

ITEM
MANAGER'S REPORT NO. 16
COUNCIL MEETING 42
92/06/15

TO: ACTING MUNICIPAL MANAGER 1992 JUNE 10
FROM: DIRECTOR PLANNING AND BUILDING OUR FILE: SD 79/91
SUBJECT: LETTER RECEIVED FROM KATHY MEZEI/ROBERT S. ANDERSON
TREE CUTTING AT 254/296 NORTH DELTA AVENUE

PURPOSE: To provide Council with information concerning the reply sent to the writers with respect to their concerns.

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RECOMMENDATION:

1. THAT a copy of this report be sent to Kathy Mezei and Robert S. Anderson, Mas d'Enfin, 13540 Puyricard, France.

R E P O R T

Appearing on the Council Agenda for the meeting of 1992 June 15 is a letter dated 1992 May 27 with respect to the cutting of trees on private property at the captioned addresses. The properties mentioned are undergoing redevelopment for single-family dwelling use under the prevailing R2 Residential District zoning designation, and the lot known as 296 North Delta Avenue has been the subject of a subdivision application to create two single-family lots (S.D. Reference #79/91).

The letter takes strong exception to the tree clearing that has taken place in recent weeks on these private lands, and expresses objection to the subdivision.

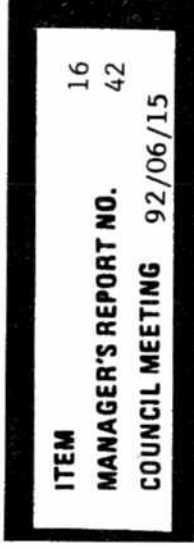
Staff have provided a direct reply to the correspondents, providing information and comment both on the subdivision and the processes involved, and on the matter of jurisdiction with respect to the cutting of trees on private lands. This latter aspect has been of particular concern to Burnaby's Council and staff, and has in fact been the subject of a resolution that Burnaby submitted to the UBCM convention in 1991 (copy of resolution text and argument as approved by Council is attached).

The letter of reply (a copy of which is attached for Council's reference) contains a statement on the status of that resolution (endorsed by the UBCM, viewed supportively by the provincial government in its preliminary comments, and being actively pursued by the UBCM with ministry staff).

As noted in the reply, the municipality does not at this time have the mandate to control or prohibit the cutting of trees on private land, other than in instances where a watercourse or lands considered hazardous are involved.

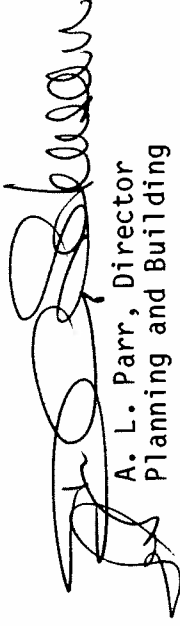
Although not mentioned in the letter from Ms. Mezei and Mr. Anderson, there was a small amount of unauthorized and unwarranted excess clearing by the subdivider on the North Delta Avenue right-of-way adjacent the subdivision in this instance, and the Approving Officer has required restoration and bonding to guarantee the restorative work as conditions of the subdivision.

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The concerns of the writers with respect to indiscriminate tree cutting are acknowledged and staff concur in the view that a positive mechanism is needed whereby future instances can be prevented and a more careful, thoughtful, and environmentally-sensitive view of the urban forest can be fostered. It is expected that Burnaby will continue to be active in its efforts to gain the needed jurisdiction in this regard.



A. L. Parr, Director
Planning and Building

DGS:lf

Attachments (2)

(EXTRACT FROM ITEM 24, MANAGER'S REPORT NO. 39,
COUNCIL MEETING 1991 JUNE 17
REGARDING 1991 UBCM RESOLUTIONS)

"2.2 Protection and Management of Trees on Private Property

The urban forest is a dominant feature of many British Columbia municipalities which should be a lasting legacy for future generations. The aesthetic value of the forest in British Columbia is undisputed. In developed and urban areas, trees also play important roles in the health of communities including: absorbing carbon dioxide, a greenhouse gas; producing oxygen; providing shade and absorbing heat; acting as windbreaks; preventing soil erosion and stabilizing soil; controlling surface run-off; buffering noise; and providing natural settings for recreational activities.

The ecological integrity of urban forests is threatened by continuing urban development. In many municipalities, citizens have expressed concern and frustration over the destruction of trees within their municipalities, both on public and private lands. Increasingly, British Columbia municipalities are recognizing the urban forest as a valuable resource to be protected and enhanced. However, under existing legislation, municipal authority relating to trees on private property is limited to watercourses and lands considered hazardous. Thus, a significant portion of the urban forest resource is subject to the wishes of the individual owner and not subject to community wide regulation or protection.

Resolution

WHEREAS the urban forest is a valuable resource that contributes significantly to the overall aesthetic value and environmental health of municipalities in British Columbia; and

WHEREAS protection and management of the urban forest can enhance its value and ensure its long term contribution to environmental health for future generations; and

WHEREAS a significant portion of the urban forest is located on private property and under existing legislation not subject to municipal policies and regulations;

THEREFORE BE IT RESOLVED THAT enabling legislation be granted to provide municipalities the authority to become involved in the protection and management of the urban forest on private lands."



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Kathy Mezei/Robert S. Anderson
Mas d'Enfin
13540 Puyricard
France

Dear Sir and Madam:

Subject: 254/296 North Delta Avenue

This is to acknowledge receipt of your letter addressed to the Mayor and Council concerning the cutting of trees in the vicinity of your property at 304 North Delta Avenue. A report will be submitted to the 1992 June 15 meeting of Council, and a copy of that report will be provided to you once it has been dealt with by Council.

With reference to your letter, this will confirm that the property at 296 North Delta Avenue is the subject of a subdivision application to create two lots under the prevailing R2 zoning. This subdivision application was given tentative approval in 1991 December, subject to a number of conditions which have been in the process of being fulfilled in recent months. These conditions have involved the provision of restrictive covenants and easements related to access requirements as well as provision for servicing the properties and other standard requirements of subdivision.

Your particular objections to the removal of the trees from this private property are noted. I assure you that indiscriminate destruction and removal of vegetation is a serious concern to the Municipality, and authorization to remove the trees in question was neither sought nor given.

However, it is absolutely critical to note that there is at the present time no enabling legislation that permits municipalities governed by the Municipal Act to effect any control over individuals cutting trees on their own property, other than with respect to watercourses or to lands considered hazardous with respect to danger from flooding or erosion. As a result, like other B.C. municipalities, Burnaby does not in general have the authority to prevent individuals from cutting their own trees on their land, nor to prosecute them for having done so in instances such as the one at hand.

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In this connection, however, you will be interested to know that this municipality in 1991 submitted a resolution to the convention of the Union of B.C. Municipalities (UBCM) providing the arguments for management of urban forests and requesting that enabling legislation be passed "to provide municipalities the authority to become involved in the protection and management of the urban forest on private lands". We are pleased that this resolution was endorsed by the convention, and we have been advised that the provincial government in its preliminary comments appears to be supportive of local governments' concerns in this area and is looking at the different options available. Moreover, we understand that the UBCM is actively pursuing this issue with ministry staff, and Burnaby staff will continue to seek the support of the provincial government through the means available to us.

In the interim, the municipality does not have the jurisdiction to control or prohibit the cutting of trees on private lands, and hence does not have the power to prevent what has occurred on the site at 296 North Delta Avenue or the adjacent lot of record at 254 North Delta (which is an existing 50-foot lot). In addition to the aforementioned clearing of the private lands however, staff noted on 1992 May 13 that some trees, underbrush and ground cover had been removed from the road right-of-way adjacent the subject property, in spite of staff's prior advice to the applicant for subdivision that this vegetation was not to be disturbed. The subdivider was thereupon notified in writing that specific remedial works would be required within the road right-of-way including the clearing of loose rock, seeding with grass, and the planting of two Mountain Ash trees to replace two trees that had been wrongfully removed beyond the area required to be cleared for construction of the approved accesses. Bonding to guarantee completion of these restorative works was required and has since been submitted to the municipality.

With respect to references in your letter to hearings, public notification requirements and the like, the following comments are provided. Applications to subdivide land are not processed through Council but are considered by the Approving Officer under the authority of the Land Title Act and the Municipal Act. There is no provision for involvement of a public hearing in connection with subdivision matters, and no provision for the involvement of a Board of Variance in a residential subdivision such as this one. This subdivision did not require any change in the prevailing zoning, and any development on the two lots must meet all the requirements of the zoning bylaw for this zone.

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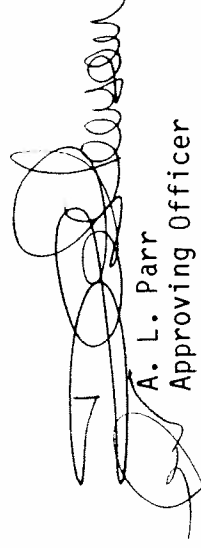
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The minimum lot area requirement of the R2 District is more than satisfied by the requested subdivision; and with respect to lot width, the 57.67 foot width is within the discretion of the Approving Officer pursuant to Council's delegation of its power to waive a minimum frontage requirement so long as the area requirement is met. One of the conditions of subdivision is that buildings or structures that will not comply with proposed lot lines must be removed or relocated. In this regard, a demolition permit for the existing dwelling on 296 North Delta was issued by the Building Inspector on 1992 May 04, and a site visit on 1992 May 13 confirmed completion of the demolition. The permit applied to the building only because, as mentioned above, the municipality does not presently have the authority to regulate tree cutting on private lands.

Finally, with reference to the objective of preserving significant trees and green areas in the Municipality, Burnaby through its Heritage Advisory Committee has recognized the importance of such features as heritage resources, and has been developing an awareness of the value of heritage buildings and sites in our community. As part of its work, the Committee has discussed preparing an inventory of trees in order to establish criteria, conduct a survey, or alternatively develop a list or registry of heritage trees, with a view to conservation and management of the resource through heritage designation, Comprehensive Development zoning, or other available legal means.

In closing, thank you for your continuing interest in preserving the character of your area. As mentioned, the municipality shares this interest and is taking steps to gain the necessary legislation to enable it to have a role in protecting and managing trees on private land in the future. Should you have further questions in regard to this matter, please do not hesitate to contact the Planning Department.

Yours truly,



A. L. Parr
Approving Officer

DGS:1f