

ITEM	SUPPLEMENTARY	20
MANAGER'S REPORT NO.		71
COUNCIL MEETING	1979 10 22	

RE: SALE OF LOTS 1, 2, AND 3, BLOCK 19, D.L. 69, PLAN 1321, N.W.D.
4008/4048 REGENT STREET
RZ #21/77, R.C. #16/77, S.D. #59/77

Following is a report from the Municipal Solicitor regarding the proposed cancellation of a sale of properties.

RECOMMENDATION:

1. THAT the recommendation of the Municipal Solicitor be adopted.

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TO: MUNICIPAL MANAGER

OCTOBER 22, 1979

FROM: MUNICIPAL SOLICITOR

RE: Sale of Lots 1, 2 and 3, Block 19, District Lot 69,
Plan 1321, N.W.D.
4008/4048 Regent Street
RZ #21/77, R.C. #16/77, S.D. #59/77

RECOMMENDATION:

1. That the sale of Lots 1, 2 and 3, Block 19, District Lot 69, Plan 1321, N.W.D. to TEC Management Ltd. be cancelled and the deposit returned.

REPORT

Council on October 17, 1977 approved the sale of Lots 1, 2 and 3, Block 19 District Lot 69, Plan 1321, together with redundant road and lane allowances to David M. Mercier (not then a member of Council) for \$103,005.00 subject to the installation of services and consolidation of the said lots with the adjacent lands.

Mr. Mercier assigned his interest in the said sale on February 17, 1978 to TEC Management Ltd. and Council on March 6, 1978 approved the assignment. On April 5, 1978 TEC Management Ltd. made a down payment of \$5,000.00.

On July 17, 1978 Council authorized the introduction of a road closing by-law closing the redundant road and lane allowances. By-Law No. 7404, being the "Burnaby Road Closing By-Law No. 8, 1979", was finally adopted on September 24, 1979.

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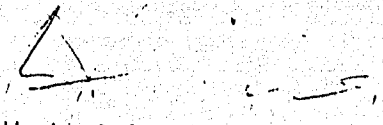
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The proposed sale has not yet been completed since many of the conditions precedent have not been finalized. In particular, Burnaby has not yet received title to the portions of road and lane closed by By-Law No. 7404. There has been no agreement on all of the terms of the sale and in particular whether the purchase price should be paid for by cash or by installments. If by installments, the amount of interest has not been determined. At this stage, therefore, if the purchaser refused to complete the transaction, Burnaby would have difficulty in obtaining specific performance.

TEC Management Ltd., which is wholly owned by Mr. Mercier, has now applied to cancel the sale. The reason for the application is Mr. Mercier's concern about his eligibility as a candidate in the November election. Section 50 of the Municipal Act provides that anyone who has, directly or indirectly, any contract whatever or interest in any contract with the municipality is disqualified. Section 51 provides, however, that such a person is not disqualified for the reason only that he is a shareholder in an incorporated company having a contract with the municipality provided he does not vote at a meeting of Council on any question affecting the company. However, the Supreme Court of Canada on March 30, 1979 gave judgment in the case of Re Wheeler, a case concerning the eligibility of the Mayor of Moncton, New Brunswick. The court ruled that the exemption given a shareholder of a company having a contract with the municipality does not apply when the Council member or candidate is more than a mere shareholder and is in fact a director or other officer or the sole owner of the company.

Having regard to all the aforesaid circumstances, it is recommended that the agreement for purchase and sale of the above-described municipally-owned lands be cancelled and the deposit refunded.



W. L. Stirling,
MUNICIPAL SOLICITOR

WLS:mc

cc: Director of Planning