



Item.....
Meeting..... 2010 January 18

COUNCIL REPORT

TO: CITY MANAGER **DATE:** 2010 January 13
FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 49500 20
Reference: REZ #09-25
SUBJECT: REZONING REFERENCE #09-25
4250 MARINE DRIVE
RESPONSE TO PUBLIC HEARING ISSUES
PURPOSE: To respond to issues raised at the Public Hearing for Rezoning Reference #09-25

RECOMMENDATION:

1. **THAT** a copy of this report be sent to the applicant and to the United Flower Growers Co-operative Association who submitted correspondence to the Public Hearing for Rezoning Reference #09-25.

REPORT

1.0 BACKGROUND

On 2009 December 15, a Public Hearing was held for Rezoning Reference #09-25. The subject rezoning application proposes a 96 unit townhouse development in accordance with the adopted New Haven Conceptual Development Plan and the Big Bend Development Plan (see **attached** Sketches #1, #2 and #3).

At the Public Hearing, the adjacent property owner to the west at 4085 Marine Way – the United Flower Growers Co-operative Association – raised an issue by correspondence related to the compatibility of the proposed residential use adjacent their industrial operation. Specifically, they requested that the City consider requiring the developer to install a sound barrier on the subject site to reduce noise transmission emanating from their operation. At the Public Hearing, Council requested that staff prepare a report on the feasibility and advisability of registering a Section 219 Covenant to inform future purchasers of potential industrial noise originating from 4085 Marine Way. This report responds to Council’s request.

2.0 ISSUES RAISED

Issue #1 – Noise from adjacent industrial uses: Concern was expressed about the need for a noise barrier on the subject site to mitigate noise from adjacent industrial uses.

Response: Concerns regarding the location of multiple-family housing at 4250 Marine Drive and the impacts of noise transmission from established industrial activities on 4085 Marine Way have previously been raised by the United Flower Growers Co-operative Association during the Public Hearings for the New Haven Conceptual Development Plan (Rezoning Reference #04-40) and during the previous residential rezoning (Rezoning Reference #05-50). As such, in relation to the surrounding industrial

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context of the area to the west, and the future New Haven industrial to the south (Rezoning References #05-49 and #07-13), substantial landscaped setbacks have been required on the subject property. Specifically, to the west the subject site is buffered by the Patterson Avenue Linear Parkway and trail which measures approximately 20.12m (66ft.) wide and is heavily vegetated with a mix of mature coniferous and deciduous species. Further, under the development proposal, the residential buildings are separated from the Patterson Avenue Linear Parkway and Trail by a further 33.86m (111.1 ft) setback which is also both heavily vegetated and proposed to be planted with additional riparian vegetation. As noted in the Public Hearing Report, a new noise study will be required to ensure the re-oriented units meet Council-adopted sound criteria as a prerequisite condition of the subject bylaw amendment's approval by Council. Therefore, given the combined setback of the proposed townhouses to the east property line of 4085 Marine Way is 53.98m (177.1 ft.), the setback area is heavily vegetated, and that the development will meet Council-adopted sound criteria, staff are of the view that the development has provided for the appropriate design considerations in relation to its location and proximity to non-residential land uses.

It should be noted that north of 4085 Marine Way are nine existing single-family dwellings, some dating back to 1940, which are designated to remain under the Big Bend Development Plan. These properties are separated by a 6.10m (20.0 ft) lane from 4085 Marine Way, with the houses set back a minimum of 12.5m (41.0 ft.) from the north property line and 48.0m (157.4 ft.) from the most northerly building on 4085 Marine Way. Despite the comparatively lesser setback and minimal vegetation than what is proposed for the subject site, in the past five years neither the Engineering Department – Environmental Services, nor the Licence Division have received any noise complaints regarding industrial activity on 4085 Marine Way.

Issue #2 – Use of covenants to inform purchasers: the feasibility and advisability of registering a Section 219 Covenant to inform future purchasers of potential industrial noise was raised.

Response: Arising from the submitted correspondence, Council requested that staff review the feasibility and advisability of registering a Section 219 Covenant to inform future purchasers of potential industrial noise from the neighbouring properties. It is noted that Section 219 of the Land Title Act explicitly notes that covenants may only be registered to restrict the use of land and/or buildings; to restrict or permit a specific form of development; to restrict or permit the subdivision of land; or to restrict the individual sale or transfer of a parcel of the land from a group of properties. Therefore the registration of a Section 219 Covenant to inform future property owners of potential industrial noise would not meet the criteria of the Land Title Act and would likely be rejected by the Registrar of the Land Title Office. That said, Council could require that the aforementioned noise study be covenanted to ensure the development is constructed and maintained in such a way as to mitigate noise from non-residential uses and traffic from nearby major roads. Unless otherwise directed by Council, staff will require such a covenant prior to Final Adoption of the rezoning amendment bylaw.

As a prerequisite of all multiple-family residential rezonings, a written undertaking is required to distribute area plan notification forms, prepared by the City, with disclosure statements; and, to post area plan notification signs, also prepared by the City, on the development site. The preparation of a disclosure statement is required by the Real Estate Development Marketing Act prior to the sale of residential dwellings in British Columbia, and is meant to inform potential purchasers of material facts of the site and development. As such, all potential purchasers will be informed of the industrial context of the Community Plan prior to purchase. Further, the developer has offered to have the City review the disclosure statement with respect to the inclusion of a note on industrial activity in the area. It is felt that

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the inclusion of area plan notification form and the City's review of the disclosure statement regarding notes on surrounding industrial activity are sufficient in informing potential purchasers of adjacent industrial activity and associated noise.

It should also be noted that the City's Noise or Sound Abatement Bylaw regulates noise levels throughout the day and night. The property at 4085 Marine Drive, its current use, and its hours of operation, will be required to comply with the Noise or Sound Abatement Bylaw. Therefore, if a complaint is received by a nearby resident or industrial tenant regarding operational noise originating from 4085 Marine Way, the Engineering Department - Environmental Services Division would be requested to conduct an acoustical evaluation to test if noise originating from that property falls within permissible levels under the bylaw. If it is found that noise levels exceed the maximum levels permitted in the bylaw, then bylaw enforcement would be undertaken to seek compliance.

3.0 CONCLUSION AND RECOMENDATIONS

In conclusion, the proposed townhouse development is considered appropriately designed and in line with the adopted New Haven Conceptual Development Plan and the Big Bend Development Plan, and meets City guidelines and practices in regards to its siting, massing, density, parking, and design. In response to expressed concerns, it is felt that the substantial landscaped setbacks is an appropriate response to neighbouring industrial uses. Moreover, the established practice of area plan notification, as well as providing information in the disclosure statement, is considered to be the most appropriate means of advising potential new homebuyers to the area's nearby industrial uses. Finally, the requirement to covenant the noise study to ensure the project is constructed and maintained in accordance with Council-adopted sound criteria would ensure the nearby non-residential uses are adequately considered.

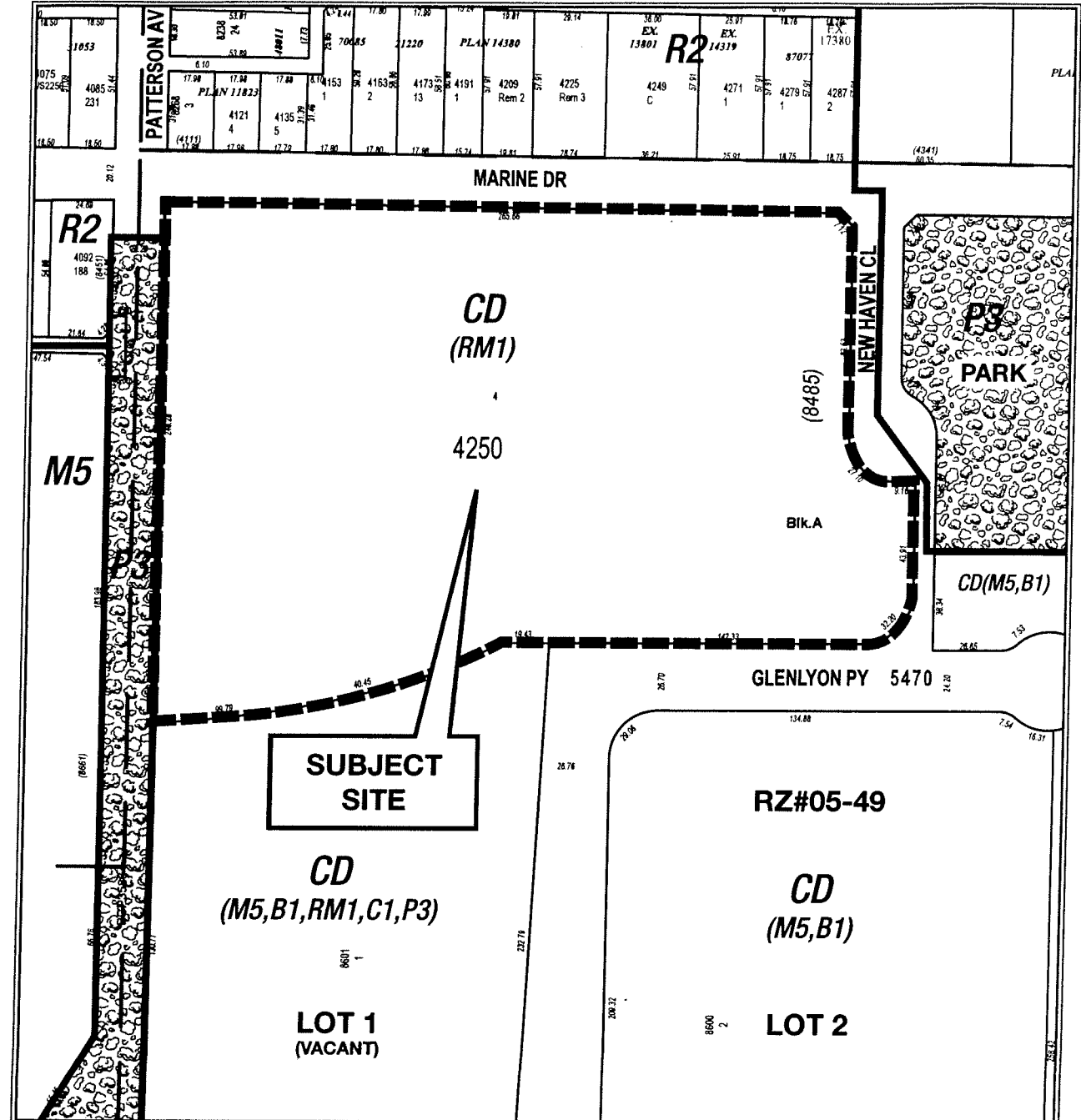
This is for the information of Council.



B. Luksun
Director Planning & Building

EK:gk
Attach

cc: City Clerk
Director Engineering
City Solicitor
Chief Licence Inspector



PLANNING & BUILDING DEPARTMENT




DATE:
2009 11 03

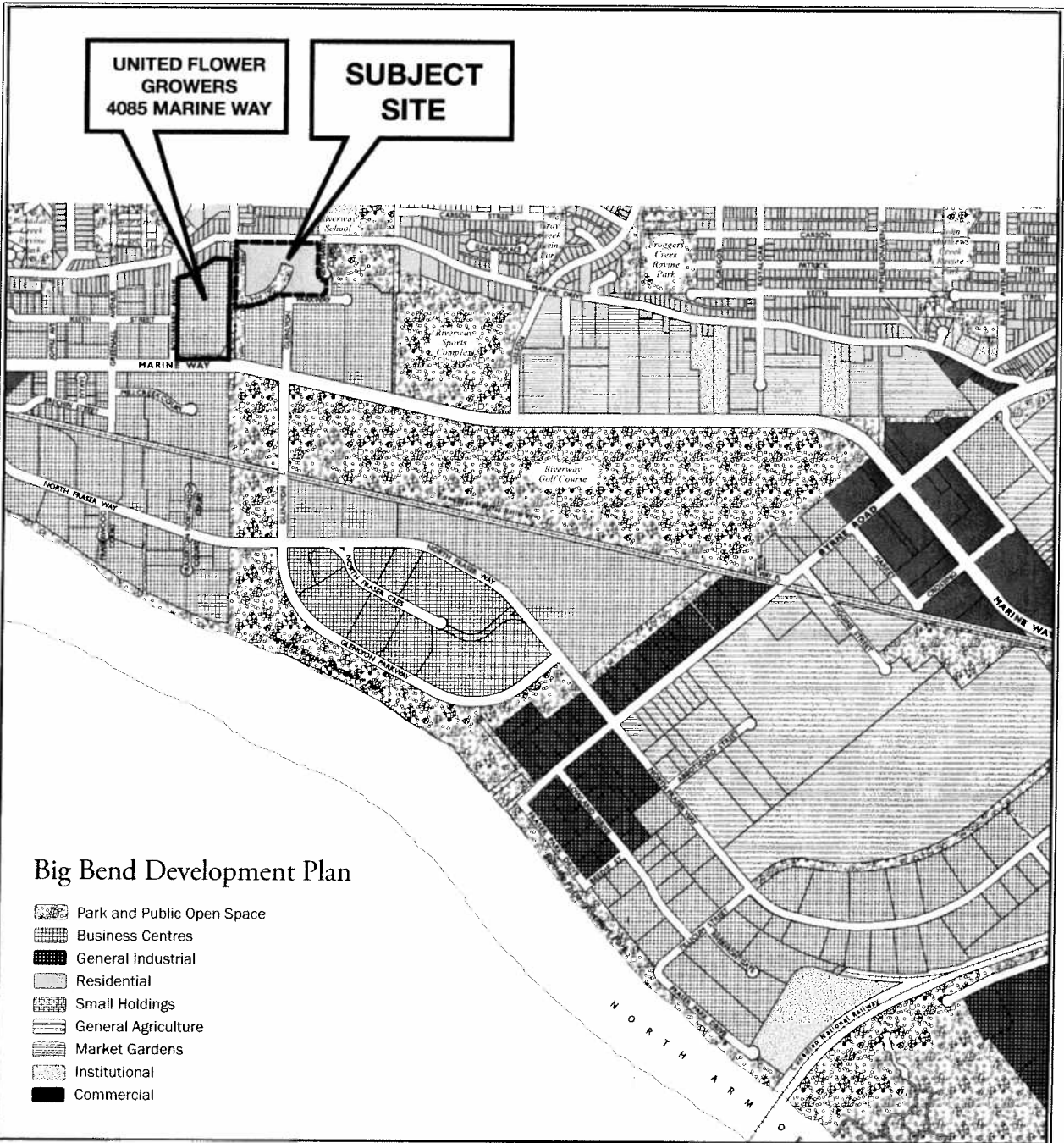
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REZONING REFERENCE #09-25

 4250 Marine Drive,

Sketch #1



Big Bend Development Plan

- Park and Public Open Space
- Business Centres
- General Industrial
- Residential
- Small Holdings
- General Agriculture
- Market Gardens
- Institutional
- Commercial



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Sketch #2

