitor was asked for an opinion on the legal position of the Corporation and his opinion briefly was, that while Section 527 of the Municipal Act gave power for the Municipality to divert surface waters into a properly created natural watercourse, any erosion of private lands by reason of the diversion of additional surface waters into the watercourse would render the private owner liable for compensation.

The Committee learned that a new subdivision was underway on nearby lands which would result in still further surface drainage being emptied into the watercourse.

In view of these circumstances, your Committee would recommend that the recommendation of the Municipal Manager as contained in Item 4 of Report No. 38, dated May 29, 1964, be adopted. (See attached).

JHS:dew

THE CORPORATION OF THE DISTRICT OF BURNABY

31 July 1964.

TO THE MEMBERS
OF THE POLICY COMMITTEE.

Gentlemen:

Re: Watercourse Traversing
6211 Halifax Street.

Item No. 4 of the Municipal Manager's Report
No. 38, 1964 refers.

In this Item your Municipal Manager recommended that Council authorize an expenditure of \$14,800. to enclose a section of a watercourse through 6211 Halifax Street and thence along the rear to connect to the watercourse. The property is owned by Mr. S. Young and three easements would be required to carry out the suggested work.

Council referred the Item for discussion in Policy Committee and directed that an opinion be obtained from the Municipal Solicitor on the legal position of the Corporation in respect of the Watercourse.

Mr. Stirling has given the following opinion:

"Section 527 of the Municipal Act empowers a district municipality to drain highways by means of ditches and drains to the nearest natural watercourse. A natural watercourse is not any depression in the ground which collects surface water but must have a definite channel with visible banks. I am assuming that the watercourse which traverses the Young's property is a true watercourse. Section 529 of the Act provides that no action arising out of the construction, maintenance, operation or user of any drain or ditch authorized by Section 527 shall be brought or maintained in any court against a district municipality. This section is a bar to any action for damages inevitably resulting from the carrying out of the authorized work. The Legislature did not intend to relieve the Municipality from liability for negligence or nuisance.

In this case no claim of negligence or nuisance can be made against the Municipality. The basis of Mr. Young's claim is that by increasing the flow of water in the watercourse the Municipality is causing damage to his land by erosion. If in fact his land is being eroded as a result of the increased flow of water in the watercourse the Municipality would be injuriously affecting his land by the exercise of its statutory powers set out in Section 527 of the Act and would in my opinion be liable for compensation under Section 478 of the Act."

Respectfully submitted,



H. W. Balfour,
MUNICIPAL MANAGER.

Report No.38,1964
Municipal Manager
29 May 1964.

4. Re: Watercourse Traversing
6211 Halifax Street

6211 Halifax Street is owned by Mr. S. Young.

There is a watercourse traversing the property between Mr. Young and his neighbour. His neighbour has constructed a wall in the watercourse which narrows it and Mr. Young is concerned about the damage to his house which might develop in time.

Mr. Young claims that the Municipality contributes to the problem because of work done by the Municipality upstream. The Municipal Engineer denies this.

This particular watercourse is a relatively important one and along certain portions of it upstream it has been enclosed by the Corporation. This does not increase the flow. Development upstream is taking place, and the Engineer states that the watercourse has also been developing in recent years in normal progress.

The Engineer has given an estimate of \$26,300.00 to enclose the watercourse from Halifax north over the Young property, and continuing east and north again to connect to the end of the existing storm sewer system at Winch Street.

Easements would be required:

- (1) East 15' of Block 122, D.L. 129, Plan 1492,
owned by the Corporation.
- (2) West 7' of Block 132, Exc. Ex.Pl. 13337, Map 1492, D.L. 129
owned by Stanley and Marjorie M. Young.
- (3) East 7' of Block 133, ExPl. 13951, D.L. 129, Pl. 1492
owned by Henry B. and Priscilla L. Tate.

At the request of your Municipal Manager, a further estimate was prepared of the cost of enclosing that section through the Young property and thence along the rear to connect to the watercourse. This estimate is \$14,800.00.

The Corporation's action in piping other sections of this watercourse are an indication of its importance. It is only a matter of timing when the balance must be piped and whether there is any development which can be required to bear the cost. In the meantime, the Young property is somewhat endangered.

It is recommended that Council authorize an expenditure of \$14,800.00 to improve the situation subject to the necessary easements being granted without cost to the Corporation for acquisition.