

THE CORPORATION OF THE DISTRICT OF BURNABY
COMMUNITY ISSUES AND SOCIAL PLANNING COMMITTEE

HIS WORSHIP, THE MAYOR
AND ALDERMEN:

SUBJECT: TOWARDS A GROUP HOME POLICY

RECOMMENDATION:

1. THAT Council endorse the consultative process for a proposed Group Home Policy as outlined in the attached report.

R E P O R T

The Community Issues and Social Planning Committee, at its meeting held on 1992 March 25 received and adopted the attached staff report detailing the development of a municipal policy statement to improve the planning and approval process for group homes in Burnaby.

The Committee therefore submits its plans for such a Group Home Policy to Council for endorsement.

Respectfully submitted,

Alderman E. Nikolai
Chair

Alderman J. Young
Vice Chair

Alderman D. Evans
Member

Alderman C. Redman
Member

INTERNAL DISTRIBUTION:

: AGENDA - 1992 APRIL 06
: COPY - ACTING MUNICIPAL MANAGER
- DIRECTOR ADMIN. & COMM. SERVICES
- DIRECTOR PLNG. & BLDG.
- MEDICAL HEALTH OFFICER
- ACTING CHIEF PUBLIC HEALTH INSP.

TO: CHAIRMAN & MEMBERS
COMMUNITY ISSUES & SOCIAL
PLANNING COMMITTEE

1992 March 19

Our File: 17.315
x ref. 17.918

FROM: DIRECTOR PLANNING & BUILDING

SUBJECT: TOWARDS A GROUP HOME POLICY

PURPOSE: To discuss the development of a municipal policy statement to improve the planning and approval process for group homes in Burnaby.

RECOMMENDATION:

1. THAT a copy of this report be forwarded to Council for information and endorsement.

R E P O R T

1.0 BACKGROUND

Prior to 1989, group homes in Burnaby were only permitted on relatively large lots in R4, R5, and R6 (Residential) Districts. The result was that group homes tended to concentrate in particular areas of the municipality (notably, the South Slope), while large sections of Burnaby had few if any of the homes (see map of home distribution in Appendix 1, attached). To address this concern, and to promote a more balanced distribution of group homes, the Burnaby Zoning Bylaw was amended in 1989 to

- increase the number of residential areas in which group homes were permitted, subject to minimum site area requirements, and
- introduce a requirement that new group homes be situated at least 200 metres from existing group homes.

The amendments were greeted favourably by Provincial ministries and group home operators. Initially, few problems were encountered by Municipal staff in application of the amended zoning provisions. Problems emerged during the past year, however, resulting from questions about the Municipality's authority to zone for group homes.

This report discusses the question of Burnaby's group home zoning authority. It also presents a proposal for the development of alternate policies to guide the planning and approval of group homes in the municipality.

2.0 ZONING AUTHORITY

Two developments have brought Burnaby's authority to zone for group homes into question.

First, shortly after the Municipality initiated the above-noted Zoning Bylaw amendments, the Province amended the Community Care Facilities Act, the legislation governing group homes and other community care facilities. Of particular note were the amendments to Sections 5 (a)(iii) and 7 of the Act (see Appendix 2, attached). The Municipal Solicitor advises that the effect of these sections is to give the Provincial Licensing Board authority to disregard Municipal zoning regulations in the licensing of group homes - provided that the facilities have six or fewer residents.

Second, the cities of Prince George and Winnipeg were taken to court over their group home zoning provisions. In both cases, the judges ruled that the cities' group home zoning was discriminatory; the cities did not have the authority to impose zoning restrictions on group homes that did not apply to single family homes. The Winnipeg case dealt specifically with separation requirements for group homes. The ruling was that the separation requirements were inoperative, constituting "people zoning" and contravening Section 15 of the Charter of Rights and Freedoms.

Given these developments, numerous questions and criticisms have been directed at Burnaby's group home zoning provisions. Indeed, Provincial staff have requested that Burnaby remove the separation and site area requirements from the Zoning Bylaw. Also, one group home operating society has indicated that it would like to see Burnaby's group home zoning provisions "declared invalid" in the courts.

3.0 GROUP HOME POLICIES

Acknowledging the limitations of zoning for group homes, a meeting was called in 1992 February to explore the possibility of establishing alternate approaches for regulating group home development. The meeting was attended by representatives from the Planning and Health Departments, B.C.H.M.C., Burnaby Psychiatric Services, Ministry of Social Services, and Ministry of Health - Services to the Handicapped Branch.

At the outset of the meeting, it was noted that the municipalities of Richmond and Delta had developed group home policies in conjunction with relevant Provincial ministries. These policies covered such matters as location and design criteria, facility size requirements, "good neighbour" policies, and approval procedures. Delta and Richmond staff report that implementation of the policies has gone smoothly, with Provincial ministries demonstrating a strong degree of cooperation and support.

At the February meeting, participants agreed to work together in developing a Burnaby group home policy. Some of the issues that would need to be addressed include:

- mechanisms for communication and joint planning between ministries and the Municipality
- locational criteria
- community education/ public awareness
- procedures for community complaints
- clarification of roles and responsibilities amongst Municipal departments, Provincial ministries, and others
- support service needs of group home clients.

It should be noted that the Richmond and Delta group home policies took over a year to formulate. While development of a Burnaby policy should not take that long, the process would involve a number of meetings held over several months. This time commitment would be necessary to ensure that all relevant issues are addressed, consensus is reached amongst affected parties, and sufficient commitment exists to implement the policy.

It is assumed that once developed, the group home policy would replace Burnaby's current zoning approach to regulating group home development.


4.0 CONCLUSION AND NEXT STEPS

This report has provided background on Burnaby's group home zoning provisions and outlined questions regarding the Municipality's authority to zone for group homes. It has also provided information on preliminary discussions held concerning development of a Municipal group home policy.

The expectation is that the proposed group home policy, when completed, will prove to be a more effective vehicle than zoning for regulating the development of group homes in Burnaby. It will be a proactive statement, which reflects the needs both of group home residents and the wider community. It will result in a more collaborative planning process and foster the successful integration of the homes throughout the municipality. Given the consultative process being proposed, staff expect to receive strong cooperation and support from relevant parties for the policy implementation.

Unless directed otherwise, staff will proceed with the consultative process described herein. Upon concluding the process, we will recommend adoption of a municipal group home policy to the Community Issues & Social Planning Committee and Council. At that time, we will also recommend appropriate amendments to the zoning bylaw.

It is recommended that a copy of this report be forwarded to Council for information and endorsement.


A.L. Parr, Director
PLANNING & BUILDING

JF/jp

Attachment

cc: Municipal Manager
Director Administrative & Community Services
Municipal Solicitor
Medical Health Officer
Superintendent, School District No. 41

BURRARD INLET

3 ● 7 ■ 15 ■ 35 ■

6 ●

11 ■ 15 ■ 21 ■ 26 ■ 30 ■

1 ●

Burnaby Lake

11 ■ 12 ■ 13 ■ 23 ■ 34 ■

10 ■

14 ■ 28 ■ 29 ■

24 ■ 27 ■

15 ■ 16 ■ 17 ■ 18 ■ 19 ■ 20 ■ 21 ■ 22 ■ 25 ■ 26 ■ 32 ■ 33 ■ 36 ■

4 ● 7 ● 9 ●

4 ■

GENERAL LOCATION OF
GROUP HOMES
IN BURNABY

- GROUP HOMES: CHILDREN and YOUTH
- GROUP HOMES: ADULT

North Arm of the Fraser River



1992 02 11

RS CHAP. 57, COMMUNITY CARE FACILITY 28 Eliz. 2

(b) who are recognized by the board as a sibling group;
 "union board" means a union board as defined in the *Health Act*.

1969-4-2; 1971-10-1,2; 1972-13-3; 1973-16-1; 1974-17-1,11; 1975-13-1; 1975-57-37;
 1978-28-4; 1981-20-12; 1987-55-1, effective January 8, 1988 (B.C. Reg. 1/88);
 1989-48-3; 1989-61-199.

Child and adult care boards

2. (1) For the purpose of carrying out the administration of this Act, the minister may establish 2 boards under the names "Provincial Child Care Facilities Licensing Board" and "Provincial Adult Care Facilities Licensing Board", each to be comprised of

- (a) 3 persons appointed by the Minister of Health;
- (b) 3 persons appointed by the Minister of Human Resources; and
- (c) 2 persons appointed by the Minister of Education.

(2) The minister shall designate one member of each board as chairman.

(3) Each board member shall be reimbursed for reasonable travelling or out of pocket expenses necessarily incurred by him in discharging his duties, and, in addition, may be paid remuneration for his services that the Lieutenant Governor in Council may determine.

(4) Each board shall meet at the call of its chairman, and 4 members of a board constitute a quorum at any meeting of that board.

(5) In the event of a tie vote the chairman has a casting vote.

(6) Subject to the approval of the minister, the boards may make rules governing their own procedure.

1975-13-2; N.C. Reg. 91/79.

Appointment of staff

3. Employees necessary to carry out the administration of this Act may be appointed under the provisions of the *Public Service Act* and, subject to the approval of the minister, shall perform the duties the board, through the chairman, may direct.

1972-13-5; 1974-17-3,11.

Operating or advertising without licence

4. No person shall

- (a) operate, advertise or otherwise hold himself out as operating, a community care facility;
- (b) provide, or hold himself out as providing, any of the services provided in a community care facility; or
- (c) accommodate, or hold himself out as accommodating, any person who, in the opinion of the board, requires any of the services provided in a community care facility,

unless he is the holder of a valid and subsisting licence or interim permit issued under this Act that authorizes him to provide those services offered at the facility.

1973-16-3; 1974-17-4,11; 1989-48-4.

Powers of board

5. Subject to this Act and the regulations the board may

- (a) issue to an applicant a licence to operate a community care facility where it is of the opinion that

- (i) the applicant, if a person other than a corporation, has the training, experience and other qualifications required under the regulations, and the personality, ability and temperament necessary to operate a community care facility in a manner that will maintain the spirit, dignity and individuality of the person being cared for; or
- (ii) the applicant, if a corporation,
 (A) has a director permanently resident in the Province;
 (B) has appointed as manager of the community care facility a person who meets the requirements under subparagraph (i);
 and
 (C) has delegated to that manager full authority to operate the community care facility in accordance with the requirements of this Act and the regulations;
- (iii) the building or structure to be used by the community care facility, will be used
 (A) to provide day care for no more than 8 persons; or
 (B) as a residence for no more than 10 persons, not more than 6 of whom are persons in care,
 who can either be safely removed from the building or structure by the staff or can make their way from the building or structure unaided in the event of fire and that the building or structure
 (C) complies with this Act and the regulations;
 (D) complies with all Provincial and municipal enactments relating to fire and health that are applicable to a dwelling house in use as a private family home; and
 (E) has, where overnight sleeping accommodation is provided, a satisfactory method of fire detection and 2 means of egress to the ground level from each floor on which a sleeping room is located; and
- (iv) the building or structure to be used by the community care facility, where it is not a dwelling house under subparagraph (iii), complies with this Act and the regulations and all applicable Provincial and municipal enactments relating to fire and health;
- (b) issue to an applicant one or more interim permits to operate a community care facility for a period not exceeding a total of one year where it is of the opinion that the applicant has complied with all of the requirements of paragraph (a) that may significantly affect health or safety and is in the process of complying with the other requirements of paragraph (a);
- (c) specify on a licence or interim permit the type of service that the person may provide in the community care facility;
- (d) where a person who has been issued a licence or interim permit under this section is, in its opinion, operating a community care facility in contravention of this Act or the regulations, or any other Act or regulation, at any time and on terms and conditions it considers appropriate,
 (i) cancel or suspend his licence or interim permit; and
 (ii) in the case of a suspension of licence, issue to him one or more interim permits in lieu of a licence for a period not exceeding in total one year;

- (e) issue a certificate to a person attesting that he has the training, experience and other qualifications required by the regulations to act as a preschool supervisor, or a particular class of preschool supervisor, or otherwise to do any of the things specified in the certificate;
- (e.1) attach conditions to, suspend or cancel for cause a certificate issued under paragraph (e);
- (f) establish Local Community Care Facilities Licensing Boards having jurisdiction in an area of the Province as the board prescribes. A local board established under this paragraph shall be comprised of
- (i) one member appointed by the Minister of Health;
 - (ii) one member appointed by the Minister of Human Resources; and
 - (iii) one member appointed by the Minister of Education;
- (g) delegate by resolution, some or all of the powers granted to it under this Act, except the power to establish a local board under paragraph (f), to a municipality, union board or local board; and
- (h) delegate by resolution the power to issue interim permits and to issue and amend licences under this section to a medical health officer appointed under the *Health Act*.

1974-17-5.11; 1975-13-1; 1978-28-4; B.C. Reg. 91/79; 1982-76-5; 1987-55-2.3, effec-
tive January 8, 1988 (B.C. Reg. 1/88); 1989-48-5.

Exemption

5.1 The board may exempt an applicant for a licence or a licensee from a requirement of this Act or the regulations where, in the opinion of the board, compliance with the requirement would result in undue hardship to the applicant or licensee and an exemption would result in no increased risk to the health or safety of a client in the facility.

1988-46-18.

Display and expiry of licence

6. (1) A person who has been issued a licence or an interim permit under this Act shall, except in the case of a dwelling house under section 5 (a) (iii), display the licence or interim permit in a conspicuous place in the community care facility.

(2) Where a person who has been issued a licence or interim permit under this Act ceases to operate the community care facility in respect of which it is issued, the licence or interim permit expires and the person shall surrender the licence or interim permit to the board.

1974-17-5.11.

Certain laws not to apply

7. Where a licence or interim permit has been issued in respect of a building or structure referred to in section 5 (a) (iii) or section 5 (a) (iii) that was in force before the coming into force of this section, a provision in an enactment of the Province, other than this Act, or of a municipality does not apply to the building, structure or the community care facility if that provision would

- (a) limit the number or type of persons who may be cared for at that building, structure or community care facility, or

(b) apply to the building, structure or community care facility only by reason that

- (i) it is not being used as a single family dwelling house, or
- (ii) it operates as a community care facility, a charitable enterprise or a commercial venture.

1989-48-6.

Arbitration in case of conflicting regulations

8. (1) Where the building or structure, for which an application for a licence as a community care facility is made under this Act, does not comply with the applicable municipal enactments referred to in section 5 (a) (iii) or (iv), but is otherwise in compliance with that section, and where the municipality, on application for a variation of the enactment or for an exemption from it, refuses the application, the applicant for a licence may notify the minister and the municipality in writing that he requires the matter to be determined by arbitration.

(2) Upon receipt of the notification, the minister and the municipality may each appoint one arbitrator, and the 2 arbitrators so appointed shall, within 10 days of the date of the last appointment, appoint a third arbitrator.

(3) If the 2 arbitrators fail to appoint a third arbitrator within the time limited by subsection (2), the applicant or the minister or the municipality may apply to the Supreme Court, after notice to the other parties as required by the Rules of Court, for the appointment of a third arbitrator.

(4) Upon their appointment as provided in this section, the arbitrators, after considering the public interest, may

- (a) dismiss the application; or
- (b) order that the applicant be exempted from the provisions of the enactment.

(5) An order made under subsection (4) is final and binding on the applicant and the municipality, and if the building or structure is exempted under subsection (4) (b), the subsequent owners of the building or structure shall, subject to compliance with the provisions of this Act, continue to be exempted from the provisions of the enactment so long as the building or structure is licensed as a community care facility under this Act.

(6) Except as otherwise provided in this section, the *Commercial Arbitration Act* applies to an arbitration under this Act, but the applicant for a licence shall pay all the costs of the arbitration.

1969-4-8; 1971-10-7; 1972-13-7; 1973-16-5; 1974-17-6.1.1; 1975-13-5; 1976-33-17;
1986-3-53, effective July 4, 1986 (B.C. Reg. 148/86).

Duties of medical health officer

9. The medical health officer appointed under the *Health Act* for the municipality shall

(a) investigate every application for a licence to operate a community care facility within that municipality and shall report and make recommendations to the board respecting the application, or any other matter relevant to it requested by the board;

(b) investigate every complaint that an unlicensed community care facility is being operated within the municipality, or that a community care facility being operated within the municipality under a licence or interim permit

Nov. 3, 1989

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