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**TO:** CITY MANAGER **DATE:** 2006 March 02  
**FROM:** DIRECTOR ENGINEERING **FILE:** Pender Street  
**SUBJECT:** TOWNHOUSE DEVELOPMENT, 3712 PENDER STREET  
**PURPOSE:** To provide Council background information on a request for servicing cost from the developer of 3712 Pender St.

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**RECOMMENDATION :**

1. **THAT** the City not reimburse the developer of 3712 Pender St for the required works and services in the lane adjacent to the development, and
2. **THAT** a copy of this report be sent to the Mr. Tony Turco, Pender Lane Properties, 100 – 1627 Ingleton Ave, Burnaby BC, V5C 4L8.

**REPORT**

Council in its correspondence package recently received a letter from Mr. Denis Turco (Attachment #1), the developer of a 12 unit townhouse complex on Pender Street, expressing his concern with an issue on which he would like redress. This report provides background information relating to the issue.

The revised Hastings Street Area Plan was adopted by Council in June 1991. It designated and pre-zoned several sites along Albert Street and Pender Street for redevelopment with two and a half storey townhouses, to an RM6 designation (Rezoning Reference #58/94), in order to permit the development of townhouses as well as the single and two family dwellings already permitted under the R5 Residential District.

Mr. Denis Turco approached the Planning Department in September 2003, inquiring about developing townhouses on four such properties, now consolidated as 3712 Pender Street (Attachment #2). Staff informed him about typical requirements of the existing RM6 zoning, the need to consolidate the properties into one parcel and, as is usual, the expectation of a high quality of design for the proposed buildings. An application for Preliminary Plan Approval (PPA#03-363) for 12 townhouse units was received by the Planning Department on 2003 December 04. The developer consolidated the subject properties through Plans Cancellation and the single family homes on the property were demolished.

To: City Manager  
From: Director Engineering  
Re: Townhouse Development, 3712 Pender Street  
2006 March 02 ..... Page 2

During the PPA review process, based on the comments from the Engineering Department, various off-site servicing requirements and access issues were discussed with the applicant. The lack of a sidewalk, insufficient capacity of the existing combined storm/sewer system, and the extremely poor condition of the lane were brought to his attention. While a lane and combined sanitary/storm sewer did exist and serviced the existing site, these were inadequate to support the proposed development

A building permit application (BP#04-87) was received by the Building Department on 2004 January 20.

At subsequent meetings with the Engineering Department on the development requirements and costs, the City agreed to relax the requirement for sidewalks as the development was not required to apply for rezoning. However, the need to construct the storm sewer and lane were determined to be directly attributable to the development and, in accordance with the Local Government Act, if not completed by the developer, would transfer a financial burden to the general taxpayer.

Once all the requirements were met, the Planning Department issued the PPA for the proposed project on 2004 April 28. The developer entered into a Servicing Agreement with the City to complete the works and these were substantially completed towards the end of 2004. The developer wrote to the Engineering Department in September 2005, requesting a reimbursement for the costs of the required works and services. A copy of this letter is attached along with the response from the City (Attachments #3 and #4).

The process followed on this development is consistent with the process on other similar developments; the upgrading requirements are consistent and fair for the development and are required as a direct result of the additional load placed on the City's infrastructure. Staff recommends that the developer not be reimbursed for the cost of the works and services required as part of the development.



W.C. Sinclair, P. Eng.  
DIRECTOR ENGINEERING

:ljb  
Attachments

Copied to: Director Planning & Building  
City Solicitor



February 15, 2006  
(2 pages)  
BY E.MAIL

**Note:** Mayor and Council recently received a letter from the developer of a 12 unit townhouse located at 3712 Pender Street, requesting reimbursement for work required as part of their development. Staff are reviewing this matter and will report to Council for it's meeting of March 20, 2006

Mayor and Council  
c/o Office of the City Clerk  
City of Burnaby  
4949 Canada Way,  
Burnaby, BC, V5G 1M2

MAIL PKG

RECEIVED IN  
ENGINEERING DEPT.  
FILED

MAR 03 2006

Your Worship and dear members of council:

Re: 12 Unit Townhouse Development at 3712 Pender Street

Refer To	Noted
WCS	WCS
LSC	
ZJB	

We are the developers of a small townhouse project and we wish to bring to your attention an issue we feel requires immediate redress.

On September 30, 2003, we met with the Burnaby Planning Department to discuss development options at the above-noted site. It was noted that the site was already zoned RM-6 through the city's own initiative several years earlier, and that it was possible to achieve what we were contemplating without a rezoning. Even though we needed to consolidate four existing lots, we were informed at that meeting that the City would not demand off-site upgrades- **the site was already suitably zoned for our proposed development.** The city received a copy of the minutes outlining these assurances immediately after the meeting.

In early April 2004 (several months after our Building Permit (BP) application was submitted), in spite of previous assurances to the contrary, we were notified that we would be required to construct and install works and services in the lane and that we would need to enter into a servicing agreement (Please note that the work benefited most other existing and future dwellings on the block as well). By this point, we were hugely committed to the project and the Building Department was waiting only for this last item before issuing a BP. For expediency, and for fear that further delay would lead to increased delay at the City, we complied with all requirements and entered into the servicing agreement.

This turned out to be a very onerous and expensive undertaking for such a relatively small project. The total costs associated with the off site requirements, as imposed under the servicing agreement, came to well over \$80,000- for what should have been a very straight-forward and modest development!

Last fall we wrote to the City's Engineering Department to convey our displeasure with, and demand recompense, for these requirements imposed on us as a condition of receiving the Building Permit. The Department simply responded by stating the works "were necessary".

This is completely unfair. This tactic, if we can call it such, does not put Burnaby in a good light, especially since the RM-6 rezoning was initiated several years ago by the city itself. It suggests that by rezoning a property of its own initiative, the city does not necessarily provide the necessary infrastructure to support what it purports to allow, and development cannot take place without additional, unforeseen commitments on the part of a developer. We would not have expected a last-minute requirement which we believe was opportunistic and not made in good faith. How is a developer, especially one that has undertaken every precaution and received clear assurances, to know that this sort of issue will arise?

PENDER LANE PROPERTIES INC.  
10 Ingleton Avenue  
Burnaby, BC Canada V5C 4L8

T. 604 320-0881  
F. 604 320-0871

Attachment #1

COPY: COUNCIL  
CITY MANAGER  
DIR. ENGINEERING  
DIR. PLNG. & BLDG.

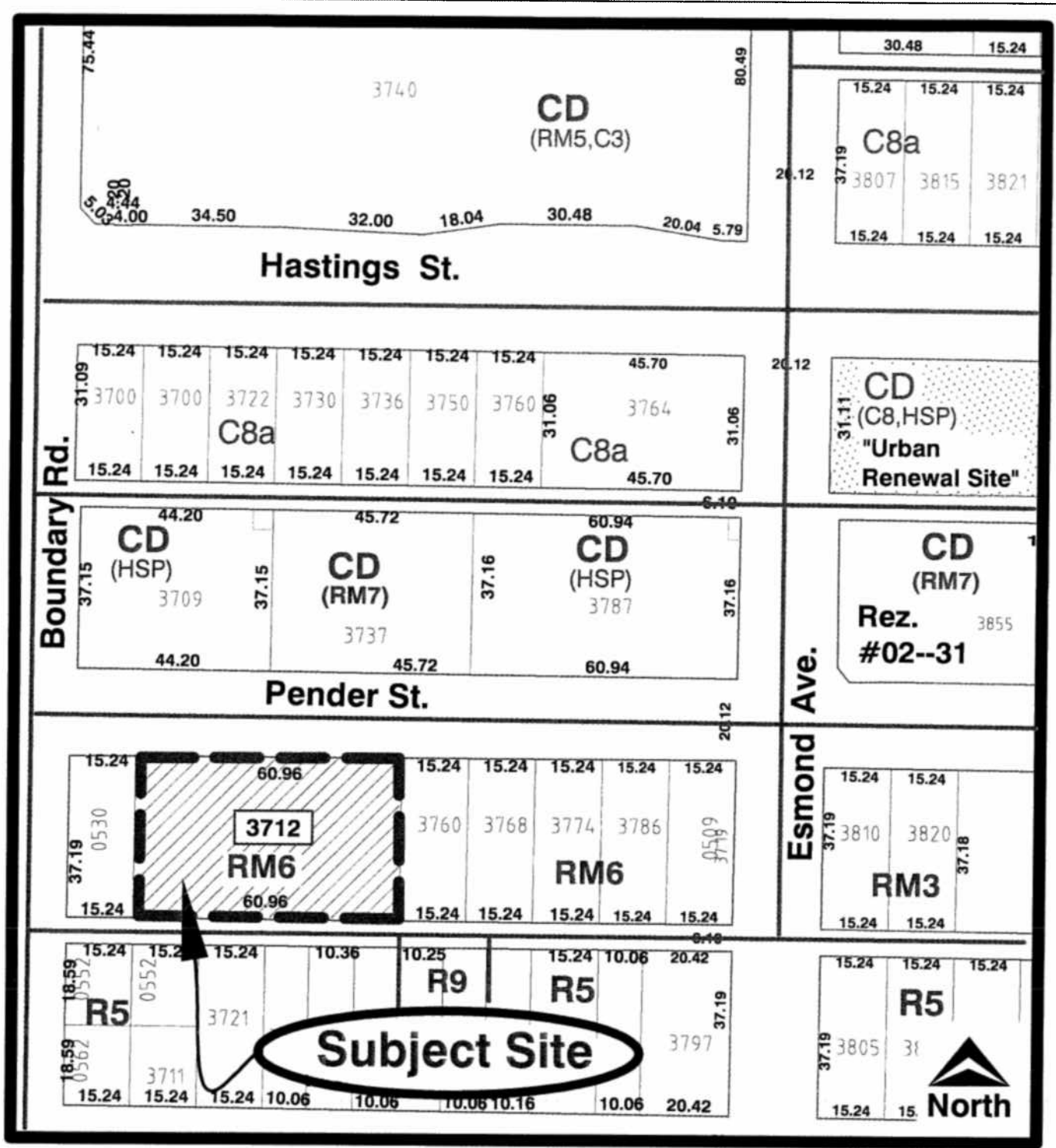
We are of the hope that drawing this matter to the attention of council will result in an equitable solution. We strongly feel that the cost expended to place the works and services in the lane be reimbursed to Pender Lane Properties Inc. This is the only fair solution.

Sincerely,  
**PENDER LANE PROPERTIES INC.**



Per: Denis Turco

copy: All Councillors, City of Burnaby c/o [postmaster@city.burnaby.bc.ca](mailto:postmaster@city.burnaby.bc.ca)  
Mayor Corrigan [mayor.corrigan@city.burnaby.bc.ca](mailto:mayor.corrigan@city.burnaby.bc.ca)  
Gary Begin  
Pietro Calendino  
Sav Dhaliwal  
Garth Evans  
Dan Johnston  
Colleen Jordan  
Lee Rankin  
Nick Volkow



**Planning and Building Department**

Scale: 1 : 1500  
 Drawn By: J.P.C.  
 Date: March 2006

**Location Plan**  
 PPA # 03 -- 363 3712 Pender St.



Sketch # 1

*Attachment # 2* 119

Pender  
Lane

RECEIVED IN  
ENGINEERING DEPT  
FILE:

SEP 29 2005

September 27, 2005

Engineering Department,  
City of Burnaby  
4949 Canada Way,  
Burnaby, BC, V5G 1M2

Refer To:	Noted
OBT. LJB	[Signature]

Re: 3712 Pender Street  
BLD04-00087

We are writing to convey our displeasure with and demand recompense for certain requirements imposed on us as a condition of receiving a Building Permit. It has been brought to our attention that a recent court decision (Imperial Oil v. McAfee, 2005 BCCA 402), in a case that parallels our situation, does not authorize the City to impose conditions on Development Permits that are not directly related to the properties to be developed.

On September 30, 2003, we met with the Burnaby Planning Department to discuss development options at the above-noted site. It was noted that the site was zoned RM-6 and that it was possible to achieve what we were contemplating without a rezoning. The site was comprised of four lots that were in the process of being consolidated into one site. Since a rezoning would not be required, we were informed at that meeting that the City would not demand off-site upgrades except, perhaps, that a sidewalk and trees would be beneficial to the new project.

On December 3, 2003, we applied for a Preliminary Plan Approval (PPA) and on January 19, 2004 we applied for a Building Permit (BP) for a twelve (12) unit townhouse development. In early April 2004, we were informed that as part of our BP application we would be required to construct and install works and services off site and that we will be required to enter into a servicing agreement. We engaged the services of an engineer to prepare necessary drawings and specifications for submission to the engineering department.

At this point, the Building Department was waiting for this last item before issuing a BP and we were expecting to start construction imminently. We were, obviously, very anxious, as our trades were precariously lined up in what could be termed a very challenging construction environment.

On April 23, 2004, we received a letter stipulating the cost for the work was estimated by the City to be \$63,100. We were required to provide a letter of credit for this amount, provide an inspection fee of \$2,524 and enter into the servicing agreement prior to issuance of the BP. This was a very onerous and expensive undertaking for such a relatively small project. However, for expediency and for fear that further delay would lead to increased delay at the City, we complied with all requirements and entered into the servicing agreement, under protest, on April 27, 2004. The Building Permit was released on May 3, 2004, following several days of a city staff worker walk-out.

PENDER LANE PROPERTIES INC.  
100 - 1627 Ingleton Avenue  
Burnaby, BC  
Canada V5C 4L8

tel. 604 / 320-0881  
fax 604 / 320-0871

Attachment #3

The lowest qualified bid we received to do the work required by the servicing agreement was \$73,774.00. The bulk of the work was completed by the fall of 2004. "As-Constructed" drawings were submitted to the engineering department in July 2005 and a "final" inspection was undertaken just this month.

We have not yet received final billing from our engineering consultant for this work, but we estimate the remaining cost will be around \$5,000. The total costs associated with the off site requirements imposed under the servicing agreement are therefore well over \$80,000, for what should have been a very straight-forward and modest development.

In an attempt to avoid the cost and expense of litigation, we are hoping that you will recognize our good faith efforts to reach an equitable solution to this matter.

Sincerely,

**PENDER LANE PROPERTIES INC.**



Per: Tony Turco

Engineering Department

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2005 November 14

FILE: Pender Street

Mr. Denis Turco  
Pender Lane Properties  
1--m - 1627 Ingleton Ave  
Burnaby, BC V5C 4L8

Dear Sirs:

**SUBJECT: 3712 PENDER STREET**

We have reviewed your concern that you were required to complete storm sewer and lane construction as a condition of developing a multi-family complex on property located at 3712/50 Pender Street.

Engineering requirements for this project are not made as a result of a subdivision or rezoning application, but as a result of needed infrastructure upgrading required to support the development. The existing sewer did not have sufficient capacity to accommodate the additional flows generated by the development and the existing lane structure required upgrading to provide access to the development.

We trust this addresses your concerns.

Yours truly,

W.C. Sinclair, P. Eng.  
Director Engineering

By: Leif Bjorseth, P. Eng.  
Assistant Director Engineering, Development Services

Copied to: Director Planning & Building (Attn: Vikram Tiku)

:ljb

Attachment #4

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pender 3712.ljb