ITEM	5
MANAGER'S REPORT NO.	51
COUNCIL MEETING	93/09/07

TO: **CITY MANAGER** 1993 SEPTEMBER 01

FROM: **APPROVING OFFICER**

SUBJECT: **SMALL LOT SUBDIVISION UNDER PREVAILING ZONING**
175 NORTH HOWARD AVENUE; 5480 CAMBRIDGE STREET

PURPOSE: To provide Council with further information as requested following a delegation on 1993 August 23.

RECOMMENDATION:

1. THAT a copy of this report be sent to:

   James and Cheryl Atwater, 135 North Howard Avenue, Burnaby, B.C., V5B 1J6;

   Alvina & John Benac, 132 North Grosvenor Avenue, Burnaby, B.C. V5B 1J2;

   Ron Abbott & Karen Abbott, Sutton Group, #308, 2800 East 1st Avenue, Vancouver, B.C. V5M 4P3, and

   R. Horvath, #2 - 2960 Mariner Way, Coquitlam, B.C., V3C 4K1.

R E P O R T

1.0 BACKGROUND

At the Council meetings on 1993 July 26 and August 09, Council heard delegations from Mr. and Mrs. Atwater concerning applications that have been received for subdivision of the captioned properties, and at the August 09 meeting Council received and tabled Item 20, Manager's Report No. 47 on the subject to allow Council members an opportunity to review the delegation's submission.

Arising from discussion after hearing delegations from the agents for the owners and prospective purchasers on August 23rd, Council referred the tabled report back to staff for further comment.

In voicing their objections to the two subdivision applications, Mr. and Mrs. Atwater have primarily directed their comments and questions with respect to the following two areas of interest:

1. The process used to examine applications for subdivision relative to potential impact on established amenities, and

2 Their request that Council direct that new services be required to be constructed before granting approval of the subdivisions.

The following provides comment on these matters, as well as the role of the approving officer in approving or refusing subdivision applications.

2.0 PROCESSING OF SUBDIVISION APPLICATIONS

The Land Title Act provides for an Approving Officer to exercise the jurisdiction conferred on him by the Act or the regulations or any other Act or regulations in respect of subdivisions. While the Act specifies certain mandatory requirements for approval of subdivisions (matters such as necessary and reasonable access, compliance with conditions related to potential flood damage, etc.) the approving officer is otherwise given a broad discretion to refuse subdivisions which he considers are against the public interest. The Act sets out certain technical and subjective matters that the approving officer may consider.

In order to assure fairness and consistency in the examination of applications, staff review applications and solicit comment from a number of city departments and external agencies with reference to the suitability of the particular application, its servicing implications, its conformance with the applicable provisions of the Municipal Act and the respective bylaws regulating subdivision and zoning. Conformance to the bylaws of the municipality is required including those related to regulation of lot dimensions and area, and in the particular case of small lot subdivision, compliance with the minimum 30% small lot content in the block front criterion is first required, as a fundamental requisite.

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In the case of the subject applications, all the normal procedures were followed and it was ascertained that the lots qualified in every way for subdivision in accordance with the regulations and with established Council land-use policy concerning the creation of small lots in residential areas. As noted in the previous report received by Council, the area in which this subdivision is located is considered to be mixed in nature, characterized by diversity in terms of lot sizes, age and style of buildings, and building siting and height. The lots involved do not contain ravines, watercourses or unique or extraordinary stands of vegetation, nor is there evidence of any other special amenities such as a heritage landscape or architectural context that would be unusual or distinctive compared with other similarly mixed areas of the city that have experienced subdivision in past years under the established regulations.

It is acknowledged that any change in a neighbourhood may be considered by some to affect established amenities in terms of subjective values, and this occurs in the course of normal land use and redevelopment as well as through subdivision. In such matters, where decisions must be made by city officials it is vital that fairness and consistency be maintained, and to this end Council in 1988 and 1989 went to considerable effort to establish clear and discrete numerical standards to replace the previous largely discretionary process for small lot creation under R9 zoning.

The key features that Council sought to put in place in the new process were a balance between the *opportunity* for a reasonable amount of small lot development and the need for *certainty* in terms of establishing where and under what circumstances small lot development would be approved. The resulting bylaw provisions adopted in 1989 incorporated a standard based on the 30% criterion, and this standard has been employed consistently since its adoption.

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For information, the block front under discussion contains 13 lots: 4 are small lots (33 feet), 2 are two-family size lots with subdivision potential (66 feet - the subject properties), and the balance are between 46 and 53 feet in width and do not have subdivision potential. The block fronts on both sides of North Howard Avenue between Dundas Street and Cambridge Street were clearly identified as qualifying for small lots in the material presented as part of the public process prior to the adoption of the amendments and this information has been supplied to anyone enquiring with respect to subdivision potential in these blocks since that time; it may be assumed that this information has been taken into account by owners and purchasers alike in forming their respective opinions of land value.

It is the prerogative of Council to review its 30% criterion at any time and to amend the bylaw through the normal process if it wishes to increase or decrease the potential for creation of small lots. However, it should be pointed out that pursuant to Section 993 of the Municipal Act, an amendment would have no effect on subdivision applications that were filed within the previous 12 months, unless the applicant agrees in writing that it should have effect.

In summary, on examination of the subject applications denial of the subdivision requested would not have been warranted, and refusal would in all likelihood have been capable of challenge in court under an appeal.

3.0 SERVICING REQUIREMENTS

In their submission, Mr. and Mrs. Atwater have questioned the conditions of the tentative approval given to Subdivision Reference #35/93 and, by extension, the conditions that apply to subdivisions that involve land that is already serviced, based on their reading of the Subdivision Control Bylaw.

Section 989 of the Municipal Act provides the authority for the City to pass a bylaw to regulate the standards for works and services "within a subdivision".

The Subdivision Control Bylaw was adopted in 1971 under that authority and since that date has been applied to subdivision applications processed by the approving officer and the Director Engineering. Prior to circulation of an application for comment from affected departments, Planning staff indicate in a preliminary way whether new improvements are required within the subdivision to serve the lots being created or whether there are existing services to serve the lots. In the final analysis, however, the City Engineer ultimately determines the standards for new construction that is necessary "within the subdivision" or to serve the lots being created, pursuant to the Subdivision Bylaw.

Where the land involved in a subdivision application is already serviced with Municipal services and utilities, and the Engineer and utility companies so advise, connection to those services is required where applicable, but no new construction is involved. Where the services do not exist to serve the lots created or they are inadequate to serve the subdivision, new construction is required and the schedules to the Bylaw prescribe the standards for such construction. The cost of all new construction and installations under such circumstances is required to be borne by the subdivider.

In the case of infill subdivision, where an existing lot of record in a previously serviced area is able to be subdivided to create two lots, the services are typically already in place and are generally adequate to serve the lots. In instances where this is not the case, however, any extension or upgrading of the services is required to comply with the standards set forth in the Bylaw.

Each subdivision request is viewed as a separate application, and it is important to ensure that consistency is maintained in the administration of the requirements.

Bylaws require consistent interpretation in order to assure fair treatment, and to assist in ensuring this consistency it is common to utilize policy statements for the guidance of staff involved with the practical administration of the bylaw.

The policy statement referred to by Mr. and Mrs. Atwater in this regard is in fact just a written statement prepared by the former approving officer and adhered to by the present one, confirming the information described above as it relates to infill subdivisions in cases where interim standard services already exist, for the benefit of staff and in the interest of consistency.

In essence, the view that has been put forward by the Atwaters is that if infill subdivision is allowed, it should be mandatory to replace all the existing services that are in place serving the existing lot, to the standards that would apply to new works if construction of new services within the subdivision were required. As noted in the previous report, the creation of two lots from one which is already serviced by existing interim standard services does not require the creation of new services "within the subdivision". To now commence to interpret the bylaw differently, as if it did, would in many instances be impractical or unfeasible from an engineering point of view and would add significantly to the cost of land for housing and reduce housing opportunities, or alternatively would result in the precluding of infill subdivision.

Clearly, this would work against the policy of Council to encourage affordability and balanced housing opportunities and to facilitate a reasonable degree of small lot development through controlled subdivision. For these reasons, it is not possible to support the delegation's interpretation of the bylaw.

4.0 CONCLUSIONS

Council has, following an extensive public consultation process, formulated Burnaby's policy concerning the creation of small lots by subdivision. The policy, which seeks to establish a balance between the desired *opportunity* for creating small lots in a reasonable way and the need for *certainty* in the matter of locations (defined by block fronts) in which this can be achieved, has been enacted in the form of a bylaw regulation. The policy appears to have served Burnaby well, as evidenced by the lack of objections that have been received in response to the significant number of small lots that have been created since it was adopted.

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The subject subdivision applications have been processed in the normal manner, and short of substituting a different standard or set of criteria for qualifying for small lot subdivision, there are no substantive grounds that the approving officer considers would warrant refusal of the applications. As previously noted, Tentative Approval has been granted for Subdivision Reference #35/93, and the review has now been completed for Subdivision Reference #37/93 in preparation for issuance of tentative approval.

The applications satisfy the requirements for subdivision and in my judgment denial of the applications would be discriminatory and not warranted, and would be subject to challenge on appeal.

Should Council wish to amend the bylaw to alter the regulations, it may do so to apply to future applications; but this would not have an effect on the present applications unless the applicants agreed in writing that it should do so.

The City Solicitor concurs in the conclusions of this report.

This is for the information of Council.

D. G. Stenson
APPROVING OFFICER

DGS:lf

cc: City Solicitor
Director Administrative & Community Services