

ITEM 3

MANAGER'S REPORT NO. 86

COUNCIL MEETING Nov 19/73

3. Re: Complaint from Mr. Alfred Butz re
Excavation Work on Adjacent Property
344 N. Delta Avenue (Yen)

The Council on October 15, referred the attached letter dated August 22, 1973, from Mr. A. Butz to Alderman Mercier to the Chief Building Inspector for report.

Mr. Butz referred to a situation involving excavating work by the adjacent property owner (Yen) at 344 N. Delta Avenue which was affecting his property.

The Chief Building Inspector has investigated the complaint and advises in the following report dated November 5, 1973, that this is a civil matter as it does not come within the Building Bylaw because it does not endanger "...the stability of adjoining buildings, walks, walls or services..." on Mr. Butz's property. The Municipal Solicitor concurs that we do not have jurisdiction to intervene.

RECOMMENDATION:

THAT Mr. Butz be advised that we regret the confusion we might have caused in this instance but that we actually do not have jurisdiction to intervene in this case and suggest that he seek legal advice if he cannot get his neighbour to willingly correct the situation.

Mr. M.J. Shelley,
MUNICIPAL MANAGER.

November 5, 1973.

Dear Sir:

Subject: 344 North Delta Avenue
Lot 91, Block 38, D.L. 189, Plan 32145

This report is in reply to a letter of Mr. Alfred Butz, referred to this Department by Municipal Council on October 15.

In 1969 Mr. E. Yen obtained a Building Permit to construct a dwelling at 344 North Delta Avenue. In so doing Mr. Yen had to excavate heavily into the steep hillside on the east side of Delta Avenue in order to site his dwelling in compatibility with others in the neighborhood. The house excavation was within the Yen property and without affecting the Butz property.

Mr. A. Butz resides next door to Mr. Yen at 334 North Delta Avenue, and in May 1973 Mr. Butz called the Building Department to complain of over-excavation in the rear yard and side yard of the Yen property without retaining provision for the Butz property. An inspection of Mr. Yen's property was made on May 24, 1973, and it was noted that excavation had been carried out to obtain a level surface in a portion of the rear yard joining to the side yard, subsequent to the original house excavation. Erosion of the adjacent Butz property was noted.

Mr. Yen was notified on June 6, 1973, that because excavation he had carried out on his property had caused erosion and loss of use of the adjacent property, Mr. Yen could face civil action by the offended party. A copy of Section 18 (2) of By-Law 5557 (Burnaby Building By-Law) was enclosed with the notice for information purposes only.

Mr. M.J. Shelley,
MUNICIPAL MANAGER.

November 5, 1973.

- 2 -

ITEM 3

MANAGER'S REPORT NO. 86

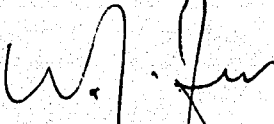
COUNCIL MEETING Nov. 19/73

Mr. Butz received a copy of that same letter, including the attachment of By-Law Section 18 (2).

In review of this matter since referral of Mr. Butz's letter on October 15, it might have been more prudent not to have included any reference to the Building By-Law in the letter. Mr. Butz has drawn the interpretation from the letter to Mr. Yen and enclosure that the Building By-Law is applicable to this excavation. Such is not the case. The excavation in dispute is landscaping work or site grading work, not within jurisdiction of the Building By-Law; and additionally, the excavation has not endangered... "the stability of adjoining buildings, walks, walls or services ..." on the property of Mr. Butz.

Section 18 (2) of the former Building By-Law intended to apply principally to the side-by-side building site where one site is occupied by a building and another site is being excavated below the first site for a second building. Since the case at hand does not fit that intent of the By-Law, and in our opinion is strictly of a civil nature where the actions of one property owner in site grading have adversely affected the property of the adjacent owner, settlement of the dispute rests solely with the two property owners and the Corporation of Burnaby does not have jurisdiction to intervene.

Respectfully submitted,



M.J. Jones,
CHIEF BUILDING INSPECTOR.

Section 18(2) Article 8.5.3.1 — Delete and add the following:

"If the stability of adjoining buildings, walks, walls or services may be endangered by the work of excavating, written notice prepared by the holder of the excavation permit shall be sent to the owner of such adjoining property. Such notice shall state the pertinent particulars of the proposed excavation and of any necessary underpinning, shoring, and bracing of his property. Adequate underpinning, shoring and bracing shall be done to prevent damage to, or movement of, any part of the adjoining property. Frequent inspections shall be made by the holder of the excavation permit to ensure that such underpinning, shoring and bracing is properly maintained."

MJJ:lm

c.c. MUNICIPAL SOLICITOR

ITEM 3

MANAGER'S REPORT NO. 86

COUNCIL MEETING Nov. 19/73

Alfred Butz
334 N. Delta Ave.
Burnaby 2, B.C.

22. August 1973

Mr. James L. Mercier
8250 Hanson
Burnaby, B.C.

Dear Mr. Mercier.

Re our tel. conversation of tuesday Aug. 21.73, please find enclosed copy of a letter and part of a bylaw send by the Building Dept. to Mr. Yen on my behalf.

Mr. Mehling places special attention on para 18 (2) which not only demands notification before excavating starts, but also demands that adequate shoring shall be done to prevent damage to adjoining property.

Since this excerpt is part of the Burnaby building bylaw and clearly states certain obligations on the part of the owner of a building and or excavation permit, this in my view, gives the Building Dept. the authority to enforce this bylaw.

To this day, we have never received a letter from Mr. Yen as advice of any excavation for the start of his building, nor has he, (also he verbally agreed to) shored up our property at the propertyline.

Thank you for your considering this case and I remain

yours truly



Alfred Butz