

**TO:** CITY MANAGER

2003 APRIL 09

**FROM:** DIRECTOR PLANNING AND BUILDING

**SUBJECT: REQUEST FOR RELEASE OF AN EXISTING COVENANT  
APARTMENT BUILDING AT 5875 IMPERIAL STREET AND  
CHURCH PROPERTY AT 5855 IMPERIAL STREET**

**PURPOSE:** To seek authority to release a covenant pertaining to an apartment building that was originally developed by an adjacent church. (Rezoning Reference 56/89 and Rezoning Reference 13/96).

**RECOMMENDATION:**

- 1. **THAT** the City
  - a) release an existing covenant stipulating:
    - (i) that the ownership and use of the former seniors' activity centre in the apartment be held by the adjacent church or a non-profit group;
  - b) modify a parking easement that required parking spaces provided on the church property be reduced to eleven spaces for the use of the apartment building residents.

**REPORT**

**1.0 BACKGROUND:**

This property at 5875 Imperial Street is developed with a two storey 34 unit apartment building that was constructed in 1992 as part of Rezoning Application #56/89. The building was constructed as a seniors' condominium apartment on land that was formerly owned by the adjacent South Burnaby Pentacostal Assembly Church. (Refer to **attached** sketch). While this site is not situated in a designated apartment area, this development was supported as it was presented as an affordable seniors' development related to the church. The church, now known as the Central Christian Assembly, still owns a portion of the cellar and a portion of the main floor of the strata-titled apartment building, that were originally constructed as a seniors' activity centre. The cellar space is a large 5,300 square foot area that has been unused for some time (due to an on-going conflict between the strata council and the church owners). The church also owns and has converted part of the activity centre into what is now a residential unit on the main floor of the apartment building. This space was originally intended to be a seniors' activity centre that was to be operated by the adjacent church.

There is a covenant on the two properties that limits the use of the space to senior's uses and it is required that the space be owned by the church. Twenty-two parking spaces on the church lot were dedicated through easements, for users of the activity space and for residents of the apartment. In addition, the apartment building units are limited by second covenant to require that at least one of the residents be a minimum of 55 years of age. The City is party to the parking easements only to the extent that the easements cannot be changed or discharged without the consent of the City. The covenants are in favour of the City.

Over time, complications developed and the church was unable to pay their share of the common property maintenance fees for the large space they owned and the church itself changed leadership and name. The senior's centre in the basement of the apartment was closed by the church. In 1996, the two groups reached a preliminary agreement to divide the activity space to convert a portion of the church-owned space on the main floor of the building to another residential strata unit that would in turn be sold by the church to recover some of their costs owed to the strata council. In addition, the cellar would be turned over to the strata council. The City did rezone the site as part of Rezoning application #13/96 to add the unit and change the zoning from CD/P5 to CD/RM2.

The construction work was done and inspected, and the new unit created, but the resolution of all the legal issues between the two parties was never concluded until recent weeks.

## **2.0 CURRENT SITUATION:**

The City has now received letters from lawyers acting for the strata owners and for the current trustees of the church, indicating that their clients have now reached a mutual agreement about how to separate their respective interests. They wish to resubdivide the church strata lot and are now also requesting release of the covenant and modification of the parking easements. They are indicating that their agreement includes the division of the former church strata lot into a residential strata lot on the main floor (to remain in the name of the church until it is sold) and a large cellar strata lot that will be provided to the strata residents as a common property/recreational area as provided for in Rezoning Reference #12/96 .

Over the years, City staff have been supportive of efforts to resolve these issues and support measures to achieve a resolution to the dispute between the parties that is now in hand. The release of a second age-restrictive covenant applicable to the apartment building has also been requested by the lawyers for the strata council to facilitate sale of the church-owned unit. Since the location of the project, outside of a designated apartment area, was originally justified on the basis that it was housing for seniors, staff are hesitant to recommend release of the age-restrictive covenant that is applicable to all the residential units.

**3.0 ACTION REQUIRED:**

There is presently a covenant and easements on the properties that were provided to reflect the original objectives of the development. The covenant is no longer considered necessary due to the fact that the church has removed itself from on-going involvement with the apartment property and the parking arrangement is to be modified.

The covenant requires that the church own the former seniors' activity centre strata lot that straddled the cellar and main floor and also restricted the use of the space as "seniors' activity centre".

Easements require that the adjacent church lot provide parking spaces to meet part of the required parking for the apartment complex and for the church's facilities in the apartment building that are now proposed to be closed. The existing apartment building has forty-four spaces on site but requires fifty-five spaces under the terms of the Zoning Bylaw for the thirty-four units. It will, therefore, be necessary to have the church property continue to provide eleven existing spaces of their parking lot area by an easement for use by the apartment. (This is reduced from twenty-two spaces presently provided on the church property).

**4.0 CONCLUSIONS:**

Staff are recommending that an existing covenant be released in order to facilitate the agreement reached between the church and the strata owners following a long period of protracted negotiations between the parties. It is also proposed that the existing parking easement be modified to require that the church provide 11 parking spaces for use by the apartment building residents. Except for the parking, this will have the effect that the apartment building and the adjacent church will function as independent entities. Staff do not support the request to lift a second covenant limiting the minimum age (55 years) of the residents for the reason outlined in this report. The zoning of the site will remain CD/RM2, parking will be to bylaw standards and all construction and works to-date have been inspected and approved by the Building Department.

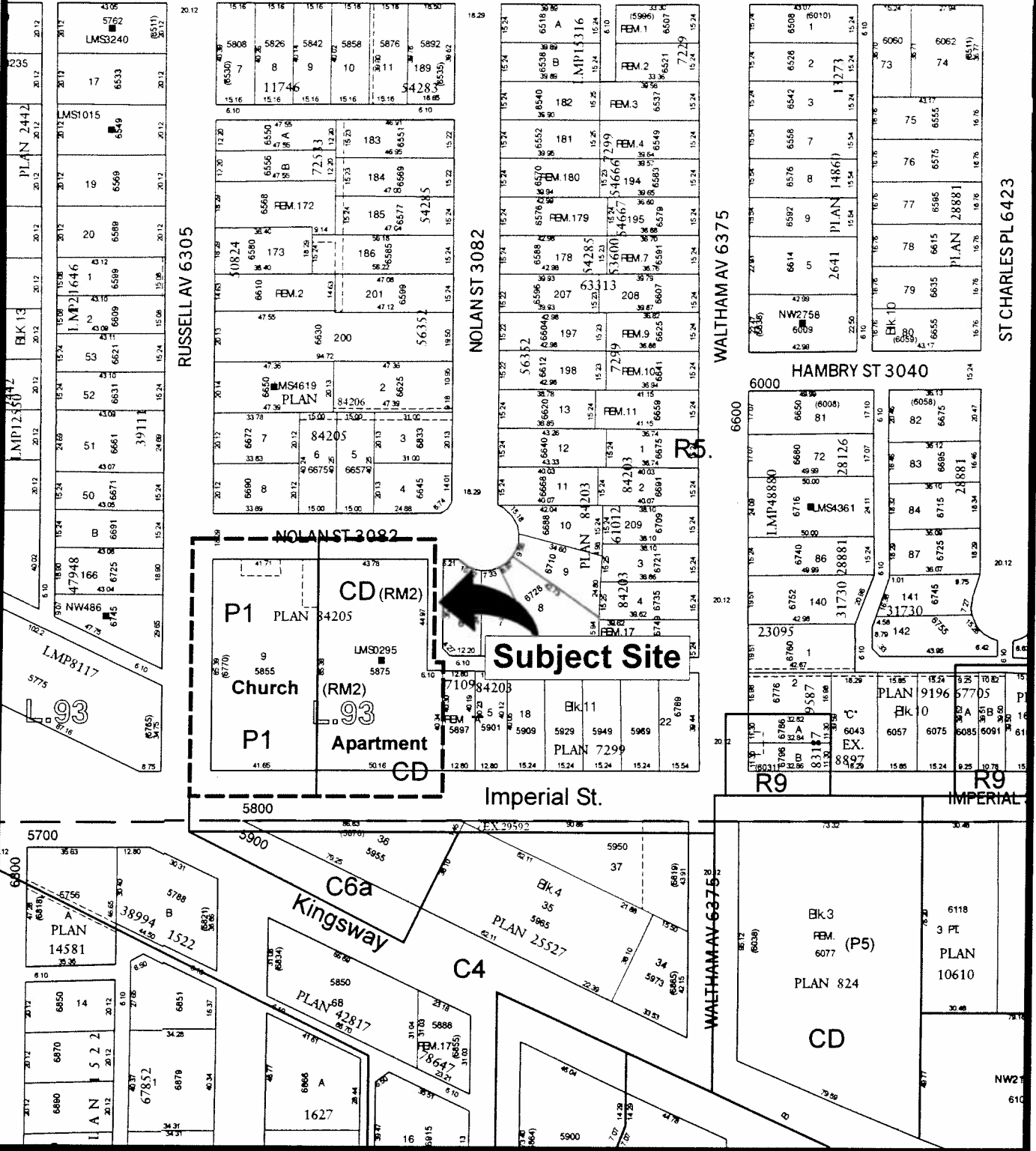


J. S. Belhouse  
Director Planning and Building

BR/gk  
Attach

cc. City Solicitor  
Chief Building Inspector

ANT ST 2990



Date: 2003 April

Scale:

Drawn By:



5875 Imperial St. RZ#13-96

Sketch #1