

TO: CITY MANAGER 1994 APRIL 20
FROM: DIRECTOR PLANNING AND BUILDING OUR FILES: 12.000
PS -5-92
PS-6-92
SUBJECT: NOTIFICATION OF POTENTIAL IMPACTS ON HOUSING
DEVELOPMENTS ADJACENT TO INDUSTRIAL AREAS
PURPOSE: To provide Council with information regarding options for notifying prospective purchasers of residential properties to the presence of industrial uses in the immediate area.

RECOMMENDATION:

1. **THAT**, in situations where lands are to be developed for residential purposes in close proximity to existing or planned industrial operations, provision be made to provide notification of the potential impacts to purchasers as outlined in this report.

REPORT

1.0 BACKGROUND

During the Council meeting of 1994 January 24th, a question was raised concerning the method of notification or acknowledgement used in the Fraser Lands development south of Marine Drive in Vancouver, to put purchasers of residential property on notice with reference to the presence of industrial uses in the immediate area. The purpose of such notification is to ensure that purchasers recognize the realities of living in an area close to established industry (traffic, potential noise impacts, etc.).

Staff have made enquiries into the Vancouver example, and have looked into the mechanisms available to effect the same type of notice for similar situations in Burnaby in the future.

2.0 GENERAL DISCUSSION

- 2.1 It has been determined that the Vancouver development referred to by Council is on lands which are leased from the City. The City has included a clause in the lease agreement entitled "Acknowledgement of Noise" which states that "The Lessee acknowledges that LANDS and the BUILDINGS may receive considerable noise from nearby industrial operations and that the BUILDINGS may not be suitable for people sensitive to noise."

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This method of notification would be available to Burnaby for use in instances where the City leases land that is close to industry, for residential development purposes.

- 2.2 Staff have also enquired whether it is possible to register a notice in the form of a restrictive covenant on the title to lands it sells or leases for residential purposes, such that prospective purchasers would be informed prior to completing their purchase.

The Legal Department has advised that the Land Title Act (copy **attached**) would not permit registration of a covenant containing a warning or acknowledgement of potential noise as this matter does not fall within any of the categories set out in subsection 215 (1)(a) - (d). As a result it is not possible to rely on the use of a Section 215 covenant for this purpose.

- 2.3 It is our understanding that Council is interested in exploring ways by which purchasers of residential property that may be affected by nearby industrial uses are informed of their presence prior to a decision to purchase. In this regard, the following mechanisms are available:

- 2.3.1 In the case of lands owned by the City that are intended to be leased or sold:

- a) Lease - an effective method of notification is available for the long term through inclusion of an "Acknowledgement" clause in the lease agreement.
- b) Sale - a voluntary statement can be provided in the bid package stating that *"The purchaser should be aware of the fact the lands may be impacted by noise and/or traffic from nearby industrial operations and that they may not be suitable for people sensitive to these factors."*

- 2.3.2 In all cases where properties are to be rezoned to CD Comprehensive Development:

In situations where comprehensive development guidelines are to be incorporated into a rezoning bylaw, it is considered valid as a condition of zoning to require the owner/developer to ensure that prospective purchasers and/or tenants are notified in writing of any potential noise factor. The difficulty with this alternative is with enforcing any follow up situations arising from subsequent transactions which may result from future sales or rentals in which notification is not given.

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2.4 As outlined above, there are a number of options available to Council to put purchasers of residential property on notice with reference to the presence of industrial uses in the immediate area. In this regard, the City has recently undertaken the servicing of single family residential lots in the 7100 block of Eleventh Avenue. Those properties are situated on the opposite side of the road from an industrial warehouse/distribution facility. At the time they are to be offered for sale, it is recommended that the solicitor include the proposed notification statement in the bid packages.

3.0 CONCLUSIONS

It is staffs' view that the most effective method of notification available for the long term is in situations where City lands are leased for residential purposes and an Acknowledgement clause is included in the lease agreement.

For existing or proposed lots, initial notification can be provided voluntarily (as in the case of City lots proposed for sale) or required in situations where Council can establish conditions under the Comprehensive Development zoning provisions.

It is not considered practical to assume that this notification will continue to be given in subsequent transactions in the absence of the ability to register a covenant against the properties.

Notification and/or acknowledgement cannot be required through the registration of a covenant under the Land Title Act.



D.G. Stenson, Director
PLANNING AND BUILDING

PB/jp/gl

Attachment

cc: Director Administrative & Community Services
City Solicitor

Registration of covenant as to use and alienation

- 215.** (1) A covenant, whether of a negative or positive nature,
- (a) in respect of
 - (i) the use of land; or
 - (ii) the use of a building on or to be erected on land;
 - (b) that land is or is not to be built on;
 - (c) that land is not to be subdivided, or if subdivision is permitted by the covenant, is not to be subdivided except in accordance with the covenant; or
 - (d) that several parcels of land designated in the covenant and registered under one or more indefeasible titles are not to be sold or transferred separately in favour of the Crown or a Crown corporation or agency or of a municipality or a regional district, in this section referred to as the "covenantee", may be registered as a charge against the title to that land and is enforceable against the covenantor and his successors in title, even if the covenant is not annexed to land owned by the covenantee.
- (2) A covenant registrable under subsection (1) may include, as an integral part,
- (a) an indemnity of the covenantee against any matter agreed to by the covenantor and covenantee and provision for the just and equitable apportionment of the obligations under the covenant as between the owners of the land affected; and
 - (b) a rent charge charging the land affected and payable by the covenantor and his successors in title.
- (3) Where an instrument contains a covenant registrable under this section, the covenant is binding on the covenantee and his successors in title, notwithstanding that the instrument or other disposition has not been signed by the covenantee.
- (4) No person who enters into a covenant under this section is liable for a breach of the covenant occurring after he has ceased to be the owner of the land.
- (5) A charge registered under subsection (1) may be
- (a) modified by the holder of the charge and the owner of the land charged; or
 - (b) discharged by the holder of the charge
- by an agreement or instrument in writing the execution of which is proved in accordance with this Act.
- (6) The registration of a covenant under subsection (1) is not a determination by the registrar of its enforceability.

1978-25-215; 1982-60-58, proclaimed effective August 1, 1983.