

1979 NOVEMBER 20

A Public Hearing was held in the Council Chamber, Municipal Hall, 4949 Canada Way, Burnaby, B.C. on Tuesday, 1979 November 20 at 19:30 h.

***PRESENT:** Mayor T.W. Constable, In the Chair
Alderman G.D. Ast (Arrived 19:37 h)
Alderman D.P. Drummond (Arrived 19:35 h)
Alderman A.H. Emmott
Alderman D.A. Lawson
Alderman W.A. Lewarne
Alderman D.M. Mercier
Alderman F.G. Randall

ABSENT: Alderman B.M. Gunn

STAFF: Mr. M.J. Shelley, Municipal Manager
Mr. A.L. Parr, Director of Planning
Mr. James Hudson, Municipal Clerk
Mr. C.A. Turpin, Municipal Clerk's Assistant

The Public Hearing was called to order at 19:30 h.

1. FROM GENERAL INDUSTRIAL DISTRICT (M2) TO
COMPREHENSIVE DEVELOPMENT DISTRICT (CD)

Rezoning Reference #32/79

Lot 4, D.L. 1, Plan 4231; Lot 6 Exc. Pt. S.W. of Highway on Plan 25870, D.L. 1, Plan 4231; Lot 5 Exc. Pt. S.W. of Highway on Plan 25870, Block 23, D.L. 1, Plan 4231.

4403, 4505 and 4511 North Road - located at the southern edge of the Loughheed Town Centre.

Mr. John A. Richardson, 9964 Millburn Court, then addressed the members of Council and advised that he was representing the Council of Owners of Strata Plan NW 655 of the Village Del Ponte. Mr. Richardson read from a prepared brief, the text of which is contained hereunder:

- "1. (a) The Village Del Ponte, consisting of 106 individually owned townhouses, is situated to the north and west of the subject property and is separated therefrom by a park strip 66 feet wide.
 - (b) As a condition for the development of the Village Del Ponte, the developers thereof made improvements to the park strip comprising inter alia, a cement walkway and landscaping.
 - (c) The Village Del Ponte has maintained this park strip at its own expense and it is an amenity of the municipality that is enjoyed not only by the residents of the Village Del Ponte but also the public at large.
2. (a) At the invitation of the Council of Owners of the Village Del Ponte, the applicants were invited to attend an information meeting to discuss the application with the Council of Owners and other interested residents on November 13, 1979.
 - (b) Mr. J.S. Taggart of the applicant company and their architect, Mr. A. Waisman, attended the meeting and explained their proposals and answered questions directed to them.
 - (c) Based on the information and explanations given, the Council of Owners, subject to the reservations expressed below being resolved, do not object to the proposed rezoning or proposed development.

3. Reservations

(a) Traffic congestion

- i) The majority of the traffic exiting from the Village Del Ponte via Rochester Street turns north at the intersection

of Rochester Street and North Road. Resident experience considerable difficulty and substantial delays, particularly at rush hours, in making this turn which involves waiting for a break in the south bound traffic on North Road which is regulated by traffic lights at Loughheed Highway and North Road. When a break in that traffic occurs, a vehicle must then wait for a break in the north bound traffic on North Road, which at that time is backed up beyond the intersection of Rochester Road as a result of the change of lights at the corner of Loughheed Highway.

- ii) Traffic exiting from the proposed development will add to this congestion, particularly during the 4-6 p.m. rush hour, further inconveniencing the residents of the Village Del Ponte and adding to the danger of accidents at the intersection.
 - iii) The Council of the Village Del Ponte has been advised by the Planning Department that the question of traffic congestion cannot be considered until the By-law that is contemplated to arise from the present Rezoning Reference #32/79 has received its second reading.
 - iv) In the recommendation of the Director of Planning dated October 4, 1979, addressed to the Municipal Manager, (who recommended that recommendations be adopted), the Director of Planning recommended certain prerequisites to the rezoning be established.
 - v) Sub section (h) of those prerequisites is "The approval of the Ministry of Transportation, Communications and Highways to the rezoning application".
- (b) Park Strip
- i) The proposed development provides for a berm and landscaping up to the northern and western property lines of the subject property.
 - ii) As a consequence, certain parts of the Park Strip, which the developers of the Village Del Ponte were not required to improve, and are not required to be improved under this application, may not be improved.
 - iii) The applicant, at the meeting referred to in paragraph 2.(a) hereof, suggested that if the application were granted, they would undertake to improve the balance of the Park Strip consistently with the existing improvements.

4. Submission of the Council of Owners of Strata Plan NW 655

- i) That the prerequisite (h) of the Director of Planning dated October 4, 1979 be implemented as a prerequisite to the rezoning and not after second reading as has been suggested; that at any meeting with the Ministry of Transportation, Communications and Highways, the reservations expressed under paragraph 3.(a) hereof be communicated; and before any resolution addressed to these reservations is finalized, the Council of Owners shall have an opportunity to consider such resolution; and any representations that they may wish to make on the proposed resolution shall be considered prior to the finalization thereof.
- ii) That the verbal offer of the developer to improve the balance of the Park Strip be incorporated into and made part of the conditions attaching to the development of the property subject to this application being approved.
- iii) That the continuing maintenance of the Park Strip be incorporated into the budget of the Parks Department of the municipality and that the Parks Department be instructed to agree with the Council of Owners of the Village Del Ponte and the applicant as to the scope of the maintenance to be provided.

Respectfully submitted by the Council of Owners of Strata Plan NW 655 of the Village Del Ponte.

Chairman
John A. Richardson
9964 Millburn Court
Burnaby

Vice Chairman
William I. Pannell
4275 Bridgewater Drive
Burnaby

MOVED BY ALDERMAN EMMOTT:

SECONDED BY ALDERMAN MERCIER:

"THAT this portion of the Public Hearing relating to Rezoning Reference No. 32/79 be now terminated."

CARRIED UNANIMOUSLY

2. FROM RESIDENTIAL DISTRICT (R2) AND SMALL HOLDINGS DISTRICT (A2)
TO COMPREHENSIVE DEVELOPMENT DISTRICT (CD)

Rezoning Reference #34/79

Lot 85, D.L.'s 15/148, Plan 51478

9000 Forest Grove Drive - located on the southern slope of Burnaby Mountain and consists of Enclave 6 as described in the adopted "Burnaby 200 Plan".

Carole Elliott, 2926 Argo Place, then addressed the Members of Council and advised that she was here tonight to speak on behalf of the Simon Fraser Area Joint Council respecting this rezoning application. Mrs. Elliott advised that the Joint Council is in no way opposed to the construction of the proposed units. However, the concern of the Council is with the current school situation in the area. The speaker advised that Stoney Creek School is now operating at full capacity and wished to know when an additional school will be constructed in the area. There are more developments planned for the area which are going to place a further burden on the school system. Currently, young children who live in the Forest Meadows development can be seen standing on the corner adjacent to the Sears Warehouse in the morning waiting for buses to come and take them to various schools. These children are forced to wait at that intersection in all types of weather conditions with trucks constantly using the intersection and a railroad crossing in close proximity. These children are very young and the Joint Council feel that a school should be constructed for them in the area as soon as possible.

His Worship, Mayor Constable, advised the speaker that the Director of Planning will be forwarding a report to the Members of Council which will be appearing on the agenda for the Council Meeting to be held on 1979 November 26. Mrs. Elliott was advised that a copy of this report would be available from the Office of the Municipal Clerk subsequent to 12:00 h on Friday, 1979 November 23.

MOVED BY ALDERMAN EMMOTT:

SECONDED BY ALDERMAN MERCIER:

"THAT this portion of the Public Hearing relating to Rezoning Reference No. 34/79 be now terminated."

CARRIED UNANIMOUSLY

3. TEXT AMENDMENT - SECTION 7.5 of BY-LAW NO. 4742, BEING
THE "BURNABY ZONING BY-LAW 1965"

It is proposed that the By-law be amended with the addition thereto of Section 7.5(2):

"It shall be unlawful for any person to prevent, obstruct, or hinder any official authorized by subsection (1) in the performance of any duty or authority therein granted to him/her."

Mr. Derek R. Corrigan, 202 - 9143 Saturna Drive, then addressed the Members of Council. The substance of Mr. Corrigan's address is contained hereunder:

"Section 7.5 of the Burnaby Zoning By-law as it presently stands authorizes the Chief Building Inspector, or any other official of the Corporation as appointed, to enter a property or premises to ensure that the provisions of the By-law are being obeyed. This is taken almost verbatim from Section 234 of the Municipal Act. But neither the Provincial Government nor the Municipal Council has broached the individual rights of the property owner until this proposed amendment. Under the Criminal Code of Canada a search warrant may be obtained pursuant to Section 443 of the Criminal Code only if a Justice is satisfied by information under oath that there is reasonable grounds to believe that there is a building, receptacle, or place where an offense is being committed. I could go into detail regarding this section but I am sure Council Members can read this section of the Criminal Code themselves. In addition, the Summary Conviction Act of British Columbia has a similar provision and this provides for similar procedures in obtaining a search warrant. That is if there is reasonable grounds to believe under oath to a Justice that there is an offense being committed. Now I think it is a good question to ask why both these Acts don't give absolute power to peace officers or government officials to simply check into dwelling houses periodically to note if there are crimes being committed. After all, the Criminal Code and the Summary Conviction Act both deal with much more serious matters than By-law infractions. I would question why the Provincial and Federal Governments, the Parliaments of our country, fail to give these powers to their peace officers, appointees and officials. I think I can tell you why. In tradition of Canadian and British law a man's home remains his castle. In order to violate the sanctity of a man's home the state must have good and just cause. It must have a reason and that reason must be sworn under oath to a Justice. Since man has established the ownership of property he has not relinquished that right easily. When he accepted the power of the state, he retained his right to his property and his home. I would like to read briefly from "Salhany" on "Canadian Criminal Procedure", which is a very well known text and is virtually the bible of the criminal practising lawyer in regards to procedures relating to criminal matters:

"Search and Seizure of Property

It is the fundamental right of every citizen in Canada to be secure against unreasonable and arbitrary searches by the police and the seizure of his property for use as evidence. This right, firmly rooted in the common law from the earliest times, was able to withstand even the practise initiated by the Star Chamber at the beginning of the 18th century of issuing general warrants permitting petty officials to search for evidence of seditious libel against political offenders.

This principle and the reason for it was expressed by Lord Camden in 1765 in the leading case of Entick v. Carrington:

It is very certain, that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it should seem, that the search for evidence is disallowed upon the same principle."

I would sincerely hope that Council take into consideration the things that I have said. I would also sincerely hope that the most trusted Members of Council would not associate themselves with this kind of amendment. I think that to associate yourself with this particular kind of amendment would be both morally and politically wrong. I don't think that infringing upon an individual's property right or privacy of his home, should be part and parcel of what this City Council is doing.

His Worship, Mayor Constable advised Mr. Corrigan that though this amendment if adopted would make it an offense to deny entry it still requires a Court Order to gain entry. This is regardless of what the amendment says.

Mr. Corrigan then advised that he was not aware of this procedure but should such a procedure exist whereby, in fact, the inspector must appear before a justice and present reasonable grounds prior to any entry of the premises then he apologized for taking up Council's time regarding this matter.

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His Worship, Mayor Constable thanked Mr. Corrigan for his presentation as it has been very informative and added that the legal advice that Council has received allows for such amendment whereby it is legal to deny entry, but once that entry is denied, the inspector cannot force his way into the home. The Corporation of the District of Burnaby then must apply for a Court Order seeking entry.

Alderman Mercier stated that he would hope that all concerns could be answered at the time this matter comes before the Members of Council at the Regular Council Meeting.

MOVED BY ALDERMAN EMMOTT
SECONDED BY ALDERMAN LEWARNE:


"THAT this portion of the Public Hearing relating to Text Amendment - Section 7.5 of By-law No. 4742, being the "Burnaby Zoning By-law 1965" be now terminated.

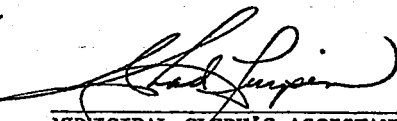
CARRIED UNANIMOUSLY

The Public Hearing was terminated at 19:47 h.

Confirmed:

Certified Correct:


MAYOR


MUNICIPAL CLERK'S ASSISTANT