

ITEM	18
MANAGER'S REPORT NO.	23
COUNCIL MEETING Mar. 28/77	

Re: APPLICATION FOR ELECTRICAL WORK
WHOLESALE DELIVERY SERVICE - 2830 NORLAND ST., BURNABY
BURNABY ELECTRICAL CONNECTION REGULATION BY-LAW
(Item 20, Supplementary Report No. 5, Jan. 24th, 1977)

Appearing on the agenda for the January 24th, 1977 meeting of Council was a letter from Mr. J. D Forbes, President of Wholesale Delivery Service, regarding electrical requirements for work to be undertaken on the firm's premises at 2830 Norland St. Mr. Forbes also appeared as a delegation on this occasion.

The following report from the Director of Planning contains the additional information that Council has requested on this matter.

RECOMMENDATIONS:

1. THAT Item 20, Supplementary Report No. 5, dated Jan. 24th, 1977 be lifted from the table and
2. THAT the provisions of Burnaby Electrical Connection Regulation By-law 1972 be upheld and
3. THAT Mr. Forbes be furnished with a copy of this report and invited to meet with the Chief Electrical Inspector in order to correct any misunderstanding he may have received as to the technical ramifications in this instance.

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PLANNING DEPARTMENT
MARCH 23, 1977

TO: MUNICIPAL MANAGER
FROM: DIRECTOR OF PLANNING
SUBJECT: BURNABY ELECTRICAL CONNECTION REGULATION BYLAW
LETTER FROM WHOLESALE DELIVERY SERVICE -
2830 NORLAND AVENUE

BACKGROUND:

At the January 24, 1977 meeting of Council, a delegation was heard in the person of Mr. J.D. Forbes, President of Wholesale Delivery Service Ltd., with reference to that company's desire to be exempted from the provisions of the Burnaby Electrical Connection Regulation Bylaw as they pertain to a proposed electrical connection to a new service building under construction at 2830 Norland Avenue, to the rear of the firm's principal building.

In tabling the matter at that time, the Council passed the following motion:

"THAT we request of the Municipal Manager that consideration be given to a device or devices whereby the strict application of the by-law may be waived."

Mr. Forbes' submission outlined the reasons for his interest in being given permission to proceed with overhead wiring in this instance, including the following points:

1. Aesthetic reasons - it is held that due to the location of the proposed connection, the overhead wire would not be seen by anyone other than those on the site and immediate neighbours.
2. Unstable soil conditions in the area, length of connection, and vehicular traffic through the yard area.
3. Higher cost of underground wiring as compared to overhead wires and reference to the cost of disruption of service.

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During discussion on Mr. Forbes' request for flexibility in the application of the bylaw in his case, it was pointed out by the Municipal Manager and a member of Council that it is not possible, in general, to introduce discretionary powers in Municipal bylaws, and that Councils are prohibited from breaching their own bylaws. In following through on the motion of Council in this instance, the Municipal Solicitor and the Director of Planning have been asked to examine the subject, and this report presents the results of this examination.

MUNICIPAL SOLICITOR'S COMMENTS: (See Paragraph 1)

In reply to the suggestion that a device or devices be considered whereby the strict application of the bylaw may be waived, the Solicitor informs that there is no way that the bylaw provisions can be waived. It is his advice that even if the bylaw provided for exceptions such as those suggested (e.g., excessive costs, unstable ground, etc.) it is his view that the bylaw could be challenged, successfully, as not being of general application. It is our observation that

/there is legal precedent for Municipal bylaws being quashed in the courts where they have been found to be discriminatory or not of general application, and as has been pointed out, in general, Councils cannot introduce discretionary clauses in bylaws. Any variance that would be proposed would have to be made by amendment of the bylaw itself, relating to the provisions of the bylaw that apply to everyone, not just to a particular situation. In other words, it is not possible, legally, to provide a device to permit the waiving of the strict application of the bylaw.

THE SITUATION AT 2830 NORLAND AVENUE

With reference to the particulars mentioned by Mr. Forbes in connection with his property at 2830 Norland Avenue, the Planning Department has received the input of the Chief Building Inspector and Chief Electrical Inspector and are able to report as follows:

1. The building electrical connection under discussion is a minor service extension from one building to another on the site. Such connections are not unusual in building complexes. The provisions of Section 2 (1) (a) and (b) of the Burnaby Electrical Regulation Bylaw 1973 relate to any and all installations on a site that require electrical or telecommunications services, and require underground connections throughout the site as well as in public areas such as roads. The visual clutter represented by overhead wiring, poles, aerial transformers, and the like, is no more acceptable within a property's boundaries than at the perimeter or beyond. In the location that is at hand, it should be noted that the rear of 2830 Norland Avenue, where the new service building is sited, abuts the Still Creek waterway, which is proposed for public walkway development as a major element in the park/trail system, and where Council has expressed a strong interest in upgrading the industrial environment. Clearly, the establishment of new overhead wiring would contradict the intent of improving the environment as well as being in conflict with the Bylaw.
2. As noted by the Building Inspector in his submission to Council at the January 24 meeting, the requirement of underground wiring in connection with this project was outlined to the applicant from the earliest stages of the project, in discussion at Preliminary Plan Approval and construction working drawing stages. Moreover, the requirement was acknowledged and documented by the engineering consultant on the project, Mr. E.A. Bianco, by letter dated March 2, 1976, and in the acceptance of the conditions of Preliminary Plan Approval signed by Mr. Forbes on September 30, 1975.

3. The physical conditions which pertain to this site, as outlined by Mr. Forbes, are not at all extraordinary for large areas of this Municipality, and do not require elaborate or excessive technical solutions. Throughout much of the Central Valley and Big Bend areas, peat conditions prevail which give rise to settlement and instability conditions that affect building and yard design. However, the means of dealing with this condition are by no means complex or unusually costly in the case of electrical connections of this sort, where both the Electrical Code and good practice permit direct burial of wiring methods in a trench, at a depth not less than 36", with the cable "snaked" in the trench to provide a slight excess of cable length to eliminate stress in the event of general or localized settlement or movement due to imposed loading. Neither piling, nor encasement in concrete, nor even provision of conduit is required in such instances.

Should the applicant choose to install his electrical conductors in conduit for any reason, he may use either rigid P.V.C. or steel conduit, and is advised to install suitable pull-boxes at either end of the service with wire looped in the pull-boxes to achieve the same freedom from stress on the cable and to allow for settlement and movement. These measures again are very inexpensive, and are not in any way unusual in the numerous underground electrical services, large and small, that have been installed underground in yard areas throughout large areas of the Central Valley and Big Bend areas.

It might be observed at this point that the technical ramifications of such a minor electrical service connection with such soil and yard loading conditions are more flexible and less critical than those associated with many other building services which must be buried, such as gas, water, and sewer lines.

4. The cost of providing underground electrical connections in general is higher than making a comparable overhead link. However, this fact was known when the Bylaw was initially adopted and is justified by the overall intent to achieve an improvement in the urban environment by working toward elimination of overhead wiring and avoiding any further additions to the existing overhead network.

In numerous past requests to the Council for relief from the requirements of the Bylaw on the basis of additional cost or claimed hardship, the Council has rejected this factor as grounds for relief or amending the Bylaw. In the present instance, as noted above, the cost involved is not unusual and reflects the same circumstances encountered by many of the over 1000 developments that have been approved since the Bylaw came into effect where the owners have observed the Municipal requirements.

5. As mentioned above, over the years there have been many new underground connections installed under similar circumstances in yard areas used for loading, heavy truck manoeuvring, and the like in the Central Valley and elsewhere. With such installations when installed in accordance with Code requirements, there has been no evidence of failures or "disruptions to service" as a result.

CONCLUSION:

After a careful examination of the subject matter, it is apparent that there is no justification for many of the concerns expressed by Mr. Forbes in connection with the proposed installation on his property. It is acknowledged that there is additional cost associated with any underground installation as compared with an

overhead wiring connection, but there are no extraordinary conditions in this instance related to local conditions or surface uses, nor any that would distinguish this case from the numerous past installations that have been made in similar circumstances in full compliance with the Bylaws and Code requirements.


Finally, and of prime importance, the Solicitor has advised that there is no way that a device or devices can be applied to provide for waiving of the provisions of the bylaw, nor could exceptions for reasons such as those mentioned (excessive costs, unstable ground, etc.) be introduced without placing the bylaw in a position of being challenged as not being of general application.

It would appear that Mr. Forbes may have been misinformed as to the complexity or other ramifications of complying with the Municipal Bylaw in this instance, and it is suggested that he or his electrical contractor contact the Chief Electrical Inspector to obtain information on the most economical and satisfactory means of making the underground service connection in this particular instance.

RECOMMENDATION:

It is recommended:

1. THAT the provisions of the Burnaby Electrical Connection Regulation Bylaw 1973 be upheld.
2. THAT Mr. Forbes be furnished with a copy of this report and invited to meet with the Chief Electrical Inspector in order to correct any misunderstanding he may have received as to the technical ramifications in this instance.


A. L. Parr,
DIRECTOR OF PLANNING.

DGS:cm

c.c. Municipal Solicitor
Chief Building Inspector
Municipal Clerk