

RE: NORTHEAST BURNABY RECREATION/LIBRARY COMPLEX  
EXPROPRIATION OF MRS. L.E. MANN PROPERTY 9637 CAMERON  
COMMENTS ON INSPECTOR OF MUNICIPALITIES LETTER OF 1981 MAY 26

RECOMMENDATIONS:

1. THAT the Province be requested to enact a new uniform expropriation act for all expropriating authorities.
2. THAT a copy of this report be forwarded to Mr. Christopher L. Woodward, Inspector of Municipalities and the Honorable William N. Vander Zalm, Minister of Municipal Affairs.

Summary

The report by Mr. Christopher Woodward, Inspector of Municipalities contains inaccuracies and incorrect statements, and proposes a solution that is clearly contrary to The Municipal Act in several respects. It castigates this municipality and its administration improperly by using innuendo and unanswered questions. It accuses Burnaby of a lack of compassion, and of an excess of zeal, which accusations are completely unfounded.

On the other hand, the report is absolutely silent about the Provincial Government's inaction with respect to recommended changes in the expropriation laws, changes which were recommended 17 years ago by the Clyne Royal Commission and again 10 years ago by the Law Reform Commission, and supported by this Municipality through the Union of British Columbia Municipalities in resolutions passed by the U.B.C.M. Convention in 1972 and 1978

A further report will be submitted by the Municipal Manager after he has had a meeting with the Honourable Thomas A. Dohm, Q.C., counsel for Mrs. Mann.

REPORT

The Municipal Council received at its meeting of 1981 June 01 a copy of a letter dated 1981 May 27 from the Honourable William N. Vander Zalm, Minister of Municipal Affairs to which was attached a copy of Mr. Christopher L. Woodward, Inspector of Municipalities' report regarding the above. This report will comment on the statements made in that report, and on the matter of the expropriation process itself. It will not deal with the solution proposed by the Inspector as that will be the subject of a later report.

Background on Investigation by Inspector of Municipalities.

Mr. Woodward's investigation has doubtful validity under the Municipal Act. According to section 745 of the Municipal Act he may, of course, conduct a "public inquiry" into any matters connected with a Municipality, providing that "inquiry" is authorized by the Lieutenant-Governor in Council and is conducted in accordance with the provisions of the Municipal Act.

Mr. Woodward's inquiry in the present case was a most informal one, and was not under Section 745 of the Act. He decided whom he should interview, decided upon his own procedures, and gave no opportunity, certainly to Burnaby to know all of the precise allegations made against it or afford the Municipality the opportunity of rebutting those allegations. His report, in its conclusion, is an obvious attempt to mediate a controversy between the Municipality and Mrs. Mann, which has already been before the courts of this province. Mr. Woodward was not asked by anyone to be a mediator or to suggest solutions if his Minister was understood correctly in his television appearance on the Mann property. In that interview the Minister was noted

as asking Mr. Woodward to determine whether there were illegalities in Burnaby's expropriation procedures.

In a letter dated 1980 April 10 addressed to Mr. Frank Helden, 3622 Haida Drive, Vancouver, the Minister stated that "I agree with you that Mrs. Mann does not seem to be getting fair treatment.". He had reached that conclusion long before asking his Inspector to make an investigation and made it without any evidence whatsoever from the Municipality. He went on in the same letter to say "...under the provisions of the Municipal Act, I do not have any authority to intervene on her behalf."

On 1980 May 01, at the request of Alderman Emmott, the Municipal Manager wrote to the Minister of Municipal Affairs and forwarded the chronology on this expropriation. The letter (copy attached) was not acknowledged, and no action was taken by the Minister of which we are aware. Since that time, additional legal costs have been incurred.

Comments on Inspector of Municipalities' Report.

Notwithstanding the above remarks, the Municipal Manager without reservation agrees that the expropriation laws of this Province are in need of reform, but he cannot agree that Burnaby in this case should be faulted "for a lack of compassion and for an excess of zeal.". Mr. Woodward raises many questions without answering them and by indirection and innuendo accuses the Municipality. It is this aspect of his report to which the Municipal Manager takes strong exception and to which he will now comment.

1. The Cameron site for the Northeast Burnaby Recreation/Library center was established after considering key locational requirements and an extremely comprehensive analysis of certain alternative sites including public meetings in the general area. The Parks and Recreation Commission, Library Board and the Advisory Planning Commission were involved in the development of the Community Plan. The building alone is 48,312 sq. ft. or over 1 acre in size and serves a population of 25,000.
2. Over the years 1974-1977 Mrs. Mann made many representations to the Municipal Council complaining of the traffic volume and noise on Cameron Street and advising that the situation was becoming intolerable. She made it very clear over and over again that she was not the least bit happy about the living conditions on her block. She went so far as to advise the Council on 1974 July 25 when she supported a Rezoning proposal that "Myself, I can neither live comfortably on my property, nor can I leave it in this present stage of partial development.... Development of the area has increased my taxes to the point where I find it almost impossible to cope on the minimal widow's pension I receive from the Department of Veterans Affairs yet, as I say, I cannot leave."

3. How can the Inspector say "When resistance emerged the administration banded together and Mrs. Mann's rights as an individual soon became secondary to the objective." (underlining by the Municipal Manager) when:

- a) This expropriation is still not concluded after negotiations started on 1978 January 20, some 3½ years ago.
- b) The expropriation required the consent of the Federal Government, and in this case two Director Generals of the V.L.A. administration handled the file as the first one retired in 1978. Further, with the change in government in 1979, the new Minister reviewed the file and did not revoke the consent.
- c) Burnaby has not enforced the order it received in the Supreme Court of B. C. on 1980 March 06 (one year ago) to take possession of the property.
- d) Mrs. Mann has not been charged rent since the property was vested in the name of the Municipality on 1979 August 16 (nearly two years ago), nor has there been any attempt to do so.

4. Mr. Woodward asks "Did anyone consider Lillian Mann in other than a detached or professional manner?" The simple answer is "yes". The Municipal Manager personally met with Mrs. Mann and her lawyer to satisfy himself of several factors, not the least of which was to cover this aspect of the subject.
- The Manager wrote to Mrs. Mann's solicitor in 1979 November and advised him of several properties that were for sale on Sullivan Street immediately behind the Recreational/Library Center so that Mrs. Mann might remain within a block of where she was living. They could have been obtained for the amount of money being offered, but they were rejected.
- In 1980 June our appraiser was asked to contact Mrs. Mann on some possible sites on which she could relocate, and he was advised that none of them was "even reasonably suitable".
- In 1980 July (some 5 months before the arbitration hearing) in order to effect a settlement, Mrs. Mann was offered \$150,000 for her property, which was a fair and reasonable offer based on residential property values then. At the same time, recognizing that the law only allowed 6% interest on any arbitration award, we advised her solicitor that if the offer was not acceptable, we were prepared to advance the monies on the understanding they would be deducted from any award made by the arbitration board. This would allow her to invest the funds and receive a decent rate of return, rather than the unrealistic 6% provided in the Act. This offer was rejected on 1980 September 23.
- On 1980 December 19, after the Arbitration Board had met, but before an award was made, Mrs. Mann's solicitor wrote and accepted the offer, but that was rejected by Burnaby unless Mrs. Mann was prepared to meet certain conditions, amongst which was the abandonment of her appeal from the judgement made by Mr. Justice Toy in the B. C. Supreme Court. The letter was acknowledged by Mrs. Mann's solicitor on 1981 January 21 and he stated he was going to get in touch with his client. We have had no further response.
5. Mr. Woodward asks "Can a parking lot be viewed in the same light as the taking of property to resolve a dangerous traffic situation...?" Of course it cannot, and no one is suggesting here that it can. This is not solely a parking lot situation, as much as the news media continues to use its old stories and maintain that terminology. The use of the property is for a fire access along the east side of the Center as well as for access to the loading/service entrance located behind the Library wing of the building. It will also serve as a parking lot as an integral part of the first phase of this development, and will be needed within 5 years for Library expansion.
6. Mr. Woodward notes, "It disturbed me to learn that Burnaby during initial contact with Mrs. Mann turned quickly to a reference to its powers of expropriation.". He says this "must have been construed by Mrs. Mann as a threat.". He does not say in his letter why this must have been construed as a threat. In any event, the reference to expropriation was made in answer to a question put by Mrs. Mann to our Land Agent on 1978 January 10. Our records show "We were then asked what would happen if she refused to sell the property, to which we advised that we had the power of expropriation and mentioned this was under consideration by the municipality and we wished to avoid such action and hoped that we could reach an amicable settlement.". This can hardly be construed by anyone as a threat. Further, Mrs. Mann has had legal counsel from the very beginning. In any event, although Bylaw No. 7209 received three readings on 1978 April 24, it was not finally adopted until 1979 June 11, since the consent of The Governor in Council was not received until 1979 May 24.
7. Mr. Woodward states "coupled with this was the urgency with which Burnaby proceeded with the construction of the recreational facility, ostensibly to ensure availability of Provincial funds. I doubt if any

serious attempt was made to explore an extension of the construction timetable and still secure Provincial assistance." This is an assumption on his part. In fact, extensive discussions were held by the Municipal Manager and the Treasurer with the Recreation & Support Branch of the Ministry of Provincial Secretary and Government Services on the eligibility and timing of construction of projects for use of Provincial funds. The contract for this project was not awarded until 1979 April 23, a year and 4 months after we started our negotiations with Mrs. Mann. We obviously did not rush ahead recklessly and without regard for Mrs. Mann's position.

8. He goes on to state "The construction drawings showed her home as part of the building site." A close examination of the construction documents will show that the contractor was to bid the job showing the cost of all of the works on the Mann property as a deletable item. This work was shown as being not in the contract.
  9. Mr. Woodward then states "Why did Burnaby proceed with construction without first securing the entire site; ...?". This was a question of timing and it is true that we were relying upon the expropriation process to acquire Mrs. Mann's property. It should be remembered that this site was the last of 5 lots needed for the first phase, and that we could not "jump" it and split the development of the project as her property was at the eastern end of the project. Besides, there was no guarantee that we would not be faced with expropriation elsewhere. Be that as it may, during the entire expropriation process we did look at the alternatives to acquiring the Mann property, and all of the options were very, very costly and not as functional as was the original design. As noted by the Mayor to the news media, we are presently looking at using the back portion of the Mann property with a service road leading to it so that we can gain access to the unloading area of the library and provide fire access to the rear of the building.
  10. Mr. Woodward states when writing about the long range community plan, "An objective one might observe which previously had failed to receive voter assent." As Inspector of Municipalities he will be aware of the fact that a Municipal Council needs to have the assent of the voters only if money is going to be borrowed longer than for a 5-year term. His reference to voter assent is irrelevant in this case as the Council did not ask the voters to approve of the long range community plan. It did ask them for authority to borrow for phase 1, and that was what was rejected.
  11. Mr. Woodward makes reference to the fact that lack of convenient parking could be a disadvantage to some patrons of the library, but he submits there is room on the site in front of the library building for a few parking spaces for the handicapped. This is not a handicapped parking problem. There needs to be built approximately 24 parking spaces in order to meet the requirements of the bylaw, and this number cannot be put in front of the library portion of the building. Certainly, parking space can be developed elsewhere at a cost. Nothing today is insurmountable at a cost.
  12. Mr. Woodward suggests a "compromise" in which Mrs. Mann would live in the premises rent free (no reference is made to taxes) for a period not to exceed 5 years and at the same time she would receive compensation at current market value having regard for the present zoning. We must comment that one aspect of the "compromise" seems to contradict the other. Further, Section 410 of the Municipal Act makes the land and improvements taxable if they are occupied by Mrs. Mann, and this is not something the Municipality can negotiate.
- The Municipal Manager recognizes that this report is lengthy, but the report of the Inspector of Municipalities is difficult to address in less space. The inaccuracies and vagaries in the report needed to be addressed, even at the risk of inflaming an already strained relationship and difficult situation.

Comments on the Expropriation Laws in B.C.

Now to deal with the real issue at hand as referred to by Mr. Woodward, and that is that Burnaby did not violate the law. He concludes in several paragraphs that "... the real villain is the law.", and he refers to the "... archaic expropriation laws under which the municipalities of this province operate". As noted previously, we agree that there is need for reform in this legislation.

ITEM  
MANAGER'S REPORT NO. 29  
COUNCIL MEETING 1981 06 22  
8

Reform of this legislation has been recommended for many years:

(a) The provincial government authorized the Clyne Royal Commission on expropriation to review the legislation and received its report in 1964. No action was taken by the Province.

(b) The Law Reform Commission produced another report on expropriation in 1971. No action was taken by the Province.

(c) The following resolution was endorsed at the 1972 U.B.C.M. Convention and supported by Burnaby:

"WHEREAS the Law Reform Commission has submitted a report to the Provincial Government in regard to expropriation legislation in the Province;

AND WHEREAS the Provincial Government has established a Legislative Committee to review this report and make recommendations to the Provincial Government;

AND WHEREAS this legislative Committee plans to study this matter before submitting their report;

AND WHEREAS the present legislation dealing with expropriation is varied and diverse in its application and implementation and effect on the parties concerned;

THEREFORE BE IT RESOLVED that the Union of B. C. Municipalities petition the Provincial Government to enact a "Provincial Expropriation Act" to provide for a uniform expropriation procedure and valuation of expropriated property by any party undertaking expropriation in the Province."

No action was taken by the Province.

(d) The following resolution was endorsed at the 1978 U.B.C.M. Convention and supported by Burnaby:

"WHEREAS the question of the reforms of the law of expropriation in British Columbia has been under discussion for seventeen years, without significant result;

AND WHEREAS the Clyne Report in 1964 called for the enactment of a comprehensive statute dealing with Expropriation matters in British Columbia;

AND WHEREAS in 1970, the Law Reform Commission of British Columbia included the law of expropriation as one of its eight projects;

AND WHEREAS there are more than sixty statutory provisions which confer the power of expropriation in British Columbia;

AND WHEREAS the Federal Government, the Provinces of Newfoundland, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Alberta, Yukon Territory and the North West Territories have updated their expropriation laws;

THEREFORE BE IT RESOLVED that the Provincial Government be requested to pass a single comprehensive statute to control expropriation, as recommended by the Law Reform Commission of British Columbia."

ITEM 8

MANAGER'S REPORT NO. 29

COUNCIL MEETING 1981 06 22

-6-

No action was taken by the Province

126

If the law is the villain, since it is the provincial government which is responsible for the law, it follows that the real villain in this expropriation is the provincial government. In other words, why should the citizens of Burnaby be taxed to pay the premium in this particular instance when its local government has not exceeded the bounds of the law, or caused any delay in the arbitration proceedings? This extra cost, if it is deemed necessary by the Minister, should then fall on the shoulders of the provincial taxpayer through the provincial government.

#### Amendments to Expropriation Legislation

The Minister of Municipal Affairs has stated in a broadcast on May 29 and in correspondence that there would be amendments made to the Municipal Act. The administration welcomes such amendments, which by reason of Provincial Government inaction, are long overdue. We have complained to the Province in the past about the expropriation process, the frustration involved in it by both parties, the interest rate involved and the "games" that can be played on the timing of each step in it. With respect, we suggest as proposed by the U.B.C.M., however, that one uniform act be enacted for all expropriation authorities, not just municipalities.

ITEM	8
MANAGER'S REPORT NO.	29
COUNCIL MEETING	1981 06 22

1980 May 01

Our File: 2-7-30-1 D.L.6

The Honourable William N. Vander Zalm,  
Ministry of Municipal Affairs,  
Parliament Buildings,  
Victoria, B.C.

Dear Sir:

Re: Property Belonging to Mrs. Lillian E. Mann  
9637 Cameron Street, Burnaby, B.C.

Alderman Emmott has requested that I forward to you some background information on the expropriation of Mrs. Lillian Mann's property on Cameron Street in Burnaby. Attached in this regard is Supplementary Item 19, Manager's Report No. 71 which Council received on 1979 October 22. You will note that this report contains a chronology, and that the last entry is dated 1979 October 16. The significant events that have transpired since then are as follows:

1979 December 17

Council received a status report (Supplementary Item 22), a copy of which is attached. Although the municipality at this time was preparing to apply to the Supreme Court for an Order declaring that title had vested in Burnaby, negotiations were continuing with Mrs. Mann and her solicitor in an attempt to effect a fair and reasonable settlement.

This report also advised that unless Mrs. Mann chooses to vacate the premises, she will be allowed to remain in the house until such time that the Supreme Court action and arbitration proceedings are concluded (Mrs. Mann had previously been given until 1980 January 10 to vacate the property).

1980 January 07

A report that explains why Mrs. Mann's property is required for the Cameron Library and Recreation Center was received by Council (Item 13), a copy of which is attached (copies of the oversized plans that Council received on this occasion are not attached but will be made available upon request).

... 2

ITEM	8
MANAGER'S REPORT NO.	29
COUNCIL MEETING	1981 06 22

128

1980 March 10

Council was advised that Mr. Justice Toy of the Supreme Court has ruled that:

1. Title to the property is now and has been vested in the Corporation of the District of Burnaby since 1979 August 16; and
2. The respondent (Mrs. Mann) is to deliver up possession of the property to the Corporation immediately.

Also attached are two reports (Item 12 dated 1977 March 07 and In-Camera Item 1 dated 1977 November 21) which explain how the site for this complex was selected.

I have met with Mrs. Mann and her solicitor in an effort to negotiate a settlement that is satisfactory to all concerned. Although conflicting opinions in value still exist, I am pleased with the fact that discussions are continuing to take place.

If you have questions or would like to have further information on any aspect of this matter, please do not hesitate to call me on 294-7103.

Yours truly,

Malvin J. Shelley,  
MUNICIPAL MANAGER

MJS:nc  
Attachments

cc: Alderman A. H. Emmott