

| | |
|----------------------|----------|
| ITEM | 27 |
| MANAGER'S REPORT NO. | 64 |
| COUNCIL MEETING | 93/11/01 |

TO: CITY MANAGER 1993 OCTOBER 27

FROM: DIRECTOR PLANNING AND BUILDING

SUBJECT: 6791 SOUTHPOINT DRIVE
EDMONDS TOWN CENTRE SOUTH
REZONING REFERENCE #32/93

PURPOSE: To provide information in response to a letter from Mr. J.N. Cram, Barrister and Solicitor, regarding the above-noted rezoning application.

RECOMMENDATION:

1. THAT copies of this report be sent to Mr. J.N. Cram, to the applicant for Rezoning Reference #32/93, and to the owner of 6850 - 20th Avenue.

R E P O R T

1.0 INTRODUCTION

A letter from Mr. J.N. Cram, Barrister and Solicitor, dated 1993 September 10, was included on the Council Agenda of 1993 September 27 as an "In Camera" item. This letter dealt with the property at 6791 Southpoint Drive. This property is the subject of a current application for rezoning to RM4 Multiple Family Residential District. The initial report regarding this application was submitted 1993 July 26, at which time Council adopted the following recommendations:

1. THAT copies of this report be sent to the applicant, and to the owner of 6850 - 20th Avenue.
2. THAT Council authorize the Planning and Building Department to work with the applicant towards Comprehensive Development rezoning and the preparation of a plan of development for a development site in accordance with the adopted Area Plan, which is suitable for presentation to a Public Hearing, on the understanding that a more detailed report will be submitted at a later date.

| | |
|----------------------|----------|
| ITEM | 27 |
| MANAGER'S REPORT NO. | 64 |
| COUNCIL MEETING | 93/11/01 |

CITY MANAGER
6791 SOUTHPOINT DRIVE
REZONING REFERENCE #32/93
1993 OCTOBER 27 ...PAGE 2

Mr. Cram's letter states that the owner of the neighbouring property (6850 - 20th Avenue) is not interested in buying or selling land to allow achievement of a site assembly for rezoning in accordance with the adopted Area Plan. Mr. Cram contends that it is unlawful for Council to require site assembly prior to rezoning, and that Council has no justification or lawful basis for refusing to rezone 6791 Southpoint Drive alone as requested by the current rezoning application. The possibility of legal action is suggested.

2.0 RATIONALE FOR SITE ASSEMBLY

The Edmonds Town Centre South Development Plan (see attached Sketch #1) was adopted by Council following a public participation process in 1987 (with minor amendments since). The draft Plan prior to adoption, and the adopted Plan since, have consistently shown 6791 Southpoint Drive as part of a larger site for Comprehensive Development rezoning and development based on RM4 guidelines. The site configuration was based on achieving an optimum scale, number, and positioning of apartment towers and open space in the Sandborne Avenue/Southpoint Drive/Station Hill Drive area. In the case of the development site which includes 6791 Southpoint Drive as well as the adjacent portion of 6850 - 20th Avenue, it is also intended that the proposed site assembly would allow siting of the proposed tower and its underground parking in a location optimized to achieve at least some preservation of the significant existing trees on the property. Redevelopment of 6791 Southpoint Drive alone for an apartment building with underground parking would likely allow little or no tree preservation.

It should also be noted that not including a portion of 6850 - 20th Avenue in the redevelopment site at the corner of Sandborne Avenue and Southpoint Drive would result in a too large and awkwardly shaped adjacent site at Sandborne Avenue and Station Hill Drive, with a "finger" extending to Southpoint Drive between 6791 Southpoint Drive and the existing Savoy Carlton apartment tower development (Rezoning Reference #25/89). In this regard, it should be noted that the Savoy Carlton site was assembled in accordance with the adopted Plan, and that the Southpoint Drive "finger" owned by the developers was excluded from that site, in order to allow its future consolidation with 6791 Southpoint Drive in accordance with the adopted Plan. Possible results of this Southpoint Drive "finger" being developed as part of the adjacent site on Sandborne Avenue (instead of being consolidated with 6791 Southpoint Drive) could be the development of a third apartment tower along Sandborne Avenue between Southpoint Drive and Station Hill Drive, or alternatively a 40 percent increase in the bulk and height of the previously planned tower on the site. These possibilities give rise to concerns regarding tower positioning, privacy and overlook, and impacts on the low-rise apartments south of Sandborne Avenue.

CITY MANAGER
6791 SOUTHPOINT DRIVE
REZONING REFERENCE #32/93
1993 OCTOBER 27 ...PAGE 3

| | |
|----------------------|----------|
| ITEM | 27 |
| MANAGER'S REPORT NO. | 64 |
| COUNCIL MEETING | 93/11/01 |

3.0 CURRENT SITUATION RE: SITE ASSEMBLY

Staff have contacted the owners of 6850 - 20th Avenue to ascertain their position regarding the planned site assembly. Attached is a copy of Millennium Development Corporation's letter in response, dated 1993 October 13. This letter indicates that they have neither received nor made a proposal for purchase or sale for assembly purposes, but that they would entertain realistic offers to sell their property to create the site assembly in accordance with the adopted Plan.

Since both owners appear willing to sell, it should be possible for a third party to pursue assembly, rezoning and development of a consolidated site in accordance with the adopted Plan. Staff are not aware of any attempt made in this regard to date. It is not unusual for land assemblies involving more than one owner to be necessary to facilitate redevelopment, and staff will be available to provide assistance and information in this regard to any interested parties.

4.0 LEGAL POSITION

The Solicitor has provided the following comment regarding the legal situation:

The Ontario Court of Appeal in Re North York 24 D.L.R. (2d)12 considered whether the power to delineate zones was affected by the size or ownership of the lots. The judgement includes these words: "It is sufficient to say that the question whether the area involved was controlled by one individual or by one corporation is nihil ad nem (irrelevant). Small areas may be zoned as well as large ones and facts as to their ownership or control should have no bearing when consideration is being given to the question of whether or not the area sought to be zoned complies with the general purpose and intent of the legislation." The British Columbia Court of Appeal in Genevieve Holdings Ltd. v. Kamloops considered a "split zoning" situation, where part of a property fell in one zone and part in another and held that a council is not required to tie zoning divisions to lot lines."

5.0 CONCLUSION

Assembly, rezoning and development of a consolidated site in accordance with the adopted Plan remains the most desirable option for redevelopment of the subject property. Since there is no evidence of failed attempts to achieve such assembly, nor of unreasonableness or attempts to frustrate such assembly on the part of either owner, staff are of the opinion that it is not necessary or desirable to contemplate less desirable site configuration and development alternatives at this time.

CITY MANAGER
6791 SOUTHPOINT DRIVE
REZONING REFERENCE #32/93
1993 OCTOBER 27 ...PAGE 4

| | |
|----------------------|----------|
| ITEM | 27 |
| MANAGER'S REPORT NO. | 64 |
| COUNCIL MEETING | 93/11/01 |

With reference to the legal position the Solicitor has advised that Council's authority to amend the Zoning Bylaw or to refuse a rezoning appears to be unfettered in this instance.

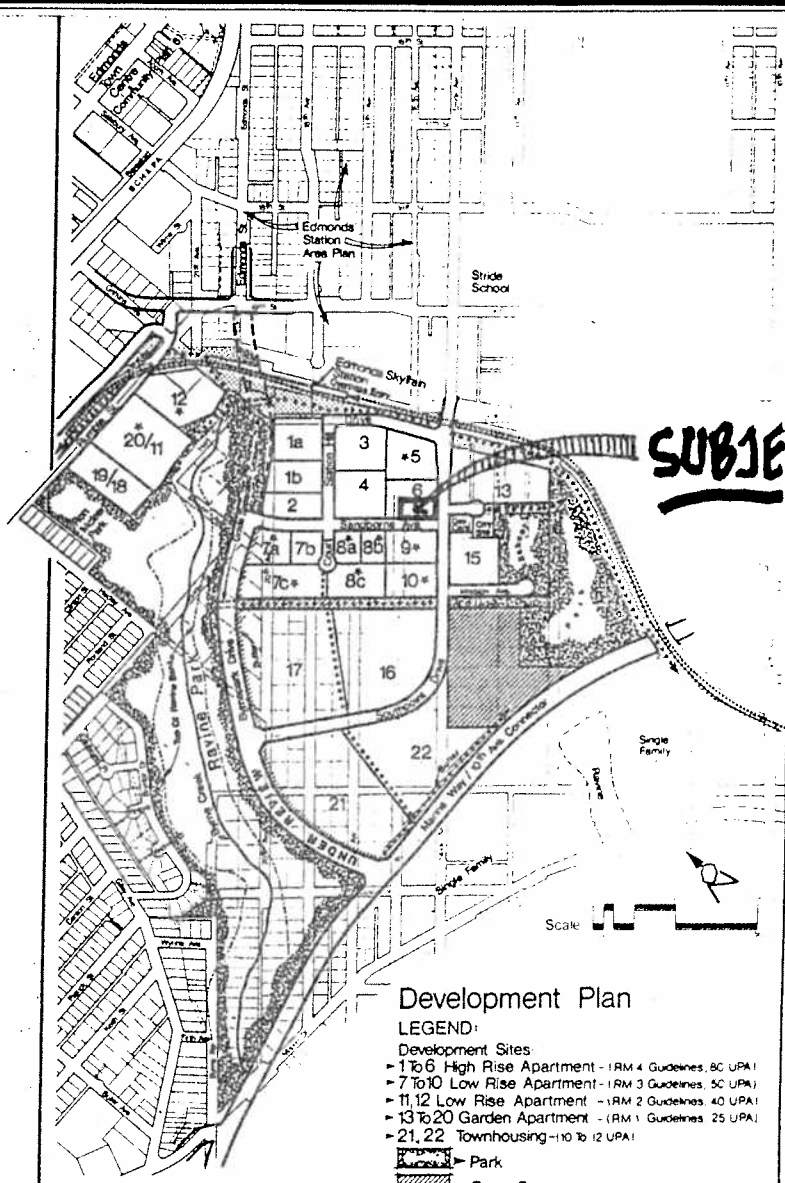


D.G. Stenson, Director
Planning and Building

RR:yg
Attach.

cc: City Solicitor

| | |
|----------------------|----------|
| ITEM | 27 |
| MANAGER'S REPORT NO. | 64 |
| COUNCIL MEETING | 93/11/01 |



Development Plan

LEGEND:

- Development Sites
- 1 To 6 High Rise Apartment - (RM 4 Guidelines, 80 UPA)
- 7 To 10 Low Rise Apartment - (RM 3 Guidelines, 50 UPA)
- 11, 12 Low Rise Apartment - (RM 2 Guidelines, 40 UPA)
- 13 To 20 Garden Apartment - (RM 1 Guidelines, 25 UPA)
- 21, 22 Townhousing - (10 To 12 UPA)
- Park
- Open Space
- B.C. Parkway
- Walkways, Trails
- Developed

Adopted 1987 July
Updated to 1993 February

Edmonds Town Centre - South

Date:
JULY 1993

Scale:
N.F.S.

Drawn By:
J.P.C.



City of
Burnaby
Planning & Building Dept.

REZONING REFERENCE #32/93

SKETCH # 1

ITEM 27
MANAGER'S REPORT NO. 64
COUNCIL MEETING 93/11/01



October 13, 1993

CITY OF BURNABY
PLANNING AND BUILDING DEPARTMENT
4949 Canada Way
Burnaby, BC V5G 1M2

Attention: Mr. Robert Renger

MILLENNIUM
DEVELOPMENT
CORPORATION

Dear Sir:

Re: Planning and Building
Rezoning Reference #32/93
1993 July 26
6791 Southpoint Drive

24th Floor
3 Bencall Centre
595 Burrard Street
P.O. Box 49077
Vancouver, B.C.
Canada V7X 1C4
Tel: (604) 688-2210
Fax: (604) 683-3421

We are the owners of the "City in-the-Park" property adjacent to the above site.

We confirm that we have to date not received a proposal from the owners of 6791 Southpoint Drive to buy a portion of our property and that we have not made a proposal to them to buy their property.

Although we have not given any specific thought to purchasing the above property, particularly since we are currently concentrating on our second tower, we would nevertheless entertain realistic offers to sell our adjoining property.

We trust that the above clarifies our position at this point in time and would be pleased to answer any questions you may have.

Yours sincerely,

STATION HILL PARK DEVELOPMENT CORPORATION
per:

S. Malek

SM/il

