

ITEM	13
MANAGER'S REPORT NO.	31
COUNCIL MEETING	1981 06 29

RE: 1981 UBCM RESOLUTIONS

Following is a report from the Director of Planning regarding the Resolutions which are proposed for referral to the UBCM convention in September, 1981.

RECOMMENDATION:

1. THAT the recommendations of the Director of Planning be adopted.

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Planning Department
1981 June 23

TO: MUNICIPAL MANAGER
FROM: DIRECTOR OF PLANNING
RE: U.B.C.M. RESOLUTIONS

RECOMMENDATIONS:

1. THAT the Council approve the resolutions as proposed in Section "C" of this report.
2. THAT these resolutions be referred to the U.B.C.M. Executive at 313 Sixth Street, New Westminster, B.C., V3L 3A7 for endorsement and submittal to the U.B.C.M.

REPORT

As backbround to this report, we have contacted the U.B.C.M. office and obtained an up-date on the status of the various resolutions which have been previously approved by Council and submitted to the U.B.C.M. This information forms the basis for the itemized summary which follows.

A. THE CURRENT STATUS OF RESOLUTIONS PREVIOUSLY APPROVED BY COUNCIL AND SUBMITTED TO THE U.B.C.M.

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1. Resolutions Now Covered by Current Legislation -

- (1) The provision of a trust fund for required services as a condition of subdivision approval -
(Municipal Act - Section 711(9) - Subdivision of Land).
- (2) The provision of underground wiring and boulevard treatment as a condition of subdivision approval -
(Municipal Act - Section 702AA(2)(c)(e)(ii) - Development permit provisions).
- (3) The provision of land or funds for public use in residential subdivisions -
(Municipal Act - Section 711 (10), (11), (13) - Subdivision of Land).
- (4) Landscaping covenants providing for earth berms and natural screening between areas of incompatible land uses -
(Municipal Act - Section 702AA(2)(c) - Development Permit Provisions).
- (5) The requiring of community care facility developments to conform with municipal electrical, plumbing, building and zoning regulations and by-laws -
(Community Care Facilities Licensing Act - 1978).

2. Resolutions Presently Under Active Review by the Province for Possible Addition to the Municipal Act or Inclusion in the New Planning Act -

- (1) The including of the cost of parking for apartment buildings in the rent.
- (2) Provision for the establishment of building lines along major streets.
- (3) Provision for compensation to municipalities for street allowance closures involving abutting property owners.
- (4) The revision of the present requirements for Public Hearing notices in the advertising of rezoning applications.

3. Resolutions Being Pursued by the U.B.C.M. With Provincial Officials, but Where the Primary Objectives has not yet been Achieved -

- (1) Provision of municipal control of strata plans for new and unoccupied buildings.
- (2) Off-street recreational vehicles - "All-Terrain Vehicles Act"

In summary, no further action is considered necessary at this time with respect to resolutions covered under the foregoing items 1 and 2. However, difficulties are apparently being encountered in the pursuit of the two resolutions included in item 3, which suggests the desirability of their re-submission to the U.B.C.M. for additional clarification and to ensure that they remain on the active list for further consideration. No new resolutions are being proposed by the Planning Department at the present time.

B. BACKGROUND TO PROPOSED RESOLUTIONS

1. Provision of Municipal Control of Strata Plans for New and Unoccupied Buildings -

(1) Past History -

Under a 1975 amendment to the Strata Titles Act, strata plans involving new and unoccupied buildings were allowed to be registered by a B.C. Land Surveyor without reference to or approval of municipal approving officers.

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The Council, on 1979 July 30, adopted a recommendation that representation be made to the Province to request the amendment of the Strata Titles Act (now the Condominium Act) to provide that all strata plan application, whether or not new and unoccupied buildings are involved, be made subject to the approval of the Approving Officer of the municipality, and that this be followed, if necessary, by the submission of a resolution to the 1980 annual convention of the U.B.C.M. Council, also at this time adopted a further recommendation to defer approvals of all duplex strata title applications until enabling legislation is obtained clarifying the impact of strata titling on the illegal fourplexing of two-family dwellings in the municipality.

Certain amendments to the Zoning By-law were passed on 1980 March 10 (By-law No. 7477) designed to strengthen the occupancy standards with particular emphasis on providing a greater degree of control over the trend towards the fourplexing of two-family dwellings.

Three letters concerning the proposed amendments were sent to the Minister of Consumer and Corporate Affairs in the period between 1979 August 16 and 1980 March 16. A responding letter, dated 1980 April 09, was received from the Minister indicating that "relevant ministries have been made aware of your concerns, and the matter is under review".

This was followed by the preparation of a U.B.C.M. resolution which was approved by the Council and endorsed by the U.B.C.M. at the 1980 convention. Subsequently, the resolution has been the subject of discussions between the U.B.C.M. and Provincial Government officials.

(2) Reasons for Resolution -

The various actions referred to above have been taken in light of the violations of the Burnaby Zoning By-law relative to the conversion of two-family dwellings into fourplex residences, and arguments being advanced to the courts that if a two-family dwelling has been strata titled, it can be converted into four housing units.

Many of these buildings have been fourplexed and developed at densities considerably greater than permitted under the Zoning By-law regulations. This, in turn, has had a detrimental effect on the livability of residential districts and resulted in the overcrowding of the land, the creation of parking problems, increased traffic congestion on residential streets, the placing of an added load on municipal services and utilities, and increased pressures on neighbourhood parks and community facilities. In addition, the excessive bulk of these buildings is quite out of scale with neighbouring residences which has adversely effected the character of many residential areas and reduced the privacy formerly enjoyed by the residents.

Despite the strengthening of residential occupancy standards, there continues to be a loophole in the Condominium Act wherein the municipality has no involvement in the approval of strata plans for new and previously unoccupied buildings.

(3) Current Status -

As noted earlier, this resolution has been the subject of discussions between the U.B.C.M. and Provincial Government officials. Information from the U.B.C.M. office indicates, that as a result of these discussions, the Province has doubled the staff involved in strata plan approvals with a view to reducing the time required for processing.

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However, problems have been encountered in obtaining Provincial approval for the implementation of the most important aspect of the resolution - that of making the strata titling of new and unoccupied buildings subject to municipal approval. The main concern expressed was that this could result in delays for developers of new strata complexes. It is our opinion, however, that the transfer of this authority from the Province to the municipalities would involve a less time consuming procedure than at present since the approval for the strata titling of new and unoccupied buildings, like other strata title plans, would be processed at the local level.

Among the alternatives suggested by Provincial officials were the use by municipalities of Section 215 of the Land Titles Act (covenants) through contractual arrangements with developers or, using the regulatory power in Section 4(J) of the Condominium Act to require strata developers to disclose the number of dwelling units allowed by the building permits that had been issued.

Both of these have been examined by the Legal and Lands Department. The conclusion reached is that neither would effectively achieve the desired objective of making the strata titling of a new and unoccupied building, or a building to be constructed and developed, subject to the approval of the Council of a municipality and to compliance with its zoning by-law regulations. (see attached memo from Municipal Solicitor). The re-submission of this resolution to the U.B.C.M. is therefore proposed.

2. The Broadening of the Definition of the Term "All-Terrain Vehicle" in the Motor (All-Terrain) Vehicles Act to Specifically Include Trail Bikes, Mini-Bikes and Similar Machines -

(1) Past History -

Initially proposed and approved in 1976 and again in 1978, we were advised by the U.B.C.M. in 1979 and in 1980 that the matter was expected to be dealt with by the Province within a short period of time. Our latest information from the U.B.C.M. office is that this resolution "has been a most frustrating one with which to deal", and the subject of numerous meetings with Provincial officials in 1980 and 1981.

(2) Reasons for Resolution -

The primary reason for this resolution is to meet the need to specifically identify the types of vehicles that should be governed by the regulations of the Motor (All-Terrain) Vehicles Act.

The present definition of "all terrain vehicle" is very general and makes no reference to such recreation vehicles as trail bikes, mini-bikes, dune buggies, motorcycles and similar machines. This, in turn, creates considerable problems in the enforcement of regulations governing their operation.

Such regulations are considered necessary in order to protect built-up urban areas, particularly residential properties, from excessive noise, as well as to preserve environmentally sensitive areas and to prevent conflicts with other recreational users.

It will be recalled that the Council, in 1976, passed an amendment to the Burnaby Street and Traffic By-law to prohibit recreation vehicles from operating on any publicly used trail or on privately owned property without the consent of the owner. This, of course, applies only to Burnaby. The proposed resolution would, on the other hand, benefit the entire Province and thus serve to clarify and strengthen our own controls over the use of all terrain vehicles.

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(3) Current Status -

We have been advised by the U.B.C.M. that amendments to the Motor (All Terrain) Vehicles Act have been placed before the Legislature in 1981 for First Reading (Bill No. 7). While these amendments include a wide range of changes, no provision has been made for a broadening of the definition of "all terrain vehicle" as proposed in the resolution. For this reason, its re-submission is considered necessary in order to make the resulting regulations meaningful and capable of effective enforcement.

C. PROPOSED U.B.C.M. RESOLUTIONS FOR 1981

1. Provision of Municipal Control of Strata Plans for New and Unoccupied Buildings -

WHEREAS the Condominium Act provides that where a strata plan is part of phased development or is a bare-land strata plan, a certificate of approval by a municipal approving officer is required, and where a previously occupied building is converted to strata lots the approval of a municipal council is necessary;

AND WHEREAS no such municipal approval is required where a strata plan involves a building that has not been previously occupied, or a building to be constructed and developed, in which case only the obtaining of a certificate from a B.C. Land Surveyor verifying the status of the building and filing it with the Registrar of Land Titles is necessary;

AND WHEREAS a municipality has no control over a strata plan developed under these circumstances and the powers granted to municipalities in the Municipal Act to regulate the size, shape and siting of buildings under a zoning by-law are rendered ineffective;

AND WHEREAS the absence of municipal jurisdiction in such cases has resulted in developments which overcrowd the land, create parking problems, increase traffic volumes on residential streets, provide an added load on municipal services and utilities, increase pressures on neighbourhood parks and community facilities, and prevent the realization of such desirable community objectives as the preservation of the character of residential districts, the character of dwellings already erected and the suitability of such areas for low density residential accomodation;

THEREFORE BE IT RESOLVED that the Provincial Government be requested to amend the Condominium Act, RSBC 1979, to provide that strata titling of a new and unoccupied building, or a building to be constructed and developed, be made subject to the approval of the Municipal Council of a municipality and compliance with its zoning by-law regulations.

2. The Broadening of the Definition of the Term, "All-Terrain Vehicle" in the Motor (All-Terrain) Vehicles Act to Specifically Include Trail Bikes, Mini-Bikes and Similar Machines -

"WHEREAS the operation of off-street recreation vehicles such as trail bikes, mini-bikes and similar machines on privately owned lands without the consent of the owner and on public trails intended for other recreational users is the source of much concern to municipalities and the residents thereof;

AND WHEREAS it is deemed desirable to have this type of vehicle being governed as to registration, operation and prohibition for operation in such cases;

AND WHEREAS the definition of "all-terrain vehicle" in the Motor (All-Terrain) Vehicles Act makes no mention of the specific types of off-street recreation vehicles to be governed by its regulations;

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AND WHEREAS if off-street recreation vehicles such as trail bikes, mini-bikes and similar machines were to be included in the definition of an "all-terrain vehicle" in the Motor (All-Terrain) Vehicles Act this would then provide municipalities with the necessary regulatory and enforcement powers;

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THEREFORE BE IT RESOLVED that the Motor (All-Terrain) Vehicles Act be amended so that the definition contained therein of "all-terrain vehicle" will specifically include trail bikes, mini-bikes and similar machines."



A. L. Parr
DIRECTOR OF PLANNING

RBC/nb

- cc: Chief Building Inspector
- Municipal Clerk
- Municipal Engineer
- Municipal Solicitor
- Assistant Director - Long Range
Planning & Research

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INTER-OFFICE COMMUNICATION

TO: DIRECTOR OF PLANNING (Att'n: R. B. Chilton)	DEPARTMENT:	DATE: June 22, 1981
FROM: SOLICITOR	DEPARTMENT:	OUR FILE #
SUBJECT: STRATA TITLE ACT - MUNICIPAL APPROVAL OF STRATA TITLE APPLICATIONS		YOUR FILE #

It is doubtful that a requirement that "other data" be included in the strata plan pursuant to paragraph 4(j) of the Condominium Act would have any effect on the problem created by allowing property to be strata-titled without regard to the zoning by-law affecting the property. In order for this approach to have the desired result, the registrar would have to reject an application if, in his opinion, a municipal zoning by-law would be contravened if the application were granted. The registrar's powers under the Act would probably need to be amended to accomplish this.

The use of section 215 covenants to prevent strata title developments that contravene the zoning by-laws was alluded to without any suggestion as to how a covenant would work. The Land Title Act is clear in its statement that the registration of such a covenant is not a determination by the registrar of its enforceability. The registrar, when faced with an application to register a strata plan for a property that had a section 215 covenant, would be asked to make a judgment on the enforceability of a covenant - a task he is specifically exempted from by the Land Title Act.

In short, it appears that an amendment to the Act is required to ensure that municipal zoning by-laws are not made ineffectual by excluding the requirement for municipal approval of strata title applications.

MUNICIPAL SOLICITOR

By: 

P. W. Flieger

PWF:mc

