

ITEM 8
MANAGER'S REPORT NO. 1
COUNCIL MEETING 1983 01 04

RE: REZONING REFERENCE #49/80
CANADA WAY/LAUREL STREET PROPOSED THREE STOREY, 45 UNIT APARTMENT BUILDING
SALE OF MUNICIPAL LAND

ACTING MUNICIPAL MANAGER'S RECOMMENDATION:

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

* * * * *

TO: MUNICIPAL MANAGER

DECEMBER 28, 1982

FROM: MUNICIPAL SOLICITOR

RE: Rezoning Reference #49/80

RECOMMENDATION:

1. That Parcel A be sold to the developer at the reduced price of \$48,026.25 subject to discontinuance without costs of the Supreme Court action against Burnaby and performance by the developer of all other rezoning requirements.

REPORT

Council on December 14, 1981 approved the recommendation of the Director Planning and Building Inspection that a closed portion of Laurel Street be sold to a developer for \$72,641.00 subject to the terms and conditions set out in his report.

The developer was a combination of Pamanika Developments Ltd. and A & I Rogic Development Ltd. represented by Mr. Glenn Toppings of Jacobson-Andersen Realty (1971) Ltd. Pamanika is the owner of Lots 8, 9 and 10, Block 2, District Lot 68, Group 1, Plan 980, New Westminster District and A & I Rogic is the owner of Lots 4, 5, 6 and 7, Block 2, District Lot 68, Group 1, Plan 980, New Westminster District. These lands are shown on the attached plan.

The land sale was part of Rezoning Application #49/80 for a proposed three-storey 45 unit apartment building at Canada Way and Laurel Street. The rezoning bylaw (No. 7865) was adopted by council on December 14, 1981 in order to assist the developer gain the benefit of a MURB before the end of 1981. A permit to construct the foundation of this development was issued by the Building Department on December 31, 1981.

Unfortunately, Parcel A was not vested in Burnaby at the time council adopted the recommendation on December 14, 1981. Council on August 23, 1971 had adopted Bylaw No. 5937 closing that portion of Laurel Street, the bylaw was filed in the Land Title Office and the closed portion of road designated as Parcel A Bylaw Plan 39887 District Lot 68 Group 1 Plan 980 New Westminster District. The bylaw authorized a petition to the Minister to vest title to the closed portion of road in Burnaby. However, it was impossible at that time to obtain the consents of the adjacent owners and no petition was forwarded to Victoria.

The developer paid the purchase price for Parcel A and other required levies. When it became apparent that Burnaby could not transfer title to Parcel A, the developer by letter dated January 18, 1982 requested the return of the purchase price stating "in light of this, we would appreciate the return of moneys for this property until it is ready for conveyance at which time we would again issue a certified cheque of \$72,641.00 in Burnaby's favour." After receipt of this letter, the purchase price plus interest was returned to the developer.


Consents were finally obtained from the new adjacent owners including the development companies, but the consent of the Provincial Rental Housing Corporation, formerly the British Columbia Housing Corporation, was not executed until March 22, 1982. The petition and supporting documents were then forwarded to Victoria on March 30, 1982. The Minister approved vesting title to Parcel A in Burnaby on May 14, 1982 and his Order was received by the Municipal Clerk on May 27, 1982. Since that date, Burnaby has been ready, willing and able to transfer Parcel A to the developer. The developer, however, no doubt influenced by the state of the economy, chose not to proceed. The Minister's Order granted title to Parcel A to Burnaby subject to consolidation with adjoining lands which were owned by the developer. Without the developer's cooperation, no transfer could be effected in the Land Title Office and, of course, the developer did not, as promised, issue a new cheque for the purchase price.

On July 20, 1982 the developer commenced a Supreme Court action against Burnaby. Its solicitor wrote the same date to the Municipal Clerk and a copy of that letter is attached. The letter sets out the developer's claim against the Municipality. An appearance to the Writ has been entered on behalf of Burnaby and the developer's allegations have been denied.

The developer, perhaps influenced by declining interest rates, now wishes to proceed. It has suggested a reduction in the price of Parcel A to reflect what it terms "present market value." It first suggested a purchase price of \$43,756.00 reflecting a rate of \$10.24 per square foot. After negotiation, that figure has been increased to \$48,026.00 reflecting a rate of \$11.25 per square foot.

It should be pointed out that the developer is required to grant to the Municipality a right of way for a water line and public access over the entire Parcel A; the Municipality acquired Parcel A at no cost; and it could not have acquired Parcel A without the consent of the developer.

Therefore, it is recommended that Parcel A be sold to the developer at the reduced price of \$48,026.25 subject to discontinuance without costs of the Supreme Court action against Burnaby and performance by the developer of all other zoning requirements.


W. H. Stirling
MUNICIPAL SOLICITOR

Attachs.

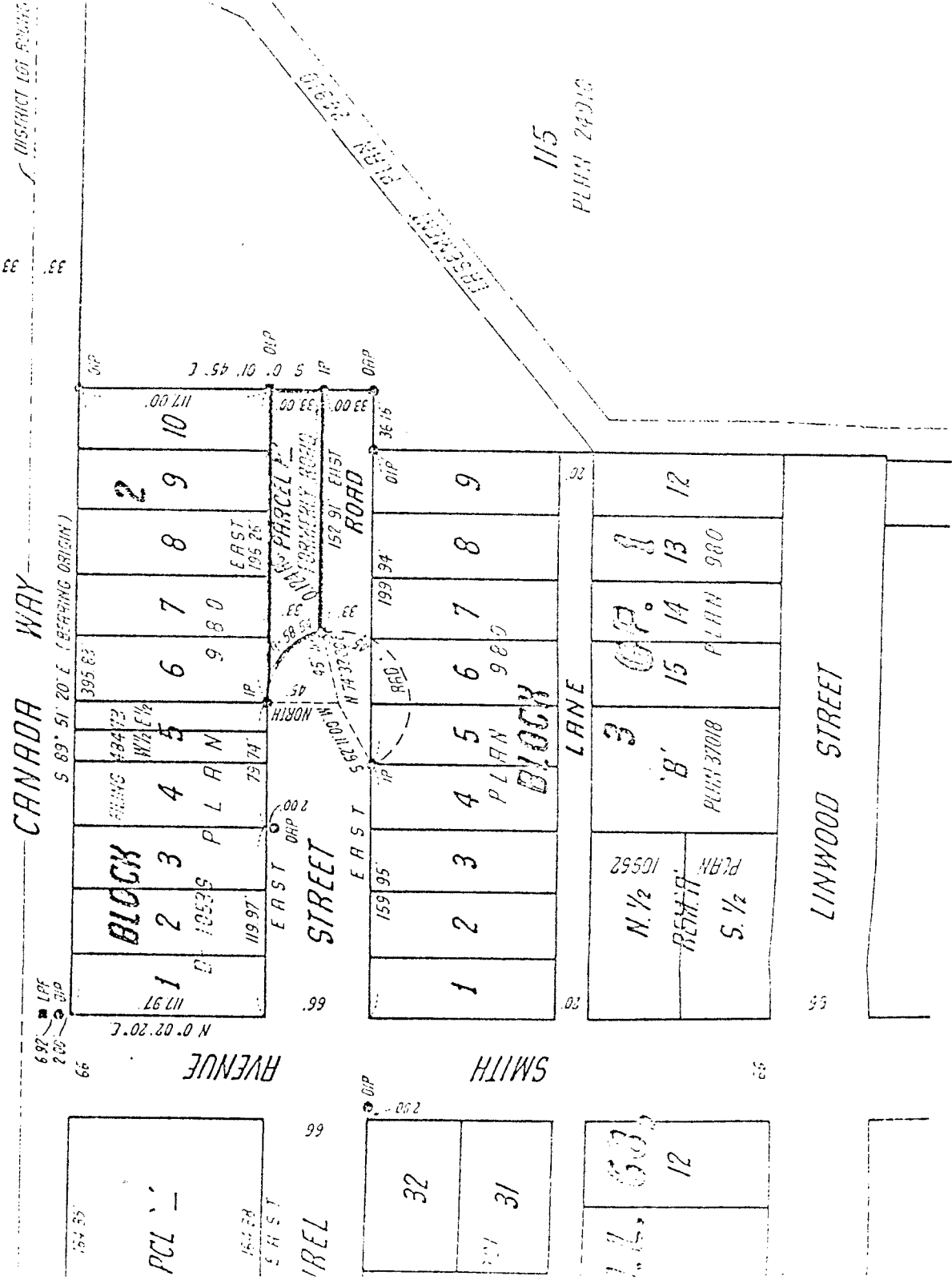
cc: Director Planning & Building Inspector

**PORTION OF DISTRICT OF
NO. 11 OVER N PORTION
OF LOT 69, GROUP 1,**

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D.L. 69, GR. 1

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|----|----|-----------|---|---|---|----|
| 12 | 11 | 10 | 9 | 8 | 7 | 12 |
| | | PLAN 1321 | | | | |



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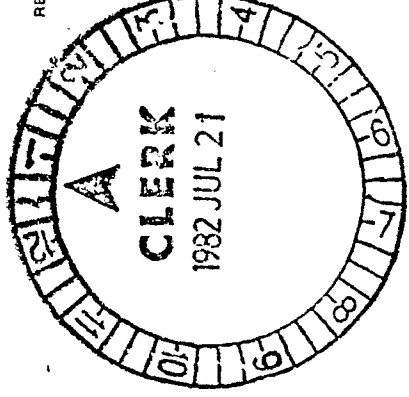
DuMOULIN, LOWES & BOSKOVICH
BARRISTERS & SOLICITORS

147

COPY

JOSEPH A. BOSKOVICH
J. KEITH LOWES
BILHAR SINGH KOONAR
SHAEL E. SMITH

ANTHONY B.P. DuMOULIN
ROSE-MARY LIU BASHAM
FREDRICK L. MORRIS
SANDRA L. POLINSKY



REFER TO FILE NO. _____

July 20, 1982

DELIVERED BY HAND

Municipality of Burnaby
4949 Canada Way
Burnaby, B.C.
V5G 1M2

Attention: Municipal Clerk

Dear Sirs:

RE: LOTS 4,5,6,7,8,9, & 10 OF BLOCK 2 OF
DISTRICT LOT 68, GROUP 1, PLAN 980,
NEW WESTMINSTER DISTRICT (the "Property")


We are the solicitors for Pamanika Developments Ltd. and A and I Rogic Development Ltd. (the "Owners"), the registered owners of the Property. The Owners have been involved with the Municipality in a process involving re-zoning and development approval of the Property. On behalf of the Owners, we hereby give you notice of "damage" sustained by the Owners by reason of the failure of the Municipality to return to the Owners the monies and letters of credit paid to the Municipality at the times and in the amounts detailed in Schedule "A" to this letter as demanded by the Owners or their agents in or about June, 1981 and July, 1981.

We enclose Writ of Summons with respect to our clients' claims.

We also advise you that the Owners have already contacted the legal department of the Municipality of Burnaby and intend to take all further appropriate legal action.

Yours truly,

DuMOULIN, LOWES & BOSKOVICH

Per: 
S.E. SMITH

SES:lcj

c.c. W. L. Stirling

SCHEDULE "A"

Application Fee for re-zoning in the amount of \$580.00 paid September 26, 1980

Application Fee and Examination Fee for subdivision in the amount of \$35.00 paid November 30, 1981

Engineering Fee for Inspection and Street Lighting Fee in the amount of \$330.00 paid November 30, 1981

Application Fee in the amount of \$50.00 paid December 15, 1981

Demolition Permit, Damage Deposit and fees in the amount of \$223.50 paid December 15, 1981

Damage Deposit, Inspection Fee, Vehicle Crossing Fee, Foundation Permit, and Application for Water Connection in the amount of \$6,788.00 paid December 31, 1981

Development Cost Charge re: Neighbourhood Parkland Acquisition in the amount of \$50,625.00 paid September 15, 1981

Letter of Credit in the amount of \$41,400.00 regarding underground wiring deposited with the Municipality in or about January, 1982 or February, 1982

Letter of Credit in the amount of \$8,000.00 regarding engineering services deposited with the Municipality in or about January, 1982 or February, 1982

The cost to the owners of obtaining the said letters of credit

Interest on the monies paid by the Owners to the Municipality at a rate equal to the Prime Rate charged by the Canadian Imperial Bank of Commerce plus One Percent per annum compounded monthly

Any sums paid or letters of credit not included above which may have been paid by or on behalf of the Owners during the period from May, 1980 to June, 1982

