

ITEM 31  
MANAGER'S REPORT NO. 47  
COUNCIL MEETING June 25/73

31. Re: Underground Electrical Service Connections  
Mr. D. M. Manning

Mr. Donald M. Manning, Architect, appeared before Council on May 22, 1973, to suggest that the decision Council rendered on May 14, 1973 regarding the requirement to have his client install underground electrical service to a building at Merritt Avenue and Beresford Street was both illegal and prejudicial. A copy of a brief that summarizes the main points of Mr. Manning's presentation to Council is attached. Also attached is a letter dated May 1, 1973, from Mr. Manning, which appeared on the Agenda for the May 14, 1973 meeting of Council.

Following is a report from the Director of Planning in which he recommends the type of policy that in his opinion should be established for future connection of electrical services to new developments in Burnaby.

RECOMMENDATION:

THAT the Director of Planning's recommendations be adopted.  
\* \* \* \* \*

Mr. M. J. Shelley  
Municipal Manager

Planning Department  
June 20, 1973

Dear Sir:

Re: Private underground electrical  
service connections to new  
development

The Municipal Council has a number of policies concerned with the general subject of underground wiring; all of them with the objective of either prohibiting the erection of new overhead wires and poles, or replacing existing overhead services with underground services.

These policies include:

1. General support for the prohibition of new major overhead transmission lines in the metropolitan area.
2. A requirement that new subdivisions, whether residential or non-residential be provided with underground power distribution series.
3. A requirement that no further overhead distribution services should be located on existing streets.
4. A requirement that underground private electrical service connections be provided to new development.

These various policies have been implemented in a variety of ways, but have relied heavily on subdivision, rezoning, and preliminary plan approval procedures, with the developer generally having the option of providing overhead service if a line is available in the lane system or providing underground service from the public street.

For example since June 1972, based upon Policy no 4, 73 private non-residential developments have installed underground electrical service connections, as a requirement of Preliminary Plan Approval at costs ranging from \$300.00 to \$4,000.00 per connection. This is a considerable investment on the part of private developers towards the improvement of the community in which they are locating. (This does not include developments within areas generally serviced with underground wiring.)

This particular policy of requiring private developers to install underground electrical connections to new development is now being questioned by Mr. D. M. Manning on technical and legal grounds, on behalf of a client who wishes to develop lots 1 and 2, Block 14, D.L. 97, Plan 34074 located at Merritt Avenue and Beresford Street. The Municipal Council on May 14,

1973, confirmed a requirement that underground electrical service be provided, but on May 22, 1973, as a result of an appeal by Mr. Manning, the Council decided to obtain comments upon the legal and technical aspects of the requirement.

Technically the Municipal Engineer does not envisage any undue engineering problems resulting from the installation of underground electrical service in accordance with the current policy. On the contrary he is of the opinion that if conversion from overhead to underground service were to be undertaken at some future time, after the street is upgraded to a finished status, it would then be necessary to cut into the finished street and disrupt curbs, sidewalks and the like, in order to install the underground service. <sup>as you would be cutting for the main line as well.</sup> This is an expensive procedure and, moreover, the resulting patches and repairs to surface improvements would be detrimental to the appearance of the street.

Legally, the Municipal Solicitor takes the view that the various policies of Council and the various bylaws available to us are too general in their wording. The Policies have already been referred to earlier in this report; the relevant sections of the Burnaby Zoning Bylaw and the Municipal Act are as follows:

Section 7.4 (1) of the Burnaby Zoning Bylaw.

"Notwithstanding any right contained in this Bylaw, the Chief Building Inspector may prohibit a person who proposes to erect a building from commencing the erection of such building until firm arrangements have been made to supply such building with electric power and public water, sewerage, street and other facilities.

Section 714 (b) of the Municipal Act empowers the Council to:

"...regulate the installation, alteration or repair of plumbing, heating, air conditioning, electrical wiring and equipment, gas or oil piping and fittings, appliances, and accessories of every nature and kind.

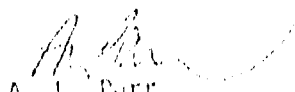
Faced with the appeal from Mr. Manning, and the question of applicability raised by the Municipal Solicitor, the whole matter has been discussed with the Municipality of Richmond and we have been advised by their Planning and Legal Departments that Richmond has had a similar policy in effect for 4 years; that they rely on Section 714 (b) of the Municipal Act; that they have B. C. Hydro's agreement to the principle; and that although there are occasional complaints due to costs, their requirements have never been challenged.

There is no reason why Burnaby should not maintain a similar position to Richmond in this matter and in view of the extreme importance to this community of continuing to progress in the field of underground servicing it is recommended as follows:

RECOMMENDATION

1. THAT the Municipal Council confirm its policy of requiring private developers to provide underground electrical service connections to new development.
2. THAT the Municipal Council enact legislation under Section 714 b of the Municipal Act to clarify and stabilize this policy.
3. THAT consistent with this policy and with the other 74 developments approved in the past 12 months, electrical service to the proposed development on lots 1 and 2, Block 14, D.L. 97, Plan 34074 located at Merritt Avenue and Deresford Street be provided by an underground connection.
4. THAT the Chief Building Inspector be instructed to make firm arrangements for an underground electrical connection to the property referred to in Recommendation No. 3.

Respectfully submitted,

  
A. L. Barr  
DIRECTOR OF PLANNING

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DONALD M. MANNING, B.Arch. M.R.A.I.C.

3647 SUNNYCREST DRIVE,  
NORTH VANCOUVER, B.C.  
TELEPHONE: 988-9900

June 9, 1973.

CLERK'S OFFICE  
JUN 13 1973

Mr. E. Ward,  
Deputy Municipal Clerk,  
The Corporation of the District of Burnaby,  
4949 Canada Way,  
Burnaby 2, B.C.

Dear Sir:

Re: Electrical Service- Merritt Avenue and Beresford Street.

I received your letter on the 24th requesting a copy of my brief presented to Council Tuesday past. Unfortunately pressure of work permitted me just to make notes for my presentation and has since delayed my reply to you. I shall therefore outline some of the salient points which will supplement my letter to Council on May 1st which was dealt with on May 14th.

My contention is two-fold:

- (1) Council and its officials are acting illegally when they regulate a citizen's rights by resolution.
- (2) Council's requirement for my client to install an underground service to existing overhead lines is unwise and will serve to retard eventual conversion of overhead street services to underground services.

In respect to legality. First of all I would suggest, in terms of broad justice, that when a governing authority imposes a restriction on the rights of its citizens then it must do so by law. This is the simple right of law- probably our most cherished citizen right. It provides the individual not only with a clearly defined set of regulations but also ensures that he will not be penalized unless he fails to comply with the law. Any motion by council to regulate or compel a citizen outside the law only tends to subvert the law and erode respect for municipal administration.

This is what Council are doing by regulating by resolution and permitting planning officials to impose restrictions on citizens developing their property by so called "Council Polity" which, as the evidence of the last two meetings shows, is pretty nebulous.

More specifically, Council has itself an obligation to comply with the law. The delegated authority in the Municipal Act in respect to setting zoning or building restrictions is to make by-laws- Section 702 and 714. Other parts of the Act also allude to the principle that if Council are to set penalties to enforce regulations then these regulations must be set out as laws.

Further, the Act states that if Council are to regulate matters of zoning, they must not only do so by by-law but also they set up a Zoning Board of Appeal (Board of Variance) (Section 708) which will hear appeals of citizens aggrieved by a decision of an official charged with enforcement of the zoning by-law (Section 709 (I)(a)).

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Mr. E. Ward, Deputy Municipal Clerk.

June 9, 1973.

In not setting out zoning requirements in by-law form, Council has alienated a citizen's right of appeal. Instead, Council in their meeting of May 14th sat in judgement of their own regulations adjudicating two complaints on underground wiring.

For Council's information, the Municipal Manager recites in Item I4, Manager's Report No. 37, just what council policy is.

He states "The Director of Planning believes it is time that Burnaby adopted a policy of prohibiting the further erection of poles and wires on all streets within the Municipality, leaving B.C. Hydro with the option of providing poles in lanes or easements or preferably providing underground electrical power."

"Such a policy would set the stage for realistic discussions with B.C. Hydro, B.C. Telephone and Cablevision on possible cost sharing; and on possible use of Provincial funds to commence a continuous program of removal of overhead wires from our public streets."

"RECOMMENDATION: That Council endorse in principle a policy of prohibiting the future erection of all overhead wires and poles on public streets, direct staff to discuss with B.C. Hydro, B.C. Telephone and Cablevision the implementation of such a policy and request the Planning Department to prepare a detailed report on this matter."

The words endorse in principle, prohibiting future erection stand out- also the concluding words prepare a detailed report.

Firstly, there is nothing in this policy statement which is mandatory. Secondly, in respect to prohibiting the further erection of all overhead wires and poles, my client is not erecting any further wires or poles, in fact he is reducing the number of overhead leads. The property was formerly serviced by an overhead lead across Beresford and another from the existing pole in the rear corner. In the redevelopment of the property only the service lead from the rear corner will be retained.

I suggest that if my client were to be heard by an impartial Board of Appeal judging his case on Council's policy as stated in Item I4, my client would be granted his right to retain the overhead service.

Now lets look at why compelling my client to install an underground service is not reasonable. It is more likely to retard eventual underground services. First of all the M4 Industrial area is presently undergoing a change largely to small industries whose electrical requirements are changing in respect to load, phase and voltage. To ascertain the future load requirements is almost impossible until the extent and nature of the redevelopment is established.

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3.

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Secondly, the location of the future underground service has yet to be planned and designated. It is not unreasonable to assume that the future underground mains should come down the lanes where the transformer kiosks will not be as exposed, where services branches will be shorter and where it will not be necessary to cross under the street pavement.

As it stands my client will be compelled to take it to the opposite junction away from the junction of the lanes. If and when an underground is installed at the junction of the lane, who pays for the service to be run in the opposite direction? - my client (and he would certainly have grounds to refuse) or the taxpaying public? Any relocation of underground services will certainly create resistance from those who have to pay for the duplication of cost.

Thirdly, it makes little sense to require underground service connections from an existing overhead service main to redeveloped properties. Not only is such a requirement needlessly expensive, but it is also needlessly hazardous. To install underground service mains after underground building services are installed requires first of all a manhole to be constructed to make the splice connection. This means the utility crews must close off the power and close down the industrial plant, or they must construct the manhole with mechanical equipment over and around hot wires which is dangerous, or they must install overhead jumpers to service the building while the underground manholes and connections are made. In short it would be much more logical to retain the overhead service connection until the underground mains are installed.

I would be most appreciative if copies of this resume could be given to Council members.

Yours truly,

  
D.M. Manning.

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~~ORIGINAL COMMUNICATIONS (17)~~

~~Regular Council Meeting  
May 14, 1973~~

DONALD M. MANNING, B.Arch. M.R.A.I.C.

3647 SUNNYCREST DRIVE,  
NORTH VANCOUVER, B.C.  
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May 1, 1973.

Mayor Prittie  
and Members of Burnaby Council,  
4949 Canada Way,  
Burnaby, B.C.

Your Worship and Council Members,

I wish to first protest a ruling of the Planning Department forcing my client to install an underground electrical service from a rear power pole to a new industrial building; and secondly, to appeal to council for relaxation of this requirement.

My client is redeveloping the property on the Northeast corner of Merritt and Beresford Streets and is now in the process of building a small industrial building. An overhead line exists on the rear side of Merritt Street - a pole is located at the lane. The planning department is demanding that the electrical service to the property be placed underground. The department states that there is no by-law to enforce this policy but they are enforcing "council policy". The cost of the electrical service connection to my clients building has risen from the \$20 nominal hydro charge to approx. \$3000 and approx. \$5000 if and when additional 5 phase power is required. Notwithstanding these increased initial costs, if and when a change to underground mains on the lane is ever made, very substantial cost will be incurred to connecting two underground services.

My first protest is that the Planning Department is attempting to enforce a building requirement which is neither in the building, zoning or electrical bylaws. This contravenes the broad principle of justice that if local governments are to regulate the right of an individual to develop his property it must do it by law. Regulation by so called "policy" offers no clear cut record of what restrictions are in effect and serves to create citizen mistrust and eliminates any incentive to upgrade existing municipal by-laws.

14/5/73  
Receipt

More specifically, Council have an obligation to adhere to Municipal Act Sections 702 or 714 which clearly state that Councils' power on such a matter is to make by-laws.

I therefore submit that the Planning Department has exceeded its powers.

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Secondly, I question the wisdom on Council or the Planning Department requiring existing industrial properties to install underground wiring particularly from the rear. First of all overhead services from the rear are not the visual deterrents that they are in the front. Secondly, underground services in transitional industrial areas are more inappropriate as not only is the demand load in these areas rapidly increasing but also any small manufacturing plants future needs will require higher three-phase voltages as well as typical single phase. Fourthly, installing individual services to be followed

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ORIGINAL COMMUNICATIONS (h) Cont'd:  
Regular Council Meeting  
May 14, 1973

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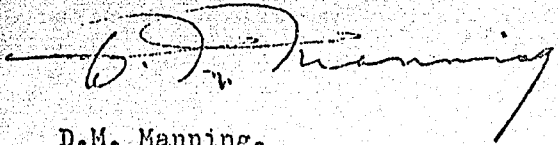
DONALD M. MANNING, B.Arch. M.R.A.I.C. APR 11 1973  
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Mayor Prittie and Members of Burnaby Council. May 1, 1973.

by underground mains makes for a very expensive and hazardous change over. It is far more efficient to change over underground services at the time underground mains are installed.

I therefore appeal to Council that (1) Since no by-law exists, my client should be able to proceed with a typical overhead service. (2) Council should reconsider any recommendation to require underground services in existing industrial areas from existing overhead lines. The proper time for installing underground services in existing developed areas is when the overhead wires are converted to underground mains.

Yours respectfully,



D.M. Manning.