

ITEM	6
MANAGER'S REPORT NO.	8
COUNCIL MEETING	95/02/20

TO: CITY MANAGER

February 13, 1995

FROM: DIRECTOR PLANNING & BUILDING

OUR FILE: 02.120.3

**SUBJECT: DELEGATION: MR. V. HURTUBISE
REGARDING CONSTRUCTION OF GREENHOUSES ON ROYAL OAK AVENUE
(BAGH ENTERPRISES LTD.)**

PURPOSE: To provide Council with additional information with respect to placement of fill to facilitate the construction of greenhouses on lands in the Agricultural Land Reserve.

RECOMMENDATIONS:

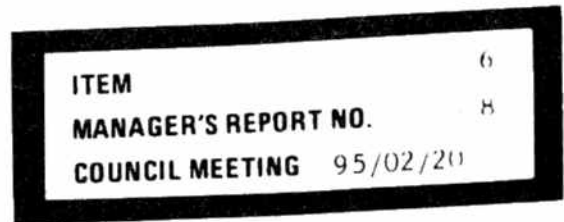
1. **THAT** Council rescind its conditional approval for the placement of fill materials on 8678 and 8708 Royal Oak Avenue.
2. **THAT** a copy of this report be forwarded to:

Mr. Kirk Miller
Chair and General Manager
Provincial Agricultural Land Commission
133 - 4940 Canada Way
Burnaby, B.C. V5G 4K6

REPORT

1.0 BACKGROUND

On February 06, 1995 Council received a delegation from Mr. V. Hurtubise regarding the proposed construction of greenhouses on lands which are in the Agricultural Land Reserve (Figure 1 **attached**). This proposal is directly linked to an application under the Soil Conservation Act to excavate peat soils and place fill on the property. In addition to receiving the delegation, Council received the 1995 February 06 City Manager's Report No. 04, Item 01 providing information on the foregoing.



2.0 EXISTING SITUATION

As a result of Council's consideration of the delegation, staff was requested to report on a number of items as follows:

2.1 Requirement to Obtain a Permit for Construction of Greenhouses

Mr. Hurtubise contended that the Soil Conservation Act (SCA) permits the construction of greenhouses without a permit and that staff had failed to advise him of this. In this regard, Section 2(1)(d)(iv) of B.C. Regulation 603/77 (Soil Conservation Act Permit Regulation) states that a permit is not required where the removal of soil or placement of fill is associated with or involves the construction and maintenance of a farm building or structure on an area of land 0.2 ha or less per 16 ha.

The Commission advised the property owner and Mr. Hurtubise of its position regarding the above-noted section in a letter dated June 28, 1994. This section is very specific in the amount of fill that can be placed on a parcel in the Agricultural Land Reserve (ALR) pursuant to Section 2(1)(d)(iv). In the subject case, the proposal was to place fill on approximately 1.9 ha of the 3.0 ha parcel. This clearly exceeds the provisions of the Act and therefore, the owner and Mr. Hurtubise were advised that an application pursuant to the Soil Conservation Act was necessary.

Section 2(1)(d)(vi) of the SCA states that a permit is not required where the removal of soil or placement of fill is associated with or involves the operations of a florist, nurseryman, turf farmer or greenhouse operator where the amount of soil removed or fill placed is reasonably necessary for the growth and maintenance of plants grown. This section pertains to the importation and removal of soil material for use in preparing and supplementing the growing medium for the stated activities. This section does not pertain to the placement of fill or soil extraction for the construction of buildings associated with these activities.

It is also important to note that, in order to qualify for exemptions under the foregoing sections, the activity must be done in accordance with good agricultural practice as required by Section 2(2)(a) of B.C. Regulation 603/77.

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2.2 Placement of Fill Materials for Construction of Single Family Dwelling

As can be seen on Figure 1, conditional approval was given to fill the front 70 metre portion of 8678 Royal Oak Avenue which is situated immediately to the north of the subject property. Mr. Hurtubise is also the contractor for this property. The ALC had no objections to the placement of fill on the western 70 metres of this property as this is consistent with Section 2(1)(d)(vi) of B.C. Regulations 603/77. This section states that a permit is not required where the removal of soil or placement of fill is associated with or involves the construction of one residential dwelling unit and accessory buildings and structures per land registry parcel, including auxillary services and utilities and reasonable landscaping requirements.

However, practically all of the 8678 Royal Oak Avenue property was filled and the ALC feels that the extent of filling is inconsistent with the foregoing section.

2.3 Notification to Mr. Hurtubise and/or Property Owners

In his delegation Mr. Hurtubise stated that he had not received letters regarding notification to stop the filling operation. Council requested staff to advise as to what letters had been sent or notification given. This information is as follows:

1994 June 06

- Staff advised Mr. Hurtubise's associate (Mr. Mathews) of the need to obtain a permit, outlined the process, and provided the application form. Reference was made to the need to provide a report on how the operation was to be conducted.

1994 June 23

- In response to an enquiry regarding landfill activity, staff from the Engineering and Planning and Building Departments met Mr. Hurtubise on-site and reiterated the need to obtain a permit. Staff advised that all landfill activity must cease.

1994 June 27

- Staff met with the owner of 8708 Royal Oak Avenue and Mr. Hurtubise and received an application from the property owner designating Mr. Hurtubise's company as the authorized agent/operator. At that time staff received a preliminary, hand-written report from HBT AGRA, Geotechnical Engineers.

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1994 June 28

- In a telephone conversation, staff reviewed certain of the requirements with Mr. Mathews and requested additional information.
- The Land Commission forwarded a letter to Mr. Hurtubise advising of its requirements for a permit, concluding with the statement that, in the meantime, no further fill is to be brought onto the properties.

1994 July 15

- Staff met with Mr. Mathews and reviewed information submitted to date. Advised that it was insufficient, Mr. Mathews agreed to provide additional information.
- Staff forwarded a detailed letter to Mr. Hurtubise providing a chronology of events to that date. This letter also confirmed what further information was required to submit a report for Council's consideration.

1994 August 10

- Staff forwarded a letter to Mr. Hurtubise advising of Council's July 25 conditional approval. Additional information which was required to advance this application was detailed. Reference was made to the fact that the application also requires the ALC's approval. The owner of 8708 Royal Oak Avenue was sent a copy.

1994 August 17

- ALC forwarded a letter to the owner of the subject property (cc: Mr. Hurtubise) advising of concerns it had with application and refusing it. The Commission advised that it may reconsider application if certain additional information is provided. If it was decided to abandon the proposal, the owner was requested to advise as to how he intended to rehabilitate the excavated and filled areas.

1994 September 06

- City staff met the owner of 8678 Royal Oak Avenue on-site in the presence of Mr. Hurtubise. The owner was given a copy of a September 1st letter advising that City staff had observed fill being placed on-site on August 31. This letter outlined the provisions of the Act regarding penalties for filling without a permit. As the owner of the property, this letter advised that she must take appropriate action to ensure that no landfill or soil removal activities take place without a permit. A copy of this letter was mailed to Mr. Hurtubise.
- Staff left a similar letter at the house on the 8708 Royal Oak Avenue property (cc: Mr. Hurtubise).

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1994 September 28

- A letter was forwarded to the owner of the subject property in response to an application to the Building Division to construct greenhouses. It reiterated the fact that a landfill permit was required and advised that, until such time as the ALC granted its approval to place fill, the City was not in a position to advance the application for a building permit.

1994 November 02

- Planning and Parks staff observed landfill being placed on the properties. The person on-site directing the operation (Mr. Alan Young) identified himself as being an employee of Mr. Hurtubise. In response to a question as to whether or not they had been hauling steady, he replied yes, for over 3 weeks now. He said there were 60 to 70 trucks on an average day.

1994 November 04

- Staff returned and found another of Mr. Hurtubise's employees on-site (Mr. Todd Houle). A letter was hand delivered to Mr. Houle ordering Mr. Hurtubise to stop placing fill on the properties. A copy of this letter was left at the house at 8708 Royal Oak Avenue.
- Staff also hand delivered a copy of this letter to the owner of 8678 Royal Oak Avenue.

1994 November 29

- A letter was sent to the owner of 8678 Royal Oak Avenue (cc: Mr. Hurtubise) regarding the illegal fill placement and requesting advice as to the owner's intentions for the property.

1994 December 21

- A double registered letter was sent from the ALC to the owners of 8678 and 8708 Royal Oak Avenue (cc's to Mr. Hurtubise) advising that the Commission has concluded that both properties must be rehabilitated. The ALC has received the "Acknowledgement of Receipt of a Registered Item" card for both of the private properties. However, the copies forwarded to Mr. Hurtubise, at the address identified on the application form, was returned unclaimed on 1995 February 01. On February 02 the letter was resent to Mr. Hurtubise by double registered mail.

The only letter which was returned by Canada Post was the ALC's December 21 letter.

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It should be noted that, in his delegation to Council, Mr. Hurtubise specifically denied receiving letters advising him to not fill the property. With respect to 60 to 70 trucks hauling to the site for over 3 weeks, Mr. Hurtubise stated he would have to disagree because that wasn't him.

Staff has no doubt whatsoever that Mr. Hurtubise has fully understood the need to obtain a permit since staff's first discussion directly with him on 1994 June 23. This information has consistently been given to him and/or his employees verbally and in writing as noted herein. Moreover, it is clear that, contrary to the advice given to Council by Mr. Hurtubise, filling has continued to take place under his auspices without benefit of a permit.

2.4 Agricultural Viability

Mr. Hurtubise stated that the land is not viable to do anything with in its present condition.

A 1977 report prepared by the Resource Analysis Branch of the Ministry of Environment, Lands and Parks found the soils on the property to be in the Lumbum series which is classified as a Typic Mesisol; fibric phase. The present soil capability is Class 04W. The improved rating is Class 03W. The soils report states that, with adequate drainage, mesic soils are highly suited for agricultural crops. These soils are limited primarily to annual crops because of the high water table during the winter, spring and early summer months. Crops such as lettuce, onions, carrots, radishes and some cole crops do very well on these soils. Also, perennial berry crops do very well on these soils.

The soils on the subject property are classified the same as those found on the highly productive market garden farms in the same vicinity. The fact that portions of the subject property are currently under cultivation for blueberries is further evidence of the agricultural capability of the property.

As a matter of interest, the subject property was previously owned by the Province and leased under the auspices of the Agricultural Land Commission for farm use.

2.5 Source of Fill Materials

Mr. Hurtubise advised that the fill was coming from the Forest Lawn Cemetery property on Royal Oak Avenue and from the development of the Oakalla lands. The extent of the fill is shown on Figure 2 **attached**.

While fill materials likely did come from those sites, the volumes involved lead staff to believe that materials also came from other sources. In fact, on November 04, 1994 when staff was at the site turning trucks away, one of the drivers advised that he had brought the fill from a construction project at Horseshoe Bay in West Vancouver.

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One of the Councillors noted that he had observed a lot of mud on Royal Oak Avenue on February 6th and that it appeared to have been coming from the subject property. Mr. Hurtubise replied that it wasn't from his landfill operation, noting that this is where he stores his machinery.

Quite independent of the Councillor's observation, staff received a report from an Inspector in the Engineering Department on February 7th advising that he found that the chain that had been across the entrance driveway was down, the excavating equipment which was stationary had been moved, and the road leading up to Marine Drive was badly soiled.

While there is no conclusive evidence that landfilling took place, it is clear that a significant amount of activity took place on the property over the weekend and on Monday. With regard to the storage of equipment, it should be noted that it is a non-farm use and therefore, requires the approval of the ALC under the terms of the Agricultural Land Commission Act.

2.6 Adherence to Consulting Engineer's Recommendations

Mr. Hurtubise stated that he was following HBT AGRA Ltd.'s specifications for the site, noting that if you want something to stand up, you have to put a foundation in.

HBT's report does provide specific directions on the excavation and fill placement and monitoring procedures to be followed to ensure that the operation respects the fragile soils in this area and to control drainage aspects, etc. The report further notes that the guidelines were to be expanded upon following completion of further planned geotechnical exploration.

It is with the foregoing in mind that staff advised that it was proposed that the applicant be required to provide weekly certification reports to the Geotechnical Engineer ensuring that all fill materials comply with the Ministry of Environment's Level B criteria or better for residential and/or agricultural lands. The Engineer would then be required to submit monthly letters of assurance attesting to the fact that the applicant is, or is not, adhering to the terms of the permit.

The foregoing was not done. Staff did not receive the further geotechnical information. Moreover, at a November 14, 1994 site meeting between Mr. Hurtubise, ALC staff, and an ALC Commissioner, it was noted that there appeared to be no order to the filling operation and consequently, much of the peat soils which had been removed and stockpiled were now contaminated with outside fill material.

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HBT's report notes that the layout of the greenhouses and access roadways has not been determined and therefore, the development geotechnical guidelines assume that greenhouses may be positioned anywhere on-site. It does refer to the proposal whereby the perimeter walls are to be constructed on a concrete foundation. Notwithstanding this alternative, the applicant and Mr. Hurtubise have failed to provide adequate information to the ALC, including the type of greenhouses actually proposed. Consequently, after examining all of the information, the Commission has refused the application.

In so doing, the Commission has stressed that it does not object to the development of greenhouses since these structures are legitimate farm buildings. Its consideration has, therefore, been restricted to the fill proposal.

The question was raised as to why landfill was required for the construction of greenhouses. It was noted that others seem to have constructed greenhouses without fill. Mr. Hurtubise advised that these structures were on land that had been filled for some time and that the greenhouses are temporary.

In this regard, there are numerous greenhouses that have been constructed on lands in the general area without benefit of landfill. As noted previously, the applicant has failed to provide adequate information, including the type of greenhouses actually proposed.

2.7 Bonding Requirements

Mr. Hurtubise stated that he felt that the requirement to provide a \$70,000 bond was not fair or practical.

Staff have discussed this requirement with the property owner and Mr. Hurtubise previously. Section 6(1)(c) of B.C. Regulation 603/77 states that an applicant for a permit shall sign as part of the application, an undertaking, to pay for any damage to persons or property that, in the opinion of the local authority and the Commission, was caused by the applicant.

ALC staff have advised that a bond in the amount of \$15,000 per acre is appropriate.

The applicant was advised that a Bank Letter of Credit would suffice. Moreover, the applicant and Mr. Hurtubise were advised that, providing proper performance was given and certified as being in accordance with all terms, conditions and requirements of the Soil Conservation Act, the regulations thereto, and the terms to be established in the permit; the Letter of Credit would not be drawn upon and it would be returned.

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2.8 Landfill at Colony Farm

Reference was made by Mr. Hurtubise to landfill being allowed at the Colony Farm site in Coquitlam, making the land completely useless for agriculture.

At the Colony Farm site, land is being prepared with the approval of ALC for the reconstruction of the Forensic Unit. Once the new facility is operational, the existing buildings will be demolished and the site rehabilitated for agricultural use.

3.0 REHABILITATION OF PROPERTIES

The Agricultural Land Commission has, by resolution, determined that both the 8678 and 8708 Royal Oak Avenue properties must be rehabilitated. Notice to this effect has been given to both owners, and copies have been directed to Mr. Hurtubise, as he is the contractor who undertook the filling operation without the necessary approvals.

To this end, the Commission has requested the City to be the lead agency in dealing with the enforcement and rehabilitation pursuant to its responsibilities under the Soil Conservation Act. The Commission's staff agrologist will conduct a site inspection of the properties to determine the reclamation specifications. Once we are in receipt of this information, we will contact both property owners and their agent, Mr. Hurtubise, to arrange for the required works to be completed.

4.0 RECONSIDERATION OF LANDFILL PERMIT

As stated above, a remediation plan will be formulated by ALC staff. If an agreement is obtained to proceed with rehabilitation based on this plan and these works are, in fact, completed and approved, it is conceivable that a further application could be received and approved.

Both the ALC and City staff continue to be willing to review all proposals and, where appropriate, request advice from specialists in the Ministry of Agriculture, Fisheries and Food regarding greenhouse construction. The key in this regard will revolve around a demonstrated effort by the owners and their contractor to adhere to the requirements of the Soil Conservation and Agricultural Land Commission Acts. City bylaw regulations will also need to be met.

5.0 SUMMARY

The construction of greenhouses on the Royal Oak Avenue properties is not an issue, as they are considered to be legitimate farm buildings. What is an issue is the type of greenhouses which are to be built and the amount of fill, if any, which is actually required for their construction.

Planning & Building

Re: Delegation: Mr. V. Hurtubise regarding Construction of
Greenhouses on Royal Oak Avenue (Bagh Enterprises Ltd.)

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To date the City and the Provincial Agricultural Land Commission have not received sufficient information to issue landfill permits. Repeated requests for such information have not been satisfied and the owner's contractor has continued to fill both properties in direct contravention to verbal and written instructions from City and ALC staff.

At this juncture it is staff's recommendation that there is no alternative other than to rescind Council's conditional approval for the placement of fill materials on 8678 and 8708 Royal Oak Avenue. Once we have received the Agricultural Land Commission's recommendations regarding rehabilitation of these lands, we will require these works to be undertaken.

Both ALC and City staff continue to be willing to review alternatives for the construction of greenhouses with the property owners and/or their agent which could result in specific recommendations being made to the City Council and to the Provincial Agricultural Land Commission.



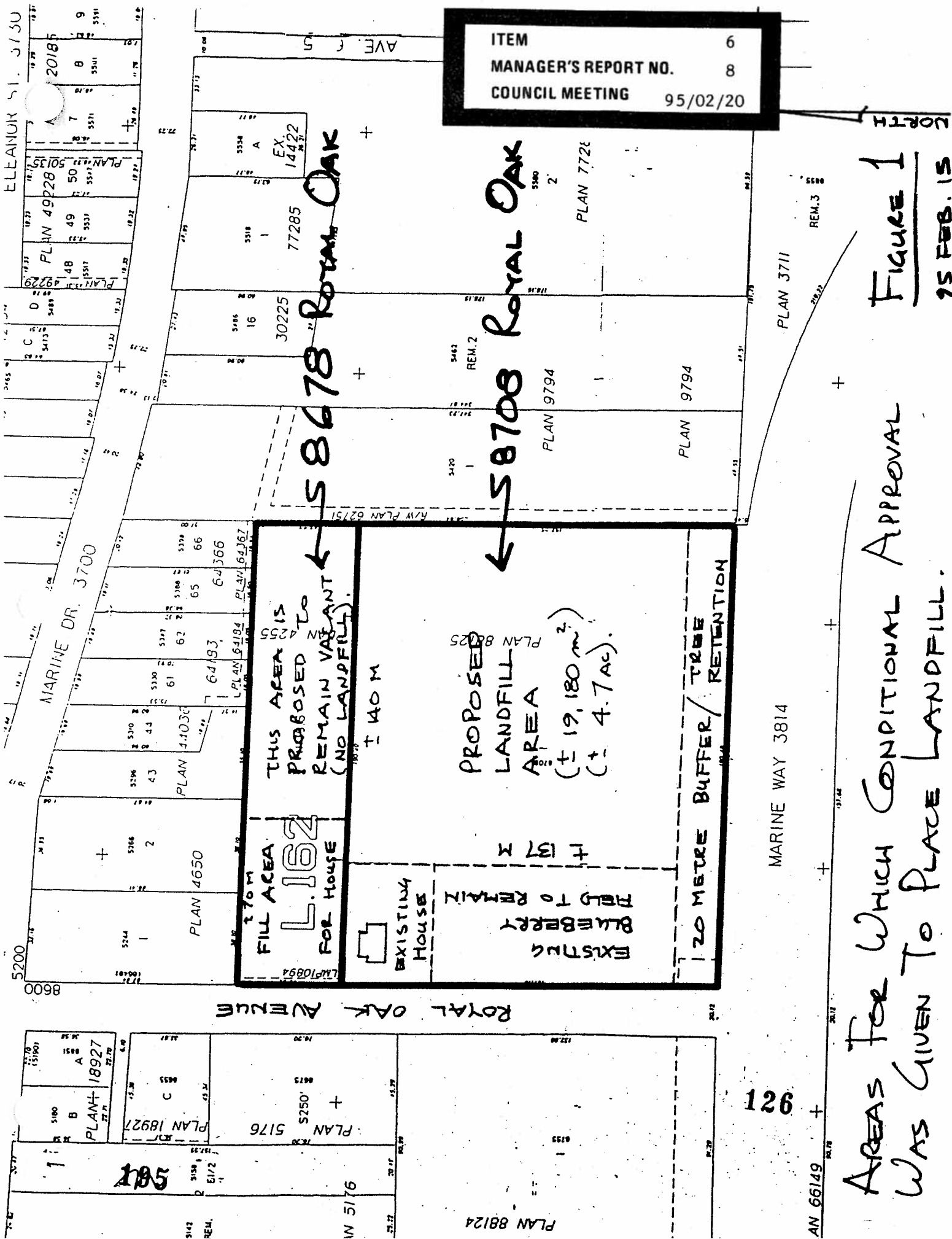
D.G. Stenson, Director
PLANNING & BUILDING

PB/jp

Attachments (2)

cc: Director Engineering
City Solicitor

c:\wp52\pete\hurtubis.rpt



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THIS AREA IS PROPOSED TO REMAIN VALEANT (NO LANDFILL).
 ± 140 M
 PROPOSED LANDFILL AREA
 (± 19,180 m²)
 (± 4.7 ac.)
 120 METRE BUFFER / TREE RETENTION

AREAS FOR WHICH CONDITIONAL APPROVAL WAS GIVEN TO PLACE LANDFILL.

Figure 1
 95 FEB. 15

ELEANOR ST. 3/30
 2018

MARINE DR. 3700

5200
 8600

ROYAL OAK AVENUE

MARINE WAY 3814

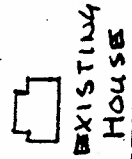
AN 66149

921

PLAN 88124

584

L102
 FOR HOUSE



EXISTING
 BLACKBERRY
 TREES TO REMAIN

120 METRE BUFFER / TREE RETENTION

THIS AREA IS PROPOSED TO REMAIN VALEANT (NO LANDFILL).
 ± 140 M

PROPOSED LANDFILL AREA
 (± 19,180 m²)
 (± 4.7 ac.)

120 METRE BUFFER / TREE RETENTION

PLAN 49228
 PLAN 49229
 PLAN 49230

PLAN 30225
 PLAN 30226
 PLAN 30227

PLAN 4650
 PLAN 4651
 PLAN 4652

PLAN 44036
 PLAN 44037
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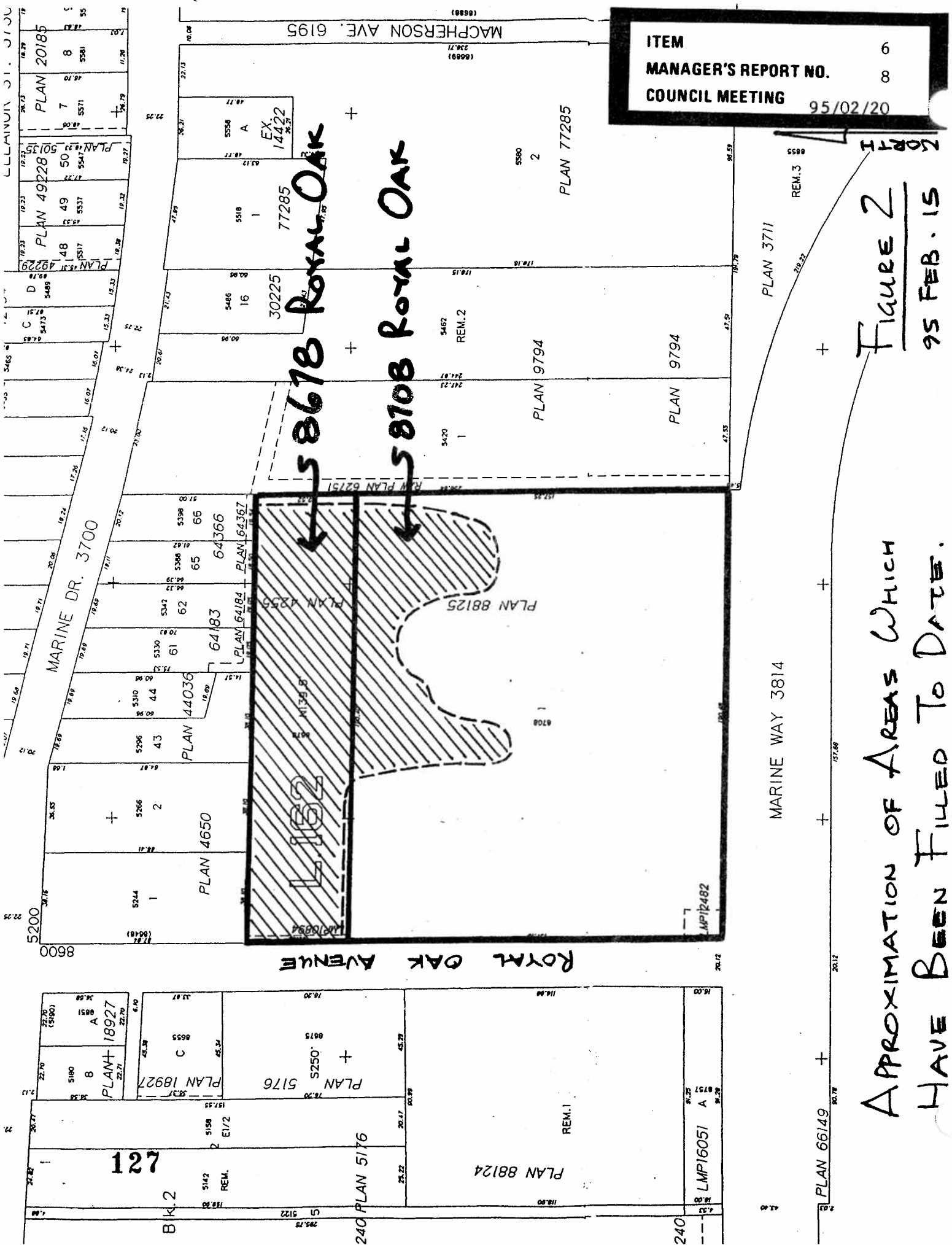
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Figure 2
 95 FEB. 15

APPROXIMATION OF AREAS WHICH
 HAVE BEEN FILLED TO DATE.

PLAN 20185	7	5571	48.08	196.79	11.26	55
PLAN 20185	8	5581	48.70	11.26	55	
PLAN 49228	50	5542	47.73	19.37		
PLAN 49228	49	5537	47.32	19.32		
PLAN 49228	48	5517	47.32	18.28		

C	5473	87.31	15.33	22.25		
D	5493	87.31	15.33	22.25		

PLAN 44036	43	5296	18.09	64.81		
PLAN 44036	44	5310	18.09	64.81		
PLAN 44036	61	5330	17.53	75.53		
PLAN 44036	62	5342	17.53	75.53		
PLAN 44036	65	5386	17.53	75.53		
PLAN 44036	66	5398	17.53	75.53		

PLAN 18927	8	5190	22.71	22.70	22.70	22.70	(5190)
PLAN 18927	A	8551	22.71	22.70	22.70	22.70	36.69
PLAN 18927	C	8655	45.34	45.34	33.87	33.87	6.40
PLAN 18927	E1/2	5158	157.53	157.53	157.53	157.53	157.53

PLAN 5176	5	5122	295.79	25.52	20.17	50.99	45.29
PLAN 5176	S	5122	295.79	25.52	20.17	50.99	45.29
PLAN 5176	REM.1						
PLAN 5176	8	5122	295.79	25.52	20.17	50.99	45.29
PLAN 5176	A	8151	94.25	94.25	94.25	94.25	16.00

PLAN 4650	1	5244	18.78	38.53	22.35		
PLAN 4650	2	5266	18.78	38.53	22.35		
PLAN 4650	64183						
PLAN 4650	64366						
PLAN 4650	64184						

PLAN 4255	1	5178	157.53	157.53	157.53	157.53	157.53
PLAN 4255	2	5178	157.53	157.53	157.53	157.53	157.53

PLAN 77285	1	5518	63.12	48.77	48.77	48.77	48.77
PLAN 77285	A	5558	48.77	48.77	48.77	48.77	48.77
PLAN 77285	EX	14422	48.77	48.77	48.77	48.77	48.77
PLAN 77285	2	5580	176.15	176.15	176.15	176.15	176.15

PLAN 9794	1	5420	247.23	247.87	247.87	247.87	247.87
PLAN 9794	REM.2						
PLAN 9794	2	5462	47.55	47.55	47.55	47.55	47.55

PLAN 3711	1	5599	20.22	20.22	20.22	20.22	20.22
PLAN 3711	REM.3						

PLAN 66149	1	8151	94.25	94.25	94.25	94.25	16.00
PLAN 66149	A	8151	94.25	94.25	94.25	94.25	16.00

MARINE DR. 3700

MARINE WAY 3814

ROYAL OAK AVENUE

MACPHERSON AVE. 6195

PLAN 77285

PLAN 9794

PLAN 3711

PLAN 66149

PLAN 18927

PLAN 5176

PLAN 4650

PLAN 44036

PLAN 88125

PLAN 88124

PLAN 16051

PLAN 4255

PLAN 62751

8678 Royal Oak

8108 Royal Oak

L162

NORTH