

ITEM	4
MANAGER'S REPORT NO.	29
COUNCIL MEETING	1982 05 03

RE: REZONING REFERENCE #104/81
 LOT "B", BLK. 56, D.L. 189, PLAN 10995
 FROM: R5 RESIDENTIAL DISTRICT
 TO: R9 RESIDENTIAL DISTRICT
 21 N. HYTHE AVENUE
 REZONING BYLAW #7779
 (ITEM 7, REPORT NO. 25, 1982 APRIL 13)

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT this report be received for information purposes.

REPORT

On 1982 April 26, Council passed the following two motions regarding Reference #104/81, Rezoning Bylaw #7779:

1. THAT Council establish as an additional prerequisite condition of rezoning the registration of a restrictive covenant pursuant to Section 215 of the Land Title Act against the title of the proposed lots for the purpose of limiting building height to twenty-two feet as described in the report of the Director Planning & Building Inspection dated 1982 April 13; and
2. THAT this decision be subject to the concurrence of the Municipal Solicitor."

The opinion of the Municipal Solicitor is as follows:

"Bylaw #7779 was reconsidered and tabled on February 22, 1982. At the Council meeting on April 19, 1982 the Bylaw was defeated.

Section 30 of the Procedure Bylaw precludes further consideration. If the rezoning that is the subject of that Bylaw is to be proceeded with, a new Bylaw should be introduced.

Section 7.8(5) of the Zoning Bylaw governs the time limit for bringing forward a new application for consideration by Council.

Section 240 of the Municipal Act is not relevant to the question. That Section refers only to a Bylaw that has been adopted and then returned for reconsideration."

A member of Council who inquired about the legalities regarding this matter prior to the Council meeting of 1982 April 26 was unintentionally misled by the assistant Solicitor in a telephone conversation earlier in the day. Some confusion was consequently experienced when the motions were made by Council on April 26. The Solicitor's present opinion is that there is no legal authority under which the motion regarding the restrictive covenant can be carried out, and that as the matter now stands, the motion is in effect null and void. As there is no need for a recission or any other kind of remedial action, this report should be merely received for information purposes.
