

THE CORPORATION OF THE DISTRICT OF BURNABY

REPORT NO. 41, 1967.

7 July 1967.

His Worship, the Reeve,  
and Members of the Council.

Gentlemen:

Your Manager reports as follows:

1. Re: Production Way North from Lougheed Highway.

Pursuant to approval of Council for the construction of Production Way North from Lougheed Highway a Petition for a Local Improvement was issued.

The Municipal Clerk has now advised that the Petition has now been completed to his satisfaction and he certifies it as being Sufficient.

A By-law to authorize construction of the work will be prepared.

2. Re: Cancellation of an Easement.

The Corporation acquired an easement over Parcel "D", Reference Plan 2807 of Lot 2 of Blocks 40 to 43, D. L. 159, Group 1, Plan 2014 for a sanitary sewer.

The design of the sewer was changed and a large part of the easement is not required.

It is recommended that the easement acquired as shown on Plan 26743 be cancelled except that portion shown on Plan 26934 and that the Reeve and Clerk be authorized to sign the necessary documents.

3. Re: 4061 Kingsway (Kingsway Foursquare Church).

As a result of an application by Kingsway Foursquare Church for a grant of \$2,101.80 to cover one-half of the 1967 taxes levied against 4061 Kingsway which was purchased by the Church from Center and Hanna the Solicitor was asked for an opinion as to Council's authority.

The Solicitor advises:

"Since the property was not tax exempt at the time the tax roll was completed, the property is liable for taxes. Whether the vendor, Centre and Hanna Ltd., or the purchaser, Kingsway Foursquare Church pays the taxes is of little concern to the Municipality. Someone has to pay them. Section 219 of the Municipal Act provides that Council shall not have the power to give any bonus or exemption from any tax, rate or rent.

Section 202(h) provides that Council may, by an affirmative vote of at least two-thirds of all the members, grant aid to "any organization deemed by the Council to be contributing to the general interests and advantage of the Municipality." This is the only possible clause under which Council could make a grant to the Church and in my opinion it cannot properly make a grant under this clause."

4. Re: Sanitary Sewer Service - 3430 and 3440 Bell Avenue.

A sewer has been provided on Cameron Street, the immediate purpose of which is to service an apartment block being erected.

The residents of 3430 and 3440 Bell Avenue have written to Council asking that the sewer be installed on Bell Avenue to serve their properties. It is estimated that it would cost \$1,500. to install approximately 200 feet of 8" sewer to serve these properties.

It is claimed by the residents that they have a septic field problem but this is not confirmed by Sanitation. This is not to say, of course, that normal problems

(.....2)

(Item 4...re Sanitary Sewer Service - 3430 and 3440 Bell Avenue....continued)

have not been experienced.

It would be a relatively simple matter to approve this extension but it is not recommended that it be done. The Corporation's objective is to provide complete sewer service throughout the Municipality but it has been necessary for financial reasons to restrict the speed at which this is to be achieved. Other problem areas have had to be deferred for this reason and it is not considered that this extension should be granted any priority..

The residents could be advised that this extension will be considered with the next sewer construction program, the size and timing of which will be decided by Council, and will depend upon funds available and priorities as determined by Council.

5. Re: "Lane Allowance" adjoining 6128 and 6138 Portland Street.

Mr. James Edwards appeared before Council on behalf of his clients regarding the "lane allowance" of ten feet and he informed Council that his search of the properties concerned at the L.R.O. disclosed that there is in fact no lane allowance. The subject was before Council by a letter from O. T. Eymundson and L. Finnbogason asking that the ditch at the entrance to this 10 foot strip be culverted to permit access to the strip.

Because of Mr. Edwards' revelation, the matter was referred for further investigation and verification.

The Corporation's strip maps showed a 10-foot parcel extending across the rear of the Eymundson and Beyerstein properties, eastward from Curragh Avenue. It has always been assumed to be a partial lane allowance, and as such a portion of the sanitary sewer was constructed on it. Actually, a closer examination of the strip map does show that it is delineated as a parcel though it has no lot number. The method of showing it as a parcel is by closing it in at the street by a solid line. This does not show up too vividly on a 10-foot parcel hence it has always been taken as a lane.

A further search of L.R.O. records confirmed what Mr. Edwards had told Council. The next question which came to mind was how the Municipal strip maps showed the ten foot strip. Since the original Lot 8 from which the 10-foot strip was supposedly taken was subdivided by Metes and Bounds and not by Plan it was necessary to search old records for an answer. This was done and the answer was found in the Municipal Clerk's files.

By-law #3106, being "Burnaby Land Acquisition and Road Dedication By-law No. 2, 1951" was adopted by Council on 26 February 1951. This By-law authorized the Council to acquire the south ten feet of Lot 8, Block 2, D.L.159, Group 1, N.W.D. Map 1241, and when acquisition was complete, such land would be dedicated as a highway. An application was made on 21st March 1951 to register this By-law in the Land Registry Office.

The original of a Deed of Land from George Thomas Rule and Joan Lois Rule, owners of Lot 8 at that time, to this Corporation of the said ten feet was also discovered in the Clerk's files. This Deed has been properly executed but for some reason or another it was never filed in the Land Registry Office.

The position, therefore, is that a By-law authorizing the acquisition and dedication of this land for lane purposes was passed by the Council but the provisions of the By-law were never completely activated by failure to register the deed which was obtained from the then owners of Lot 8.

A question then arises as to the present validity of the Deed acquired by the Corporation, having particular regard to the fact that Lot 8 was subdivided subsequent to the date of the Deed, and the former Lot 8 is now two lots in new and separate ownerships.

(.....3)

(Item 5....re "Lane allowance" -6100 Block Portland Street...continued)

The Legal Department state that the status of the Deed is in some doubt. The Registrar in the New Westminster Land Registry has declined to entertain the application to register this Deed. However, he is not sure that the document is not registrable. One of the exceptions to indefeasible title is land used for a public highway. The question then is: "Was the lane in question constructed in any way, or if not, does the granting of the Deed plus the passage of the By-law create in law a designated road, thereby being an exception to the normal rule of indefeasible title?"

A perusal of various authorities has so far failed to reveal any decision on this point. The Courts have generally interpreted the Land Registry Act narrowly, in order that when title is granted, the registered owner would not be subjected to claims of which he had no knowledge. The chances then of the Corporation establishing that the 10 foot strip is actually road and should be an exception to the presently existing titles to the East and West halves of Lot 8 are not too favourable.

An alternative would be to obtain the allowance again rather to force a case on the validity of the Deed.

This in turn poses another question since the Council has now gone on record that providing it obtains or retains an easement for the sewer installation it would not oppose cancellation of the lane allowance, assuming that it existed or could be created. The simplest answer to the whole question would be to not complete dedication of the strip as lane allowance, register an easement for the sewer by obtaining one by negotiation or expropriation and leave the matter there.

Your Municipal Manager cannot recommend such an approach by Council in view of the circumstances of and controversy over the ten foot strip. It is considered that at this stage it is necessary for the Corporation to complete what it started out to do in 1951 and have this strip dedicated as lane allowance either by registration of the Deed now held, or by other means should such registration not be possible.

When this has been achieved, Council would be in the position it actually always has thought it was, to deal with the representations made to it with respect to the lane allowance.

6. Re: Lakeview Park/School Site.

Lot "T", D. L. 90N, Group 1, Plan 17957 owned by Mr. W. Zebrowski was expropriated for park purposes.

The owner submitted a claim for \$38,000.00 together with interest and costs.

The Arbitrator appointed to determine the value has awarded the owner \$19,000.00 and has agreed to hear submissions from both parties in the event they fail to agree on the disposition of the costs.

The award is less than the amount which representatives of the Corporation were prepared to recommend as a settlement.

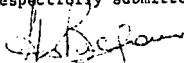
7. Re: Estimates.

Submitted herewith for your approval is the Municipal Engineer's report covering Estimates of Work in the total amount of \$53,580.

It is recommended the estimates be approved as submitted.

8. Submitted herewith for your information is the report of the Medical Health Officer covering the activities of his Department for the month of May, 1967.

Respectfully submitted,

  
H. W. Balfour,  
MUNICIPAL MANAGER.

9. Re: Rezoning Applications #78/65 and #79/65,  
Lots 2 and 3, Block 86, D. L. 127, Plan 4953.

Council recently considered the rezoning of the above lots located on the north side of Hastings Street. The original conditions attached to the rezonings included the consolidation of these two lots with a portion of Lot 6.

The agent for Lots 2 and 3 presented argument to Council that the westerly portion of Lot 6 could not be acquired at a reasonable price and asked Council to waive the requirement of consolidation. After due consideration Council decided to waive the condition.

The owner of the westerly portion of Lot 6 has now written to the Municipal Clerk that he is prepared to sell and has indicated a price which appears reasonable. Through discussion he has asked Council to reconsider the original waiver.

Planning is in favour of reintroducing the condition of consolidation for two reasons:

- (1) Development on Lots 2 and 3 will not be dependent on Hastings Street for access.
- (2) Lot 6 west part can be properly used for apartment purposes. As a separate parcel as it now exists, it is not of sufficient size.

Council on 15 May 1967 deleted the westerly part of Lot 6, Block 86, D. L. 127, Plan 4953 from the By-law and gave 3rd Reading to By-law No. 4963 being "Burnaby Zoning By-law 1965, Amendment By-law No. 35, 1966" which would effect the amendment to the Zoning By-law and thereby rezone this property.

There are two other prerequisites attached to the proposed rezoning which have not yet been satisfied so Reconsideration and Final Adoption of By-law #4953 has not yet taken place.

Since the By-law has had three Readings it cannot now be further amended. It is recommended that Council inform the agent for the owner of Lots 2 and 3 that in view of the offer of the owner of the west part of Lot 6 to now sell, By-law No. 4963 will not be brought forward for reconsideration and final adoption until the original conditions have been complied with. At that time it will be recommended that By-law No. 4963 as amended be defeated to get it out of the way, and a New By-law introduced which will be the same as By-law No. 4963 before amendment.

10. Re: Western Pacific Projects Ltd. - Land Exchange - D. L. 136.

Council directed that an independent appraiser be engaged to evaluate the proposed land exchange between the above mentioned company and the Corporation.

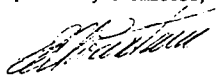
Mr. Ronald D. Grant, M.A.I., was engaged and the following is his opinion:

"In accordance with your request of May 11, 1967, I have considered the land exchange as indicated above.

Sales and listings of Apartment House lands and Residential lands have been investigated and inspected.

The Scheme has been analyzed and, after considering land values, road costs, road designations and future use, it is my opinion that the offer from Western Pacific Projects Ltd. is eminently fair to the Corporation and should be accepted."

Respectfully submitted,

  
E. A. Fountain,  
ASSIST. MUNICIPAL MANAGER.