

ITEM	02
MANAGER'S REPORT #	18
COUNCIL MEETING	96/06/24

TO: CITY MANAGER 1996 June 18

FROM: APPROVING OFFICER

SUBJECT: SUBDIVISION REFERENCE #4/94  
6599 and 6609 Russell Avenue

PURPOSE: To provide Council with information on the subjects addressed by a delegation at the 1996 June 10 meeting.

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**RECOMMENDATION:**

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

*Mr. San Khanna  
2651 Point Grey Road  
Vancouver, B.C. V6K 1A4*

**REPORT**

At the meeting on June 10, Council received a delegation from Mr. Khanna and his builder, Mr. Pritam Saggi, which requested that the City make funds available to repair a section of stone wall on one of their properties on Russell Avenue, or alternatively remove the Section 215 Covenant from the title to the property. Staff were requested to prepare a report on the matters addressed by the delegation.

**1.0 Background:**

An application for subdivision of the property formerly known as 6611 Russell Avenue was received in early 1994. At an early stage in the review process staff discussed with the applicant the possibility of retaining the c. 1927 Craftsman-style house on the property (listed on the Preliminary Heritage Inventory List). On 1994 May 04, Mr. Khanna (as a part owner) advised that he and his partner had decided against retaining the house as a heritage house. Accordingly, on 1994 May 12 the Approving Officer issued Tentative Approval of the subdivision subject to conditions which did not include retention of the dwelling but did require tree protection covenants for certain trees on the property and a covenant to protect an existing granite wall on the property, extending across a portion of the Russell Avenue frontage and dating from the original construction of the residence in 1927.

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Mr. Khanna and his partner had extensive discussions with staff on numerous occasions about the tree retention and preservation of the stone wall. Although the wall was not built on a concrete foundation, it had stood for over 65 years and was in generally good condition apart from the lack of some capstones at gateposts, and some damage at the north end that was apparently sustained during construction of a new dwelling on the lot to the north, built by Mr. Saggu. The City agreed in principle to Mr. Saggu's proposal to permit the wall to be taken down temporarily if needed so that services could be installed, but that this would be subject to a bond in the form of a Letter of Credit.

Mr. Khanna expressed a desire to be free to demolish the wall in order to place a foundation under it, although staff advised him that in the City's view this was unnecessary. By letter dated 1994 September 20, Mr. Khanna confirmed that he proposed to rebuild the stone wall with a foundation, and that the wall front would be a reproduction of the original wall, using the existing stones as far as possible, and that the top of the wall would be constructed using formed cement (in place of the natural stone treatment that exists). While recognizing that this, to some extent, would compromise the heritage authenticity of the wall, the Approving Officer consented to this approach and a specific clause was introduced into the Section 215 Covenant by our Solicitor consenting to dismantling and reconstruction if such were desired by the Grantor (the owners). A bond in the form of a Letter of Credit in the amount of \$9,400.00 was deposited with the City to guarantee performance if such work was undertaken.

Additionally, a covenant for protection of certain identified trees on the property was prepared and, following a severe limbing that disfigured and endangered the health of the trees in 1994 October, a Letter of Credit was obtained to provide for replacement of the trees if necessary, for a period of three years. On two previous occasions, the Approving Officer has consented to an earlier review date for the release of the Letter of Credit.

The owners fulfilled all the conditions of subdivision including entering into the relevant covenants under Section 215 of the Land Title Act, and on 1995 January 21 the subdivision was approved. The subdivision plan and all associated documents were deposited in the Land Title Office on 1995 February 08 and the covenants are now registered on title.

The subdivision having been approved, building permits were issued for two new single-family dwellings on the newly created lots. Building inspections took place and Occupancy Permits were issued for both dwellings.

The granite wall on the Russell Avenue frontage, however, has not been repaired to date - neither the previously damaged northerly portion nor a segment approximately 10 feet in length that was removed by the contractor in the course of servicing the northerly lot. It is this latter segment that Mr. Khanna is now disputing.

**2.0 Servicing of 6599 Russell Avenue:**

Mr. Khanna's contention is that the City should bear responsibility for the cost of repair of the covenanted wall as its partial demolition resulted from the provision of underground services to the new lot, passing beneath the wall.

Where a new sewer service is required, the City will provide connection to the property line, thereby allowing the owner's contractor to tie to this connection and extend the service on private property to the building. At the time City crews came on site, the builder had previously excavated a sewer trench only to the back of the stone wall on private property. It was therefore necessary for the City to request removal of a portion of wall in order to safely install the sewer connection under the wall. (Photographs available on request).

The wall in question is on private property, and the City does not underwrite the costs of protecting improvements or effecting repairs on private lands. As is the case wherever servicing of lots occurs, the City takes responsibility for the connections on the public street or lane, and the landowner is responsible for protection or restoration of improvements on the private land. Moreover, as the following excerpt from the text of the registered Section 215 Covenant indicates, the owner (the Grantor) has agreed to repair, maintain and protect the original or reconstructed stone wall on the lots:

*"....WHEREAS a stone wall on the easterly side of the said Lots 1 and 2 has been identified as a neighbourhood amenity with heritage value and, as a condition of the subdivision creating the said Lots 1 and 2, the stone wall is required to be protected;....."*

*"....the Grantor covenants and agrees with the Grantee that the said Lots 1 and 2 shall not be used so as to disturb, in any way contrary to this Agreement, the stone wall contained in that part of the said Lot 1....or that part of the said Lot 2..... Notwithstanding the foregoing, it is agreed between the parties that the Grantor may dismantle the stone wall and if the wall is dismantled the Grantor covenants and agrees to reconstruct the wall using the existing stones so far as possible so as to reproduce the appearance of the wall before it was dismantled."*

The covenant was executed by Mr. Khanna and his partner and has been registered on title.

With reference to the tree protection bonding, Mr. Khanna has been informed that following an inspection by our Landscape Inspector, it has been concluded that the Approving Officer is prepared to provide for an early release of the balance of the Letter of Credit that was submitted in connection with the previous damage done to a beech, a fir, and a cedar tree on the lands.


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**3.0 Conclusion:**

The requirement to preserve the 1927 granite wall in connection with the subdivision of these lands was made known to the applicant for subdivision from the outset in the Letter of Tentative Approval, and through the course of discussions accommodations were made to respect the owners' desire to be free to demolish the wall, subject to suitable reconstruction. A covenant was executed by the owners and registered in the Land Title Office reflecting this condition, and the subdivision was approved on this basis. The purpose has been to protect the stone wall, identified as a neighbourhood amenity with heritage value, despite approval to subdivide the property on which the wall is situated. Consistent with the covenant, it is the owners' responsibility to repair, maintain and protect the wall, notwithstanding the owners' and builder's objections after completing the subdivision and house construction.

The Approving Officer confirms that the bonding that was obtained in connection with three trees previously damaged by agents for the subdivider will be released (months prior to the date originally intended).

It would be appropriate to send a copy of this report to the delegation.



D. G. Stenson  
APPROVING OFFICER

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cc: City Solicitor  
Director Engineering