

ITEM	10
MANAGER'S REPORT NO.	33
COUNCIL MEETING	90/05/07

RE: TEXACO LEASE TERMINATION - BARNET MARINE PARK

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Director Recreation & Cultural Services be adopted.

* * * * *


TO : MUNICIPAL MANAGER 1990 MAY 01
FROM : DIRECTOR RECREATION & CULTURAL SERVICES
RE : TEXACO LEASE TERMINATION - BARNET MARINE PARK
PURPOSE: To direct the Municipal Solicitor to terminate the Texaco Lease over a portion of Lot 1, District Lot 214 and Tidal Lands fronting District Lot 214, Group 1, New Westminster District Plan 49510, under the terms and conditions outlined in this report.

RECOMMENDATION:

1. THAT the Municipal Solicitor be directed to terminate the Texaco Lease over a portion of Lot 1, District Lot 214 and Tidal Lands fronting District Lot 214, Group 1, New Westminster District Plan 49510, under the terms and conditions outlined in this report.

REPORT

At its meeting of 1990 May 02, the Parks & Recreation Commission received the attached staff report on the above subject and adopted the recommendation contained therein.


for DENNIS GAUNT
DIRECTOR RECREATION &
CULTURAL SERVICES

tc
Attach.

cc: Municipal Solicitor
Tax & Licence Director

ITEM 1
DIRECTOR'S REPORT NO. 9
COMMISSION MEETING 90/05/02

RE: TEXACO LEASE TERMINATION - BARNET MARINE PARK

ITEM 10
MANAGER'S REPORT NO. 33
COUNCIL MEETING 90/05/07

RECOMMENDATION:

1. THAT Council be requested to direct the Municipal Solicitor to terminate the Texaco Lease over a portion of Lot 1, District Lot 214 and Tidal Lands fronting District Lot 214, Group 1, New Westminster District Plan 49510, under the terms and conditions outlined in this report.

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REPORT

BACKGROUND

On 1985 October 15 Council approved the purchase of 8059 Texaco Drive and 8178 Burrard Inlet from Texaco Canada Inc. for inclusion in Barnet Marine Park. As a condition of sale Texaco leased back the existing building on Lot 1, consisting of a combination transit warehouse/office and garage and the surrounding yard area as shown on the attached, Figure 1, for a period of five years from the date of transfer at an annual rate of \$1.00.

PRESENT SITUATION

Texaco Canada Inc. has now been bought out by Imperial Oil, who have found alternative office and storage facilities within the Lower Mainland and Texaco therefore do not require continued use of the land and buildings on the Barnet foreshore.

There is still one year to go on the five year lease which is up on 1991 March 31. Texaco is now asking to be released from the lease one year earlier than the agreed upon term.

The Legal Department advises that a lease termination document can be prepared which simply states that it has been mutually agreed that the lease terminate one year early. However, the Legal Department advises that since it is Texaco's desire to terminate the lease, Burnaby is in a position, if it wishes, to impose conditions upon which we would agree to such an action.

Under Sections 4 and 13 of our lease agreement with Texaco Canada Inc., the Lessee (Texaco) must pay all taxes, rates, duties and assessments charged upon the premises and any improvements thereon. Following is a summary of charges which are outstanding and which should be paid by Texaco if they vacated the property as of 1990 March 31.

- | | |
|--------------------------------|----------|
| A. Metered water to March 30 | \$ 34.77 |
| B. Refuse disposal to March 30 | \$189.00 |

Texaco Canada Inc. has been billed for these charges and to date payment has not been received.

- | | |
|------------------------------------|-------------|
| C. 1990 Property taxes (estimated) | \$18,000.00 |
|------------------------------------|-------------|

In the attached memo, attachment #2, the Tax & Licence Director has confirmed that the 1990 taxes will need to be paid irrespective of any change in or cancellation of the lease agreement. He has advised that it would be possible under Section 4 of our lease with Texaco Canada Inc. to pro-rate the taxes for 1990. Since Texaco vacated the property by the end of March, they would be liable for \$4,500 in 1990 property taxes. This action is reasonable and consistent with normal practice in property transactions.

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If Burnaby were to agree to pro-rate the 1990 taxes 25% Texaco/75% Burnaby, Burnaby would then be liable for approximately \$13,500 in 1990 taxes (\$6,400 general municipal and \$7,100 all other rate setting bodies).

Mr. Murray Colburn, Terminal Superintendent with Texaco Canada Inc. has been advised of this action and concurs with the proposal to pro-rate the 1990 taxes to March 31.

FINANCING

The Tax & Licence Director has advised that the \$13,500 which is Burnaby's share of the pro-rated 1990 taxes, can be financed from the tax write-off account.

FUTURE USE OF THE LEASE SITE

Once the lease is terminated the Corporation would take over the property for Parks use and would commence immediate use of some of the warehouse space for the preparation of park furniture for the spring park season. The ultimate use of the buildings and lands would be incorporated into the future park planning process.

CONCLUSION

An early termination of the Texaco Lease at Barnet Marine Park has been requested by Texaco Canada Inc. The Municipal Solicitor notes that if it is in Burnaby's interest to do so, we can comply with Texaco's request for early termination of the lease.

As the Tax & Licence Director has advised that the \$13,500 which is Burnaby's share of the pro-rated 1990 taxes can be financed from the tax write-off account; and as Parks Department staff are able to make immediate use of the lease site, staff recommend that the Commission request Council to direct the Municipal Solicitor to terminate the Lease, provided that Texaco Canada Inc. pay the pro-rated 1990 taxes to March 31 and all other outstanding arrears (water and refuse disposal charges).

AS/tc
Attach.

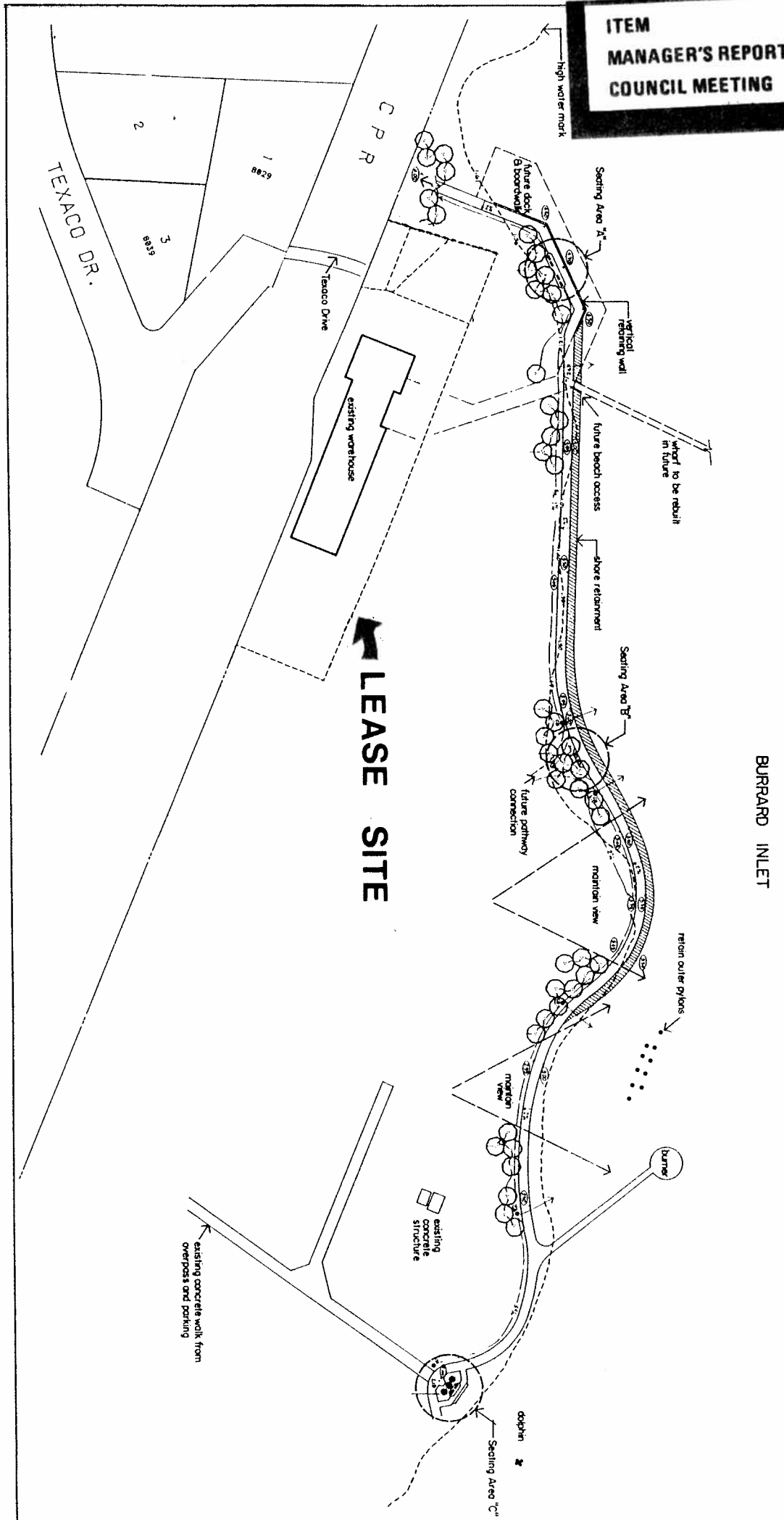
cc: Municipal Solicitor
Tax & Licence Director

ITEM 1
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 COMMISSION MEETING 90/05/02

ATTACHMENT # 1

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BURRARD INLET



ITEM 1
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COMMISSION MEETING 90/05/02

ATTACHMENT # 2

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THE CORPORATION OF THE DISTRICT OF BURNABY

INTER-OFFICE COMMUNICATION

TO: DIRECTOR RECREATION & CULTURAL SERVICES 1990 April 17
Attention: Research Officer

FROM: TAX & LICENCE DIRECTOR

RE: REQUEST FROM TEXACO FOR EARLY TERMINATION OF THEIR
LEASE AT 8059 TEXACO DRIVE

This is in response to your memo dated 1990 April 10 wherein you ask:

1. Will the 1990 taxes still need to be paid if we agree to early cancellation of the lease agreement?
2. If the Corporation were to assume the responsibility for the 1990 taxes, how much, if any, of the taxes would the Corporation be forgiven?

First, the 1990 taxes will need to be paid irrespective of any change in or cancellation of the lease agreement.

Second, there would be no forgiveness of 1990 taxes even if the Corporation took over occupancy as of 1990 April 01. If we have agreed to terminate the lease and Texaco no longer occupies the property, then the property would be statutorily exempt from property taxation for 1991.

Having answered your two questions, we offer the following comments for your consideration.

- While the 1990 property taxes must be paid we believe it would be possible under Section 4 of our lease with Texaco Canada Inc. to pro-rate the taxes for 1990, IF it were Burnaby's desire to do so. In this case, Texaco would pay the taxes to the date (month's end) that they occupied the property and Burnaby would pay for the remainder of the year.
- The "IF it were Burnaby's desire to do so" arises from a discussion with Peter Devonshire, our Solicitor. Peter advises that since it is Texaco's desire to terminate the lease it is incumbent upon us (Burnaby) to set the conditions upon which we would agree to such an action. In other words, we are not bound by the pro-rating provision in Section 4 of the lease when the lessee (Texaco) acts to "break" the lease.

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- With regard to whether or not there is justification to support pro-rating the 1990 property taxes, we would look to you (Director Recreation & Cultural Services) for a recommendation. We do however, believe that such an action is reasonable, and consistent with normal practice in property transactions.
- We would draw to your attention that if we were to agree to pro-rate the 1990 taxes 25% Texaco/75% Burnaby, we would then be liable for approximately \$13,500 in 1990 (\$6,400 general municipal and \$7,100 all other rate setting bodies). In this way the taxpayers of Burnaby would be paying \$6,400 to the Municipality and \$7,100 to all other rate setting bodies.
- Should you conclude that there is justification to pro-rate the 1990 property taxes we would provide monies to pay the taxes in our tax write-off account.

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Following is a summary of charges which are outstanding and which should be paid by Texaco if they vacated the property as of 1990 March 31:

- A. Metered water to March 30 \$34.77
- B. Refuse disposal to March 30 \$189.00

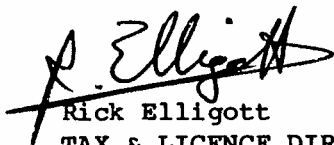
We have billed Texaco for these charges and to date payment has not been received.

- C. 1990 property taxes (estimated) \$18,000

Pro-rated to the end of 1990 March, Texaco would be liable for \$4,500 in 1990 property taxes.

We trust this memo gives you the information you require.

Please let us know if we can be of further assistance.


Rick Elligott
TAX & LICENCE DIRECTOR

RE:aj

cc. Municipal Solicitor
Attention: P. Devonshire