

ITEM 22

MANAGER'S REPORT NO. 54

COUNCIL MEETING Sept. 2/75

RE: LETTER FROM MR. J. L. JANKOLA, 4136 BOND STREET, BURNABY  
LOCAL IMPROVEMENT NO. 74-024  
28' PAVEMENT WITH 5' CURB SIDEWALKS ON BOTH SIDES OF  
BOND STREET FROM HALLEY AVENUE TO PATTERSON AVENUE

Appearing on the Agenda for the September 2, 1975 meeting of Council is a copy of a letter from Mr. Joe Jankola, 4136 Bond Street, Burnaby, disputing three major points in the Clerk's Certificate of Sufficiency.

The Mayor advised the Council at the August 18, 1975 meeting, when an inquiry was raised with respect to this matter, that he would be meeting with the Municipal Manager and Municipal Clerk. This matter has now been discussed by these three parties.

The following is the Municipal Clerk's report of August 28, 1975 in this connection.

RECOMMENDATION:

1. THAT a copy of this report be forwarded to Mr. J.L. Jankola, 4136 Bond Street, Burnaby, B. C., V5H 1G2.

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TO: MUNICIPAL MANAGER

File: 2112

FROM: MUNICIPAL CLERK

August 28, 1975

SUBJECT: Local Improvement No. 74-024  
28' pavement with 5' curb sidewalks  
on both sides of Bond Street from  
Halley Avenue to Patterson Avenue

BACKGROUND INFORMATION:

At the regular meeting of the Municipal Council held on January 27, 1975, Item #6 of Manager's Report No. 5, 1975 was considered. Recommendation 10 of Item #6 reads: "THAT the work program for 1975 outlined in the attached cost report be adopted." A motion of concurrence with the recommendations of the Municipal Manager was adopted. Local Improvement No. 74-024 was one of thirty-six (36) local improvement projects listed therein.

Notices of the intention of the Council to undertake the thirty-six (36) projects were mailed to the owners of the parcels liable to be specially charged prior to March 5, 1975. Section 4 of this notice reads: "Persons desiring to petition against the work must do so by lodging their petition with the undersigned within one month after the date of publication of a Notice of Intention covering this work in the Vancouver Sun being the 5th day of March 1975."

The Municipal Clerk's Certificate of Sufficiency dated April 17, 1975 was received by the Municipal Council at the regular meeting held on April 21, 1975. Local Improvement No. 74-024 was one of the projects covered by the third paragraph of the Certificate which read: "Sufficient petitions against the balance of the works shown on the attached schedule have not been received and Council may proceed with the works as provided for in Section 589(1) of the Municipal Act."

By-Law No. 6661 cited as "Burnaby Local Improvement Construction By-Law No. 2, 1975" being a by-law to authorize the construction of asphaltic pavement 28' wide with 5' curb sidewalks on both sides as a local improvement on eight (8) streets received Reconsideration and Final Adoption at the regular meeting of Council held on May 12, 1975. Section 2(b) of By-Law No. 6661 applies to Local Improvement No. 74-024.

We will now deal with the "three major points" as raised by Mr. J. L. Jankola in his correspondence which was received by the Clerk's Department on August 21, 1975.

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1. There are two errors in the paragraph wherein Mr. Jankola cites from the "Municipal Act" being a portion of Section 589(1) namely:
  - (i) the first line should read -- "one month after the publication" not -- "one month of the publication";
  - (ii) the third and fourth lines should read -- "liable to be specially charged" not -- "liable to be specifically charged".

We would submit that the owners of parcels liable to be specially charged are all owners whose parcels either benefit from or abut the proposed work. The authority to provide that "where a parcel of land is situate at the junction or intersection of highways (includes a street, road, lane, bridge, viaduct, and any other way open to the use of the public) and the work or service is provided on or along more than one side of the parcel, the taxable foot-frontage shall be a stated fraction of the actual foot-frontage or alternatively shall be not more than a stated maximum number of feet", was contained in Section 415(3)(c) of the "Municipal Act". This Clause (c) has now been repealed by the "Municipal Amendment Act, 1975" effective June 26, 1975 with the new Clause (c) reading: *"the assessment of corner parcels of land, parcels of abnormal or irregular shape or situation, and rights-of-way of railways and utilities may be varied in the manner and to the extent provided in the by-law, to the end that they may be dealt with in a fair and equitable manner as compared with other parcels."*

Parcels of land situate at the junction or intersection of highways in Burnaby are exempted according to the provisions of By-Law No. 6629 cited as "Burnaby Local Improvement Charges By-Law 1975".

Section 589 itself in Clause (d) of Subsection (2), where it designates what must appear in the notice of intention which is to be published and posted, makes reference to Clauses (a) and (c) of Subsection (1) of Section 594 which said Clauses provide in part:

- "(a) established the annual charge for each foot of taxable foot-frontage to be specially charged against parcels benefiting from or abutting that class of work...";*
- "(c) alternatively, established the proportion of the cost of the class of work to be specially charged against the parcels benefiting from or abutting the work as the owners' portion of the cost of the work."*

In Local Improvement No. 74-024 there are eight (8) parcels of land situate at the junction or intersection of highways, namely: 4109 and 4126 Bond Street - Patterson Avenue with Bond Street; 4178, 4179, 4219 and 4226 Bond Street - Barker Avenue with Bond Street; 4284 and 4285 Bond Street - Halley Avenue with Bond Street.

No response was received from the owners of seven (7) of these corner parcels. The eighth corner parcel being 4284 Bond Street is registered in two (2) names but only one (1) signature appeared on the petition that was submitted by Mr. Jankola and received after the deadline. Section 592(5) of the "Municipal Act" provides:

*"Where two or more persons are owners of a parcel, they shall be reckoned as one owner only, and are not entitled to petition unless a majority of them concur, and accordingly the signatures of any such persons, unless the petition is signed by the majority of them, shall be disregarded in determining the sufficiency of the petition."*

Both of the corner parcels at 4284 and 4285 Bond Street are presently not being charged for works of local improvement and in addition to the work of local improvement proposed for Bond Street there is also Local Improvement No. 74-023 being 28' pavement with 5' curb sidewalks on both sides proposed for Halley Avenue from Burke Street to Sardis Street. This work would be constructed along the flankages of 4284 and 4285 Bond Street.

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The corner lot at 4126 Bond Street is presently paying for 50' of local improvement work constructed along Patterson Avenue and under present By-law policy would be liable for an additional 16' of local improvement work constructed along Bond Street.

Even if we were to accept Mr. Jankola's submission that there are only fifteen (15) owners liable to be specially charged we must bear in mind that by deadline time for the presentation of petitions against the undertaking of Local Improvement No. 74-024 only one (1) owner with a parcel having an assessment of \$13,105.00 had submitted such a petition. The Certificate of Sufficiency from the Municipal Clerk dated April 17, 1975 and submitted to Council on April 25, 1975 showed for Local Improvement No. 74-024:

Number of Owners	-	21
51% required to defeat project	-	11
Number of Objections	-	1
Total assessed value of land	-	\$272,225.00
50% required	-	\$186,112.00
Total petitioners' assessment	-	\$13,105.00

2. The deadline for the presentation of petitions against the undertaking of the works covered by the advertisement being the Notice of Intention which appeared in the Vancouver Sun issue of Wednesday, March 5, 1975 was Monday, April 7, 1975 at 5:00 p.m. This date and time were arrived at following a conferral with the Municipal Solicitor as a result of a number of enquiries received the week prior to the deadline. The petition from Mr. Jankola was not received until Monday, April 7, 1975 at 8:40 p.m.

Section 25 (39) of the "Interpretation Act" provides: *"'month' means a period calculated from a day in one month to a day numerically corresponding to that day in the following month, less one day."*

Section 4 (2) of the "Municipal Act" provides: *"Where the time limited or the date under this Act for any proceeding or for the doing of anything expires or falls upon a day on which the offices of the Municipality are not open to the public, the time so limited shall extend to and such thing may be done on the day next following on which the offices are open to the public, but this subsection does not apply with respect to polling-day."*

Even if Mr. Jankola's petition had been received on time there are only seven (7) signatures from owners on same that are acceptable, namely:

4250, 4236, 4243, 4150 and 4164 (owned by same Corporation),  
4274, 4136 and 4163 Bond Street.

The signatures for 4135 and 4284 Bond Street are not acceptable as there is only one (1) signature in each instance whereas each property is registered in two (2) names. The signature for 4277 Bond Street is not acceptable as the property is registered in two (2) names and the signing is in the handwriting of one (1) person only signing as "Gerald & Beverly Pinchback". Section 592(5) of the "Municipal Act" provides: *"Where two or more persons are owners of a parcel, they shall be reckoned as one owner only, and are not entitled to petition unless a majority of them concur, and accordingly the signatures of any such persons, unless the petition is signed by the majority of them, shall be disregarded in determining the sufficiency of the petition."*

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3. In the first paragraph on Page 2 of the correspondence received from Mr. Jankola the reference therein should be to Section 592(5) of the "Municipal Act" not to Section 591(5). We have previously cited Section 592(5) in the foregoing paragraph when dealing with Number 2 of the "three major points".

Mr. Jankola's contention that "In case of petitions for local improvements (Chap.255-591(5), Municipal Act) the case of multiple ownership is dealt with, but this in no way could be made applicable in the case of objections" is not correct. Section 590 of the "Municipal Act" provides in part: *"Where the Council has been prevented from undertaking a work by reason of a petition having been presented under the provisions of Section 589, ..."*. Section 589 sets out the procedure to follow for publication and service of the notice of intention to construct work and commences with the words, *"Where the Council proceeds on the initiative plan, notice of the intention of the Council ..."*.

RECOMMENDATION:

1. THAT a copy of this report be forwarded to Mr. J. L. Jankola, 4136 Bond Street, Burnaby, B.C. V5H 1G2.

  
James Hudson  
MUNICIPAL CLERK

JH/dew