

Place: DNV Hall 355 W. Queens Rd V7N 2K6

Time: 7:00-9:00pm

Chair: Allan Orr –Seymour Community Association –
tel:604-929-4408 email: allandorr@shaw.ca

1. Order/content of Agenda

2. Adoption of Minutes of April 21

3. Old Business

3.1 Shirtsleeve session with council

- debriefing

3.2 Alpine Recreational Strategic Study:

- now rescheduled to Tuesday, June 21st between the hours of 5pm and 7pm

3.3 Dog Bylaw

- adopted despite opposition and not one speaking for it

3.4 Council meetings at 5PM

- review of arguments for/against

3.5 Update on Taxes

- Implications of Western Stevedoring taxation issue.

3.6 Letter to Remuneration Task Force

<http://www.fonvca.org/agendas/may2005/taskf.pdf>

4. Correspondence Issues

4.1 Business arising from 80 regular emails - 33 on the Mountain Biking Issue

4.2 Non-Posted letters

5 this period. Will be circulated at meeting for discussion.

5. New Business

Council and other District issues.

5.1 Formation of North Shore Water Committee

5.2 Conflict of Interest

- retroactive legislation aspects (council remuneration)
- authority of council to enforce
- WCEL legal opinion
<http://www.fonvca.org/agendas/may2005/wcel.pdf>

5.3 Lynn Valley Ceremony – 11 am Sat May 28

5.4 Alarm Permit Fees – fairness and need

6. Any Other Business

6.1 - Legal issues to think about-

Application to disqualify councillor:

- 45 day limit to apply to Supreme Court
- 10 electors requirement
- recent court case

<http://www.courts.gov.bc.ca/jdb-txt/sc/05/06/2005bcsc0626.htm>

7. Chair & Date of next meeting.

June 16th /2005

Attachments

*List of Email to FONVCA of last 28 months - **BUT ONLY FOR SUBJECTS WITH NEW ENTRIES**

OUTSTANDING COUNCIL ITEMS

- Cat Regulation Bylaw
- Review of Zoning Bylaw
- Securing of vehicle load bylaw
- District-wide OCP
- Street-ends opening to Waterfront
- Snow removal for single family homes bylaw

Correspondence Ordered by Subject

* means since new emails

18 Apr 2005 →

23 May 2005

Only subjects with new
entries are listed - ordered ~
by volume since 18 Nov/2002

On Council Motions /
Procedures / Freedom of
Speech / Ombudsman

Ernie_Crist_19nov2002.pdf
Ernie_Crist_11dec2002.pdf
Ernie_Crist_15dec2002.pdf
Ernie_Crist_19dec2002.pdf
Ernie_Crist_21dec2002.pdf
John_Hunter_14jan2003.pdf
Ernie_Crist_4feb2003c.pdf
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Alan_Nixon_9jul2003.pdf
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Corrie_Kost_7sep2003.pdf
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Agnes_Hilsen_24dec2003.pdf
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Don_Bell_30dec2003.pdf
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James_Ridge_23jan2004.pdf
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James_Ridge_25aug2004.pdf
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Corrie_Kost_19mar2005.pdf
Jim_Cuthbert_31mar2005.pdf

* Agnes_Hilsen_2may2005.pdf
* Ernie_Crist_2may2005.pdf
* Ernie_Crist_2may2005b.pdf
* Brian_Platts_16may2005.pdf
* Corrie_Kost_23may2005.pdf

**Billboards/Signage/Public
Postings**

Ernie_Crist_24may2003b.pdf
Ernie_Crist_12nov2003c.pdf
Brian_Platts_14dec2003.pdf
Ernie_Crist_17sep2004.pdf
Ernie_Crist_17jan2005.pdf
Ernie_Crist_22mar2005b.pdf
* Ernie_Crist_4may2005c.pdf

**Mountain biking/Parking
issue/Alpine Plan /Pay
Parking**

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* Marc_Henly_18may2005.pdf
* Rick_Cleghorn_19may2005.pdf
* Monica_Craver_21may2005.pdf
* Ernie_Crist_21may2005.pdf

Inappropriate Development Variance Permits

Brian_Platts_10mar2003.pdf
Brian_Platts_7mar2003.pdf
Brian_Platts_11may2003.pdf
Ernie_Crist_12may2003.pdf
Ernie_Crist_1jun2003.pdf
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Ernie_Crist_10sep2004.pdf
Ernie_Crist_3jan2005.pdf
Corrie_Kost_1jan2005.pdf

* Ernie_Crist_16may2005.pdf

Yard Trimming Collection Program / Recycling /Solid Waste

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Ernie_Crist_12jan2005.pdf
* Jean_Reeve_24apr2005.pdf
* Ernie_Crist_25apr2005.pdf
* Janice_Harris_25apr2005.pdf

Health Care / LGH / MHR /Homeless

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* Elix_3may2005.pdf
* Ernie_Crist_3may2005b.pdf
* Elix_5may2005.pdf
* Elix_8may005.pdf

War on Iraq / Free Press / US elections

Elizabeth_James_31jan2003.pdf
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Ernie_Crist_31jan2003b.pdf
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Brian_Platts_4nov2004.pdf
Elizabeth_James_4nov2004.pdf
Elizabeth_James_4nov2004a.pdf
* Ernie_Crist_28apr2005.pdf

District Taxes /BC Assessment Authority / Home Owners Grant

Ernie_Crist_7jan2003.pdf
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Ernie_Crist_21jul2003.pdf
Corrie_Kost_8nov2003.pdf
Brian_Platts_10jan2004.pdf
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Bill_Tracey_28mar2005.pdf
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Corrie_Kost_17apr2005.pdf
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* Ernie_Crist_5may2005b.pdf
* Elizabeth_James_16may2005.pdf

New Lynn Valley Library / 1996 Referendum

Ernie_Crist_5sep2003c.pdf
Ernie_Crist_3nov2003c.pdf
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Ernie_Crist_1jan2004.pdf
Ernie_Crist_5feb2004.pdf
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Ernie_Crist_30apr2004.pdf
Ernie_Crist_5may2004b.pdf
Elizabeth_James_6may2004.pdf
Elizabeth_James_21may2004.pdf
Ernie_Crist_23may2004.pdf
Ernie_Crist_19jul2004d.pdf
Ernie_Crist_4aug2004.pdf
Elizabeth_James_13aug2004.pdf
Elizabeth_James_14aug2004.pdf
Elizabeth_James_25aug2004.pdf
Ernie_Crist_25aug2004b.pdf
Elizabeth_James_26aug2004.pdf
Elizabeth_James_2sep2004b.pdf
Maureen_Bragg_2sep2004.pdf
Brian_Platts_2sep2004.pdf
Ernie_Crist_2sep2004.pdf
Maureen_Bragg_3sep2004.pdf
Maureen_Bragg_3sep2004b.pdf
Maureen_Bragg_3sep2004c.pdf
David_Potter_3sep2004.pdf
Ernie_Crist_3sep2004.pdf
Ernie_Crist_3sep2004b.pdf
David_Potter_3sep2004b.pdf
Ernie_Crist_3sep2004c.pdf
Dan_Ellis_3sep2004.pdf
David_Potter_4sep2004.pdf
Maureen_Bragg_4sep2004.pdf
Maureen_Bragg_8sep2004.pdf
John_Hunter_13sep2004.pdf
Ernie_Crist_16sep2004.pdf
John_Hunter_16sep2004.pdf
Ernie_Crist_18sep2004.pdf
Ernie_Crist_20sep2004.pdf
Elizabeth_James_4dec2004.pdf
Maureen_Bragg_4dec2004.pdf

Ernie_Crist_7dec2004.pdf
Ernie_Crist_18dec2004.pdf
Richard_Walton_18dec2004.pdf
Ernie_Crist_19dec2004.pdf
Eric_Andersen_19dec2004.pdf
John_Hunter_20dec2004.pdf
Corrie_Kost_20dec2004.pdf
James_Ridge_20dec2004.pdf
Elizabeth_James_20dec2004b.pdf
Elizabeth_James_21dec2004.pdf
John_Hunter_22dec2004.pdf
John_Hunter_22dec2004b.pdf
Ernie_Crist_25jan2005.pdf
Ernie_Crist_3feb2005c.pdf
* Ernie_Crist_20may2005.pdf

Dogs / Cats Licences/Issues

Ernie_Crist_5mar2003.pdf
John_Fair_7apr2003.pdf
Don_Bell_8apr2003.pdf
Ernie_Crist_23feb2004b.pdf
Elizabeth_James_5apr2004.pdf
Corrie_Kost_3apr2005.pdf
Ernie_Crist_15apr2005.pdf
Ernie_Crist_1apr2005.pdf
Monica_Craver_1apr2005b.pdf
Ernie_Crist_4apr2005.pdf
Ernie_Crist_4apr2005b.pdf
Ernie_Crist_5apr2005.pdf
* Jim_Cuthbert_7may2005.pdf

Grouse Mountain "Zoo" / Bears

Ernie_Crist_28feb2003.pdf
Barbara_Murray_28feb2003.pdf
Ernie_Crist_5mar2003b.pdf
Barbara_Murray_10mar2003.pdf
Ernie_Crist_10mar2003.pdf
Ernie_Crist_10mar2003b.pdf
Elizabeth_James_23sep2004.pdf
Elizabeth_James_16mar2005.pdf
Allan_Orr_11apr2005.pdf
Barbara_Murray_11apr2005.pdf
Barbara_Murray_11apr2005b.pdf
Barbara_Murray_11apr2005c.pdf
John_Hunter_11apr2005.pdf
Maureen_Bragg_11apr2005.pdf
Eric_Andersen_13apr2005.pdf
* Ernie_Crist_26apr2005.pdf
* Ernie_Crist_29apr2005.pdf
* Ernie_Crist_29apr2005b.pdf

Community Policing Centres / Integrated Policing / Crime Statistics /Alerts

Ernie_Crist_13apr2003.pdf
Ernie_Crist_31dec2003.pdf
Ernie_Crist_12aug2004.pdf
Ernie_Crist_19aug2004.pdf
Ernie_Crist_19aug2004b.pdf
Ernie_Crist_19aug2004c.pdf
Ernie_Crist_24aug2004.pdf
Ernie_Crist_13oct2004.pdf
Ernie_Crist_14oct2004c.pdf
Ernie_Crist_21oct2004b.pdf
Ernie_Crist_21oct2004e.pdf
Ernie_Crist_4nov2004c.pdf
Ernie_Crist_12dec2004b.pdf
Ernie_Crist_14dec2004.pdf
Ernie_Crist_4jan2005.pdf
Ernie_Crist_5jan2005c.pdf
Ernie_Crist_12jan2005b.pdf
Bill_Tracey_12jan2005.pdf
Corrie_Kost_12jan2005.pdf
Ernie_Crist_21feb2005.pdf
Ernie_Crist_24feb2005.pdf
Ernie_Crist_8mar2005c.pdf

Ernie_Crist_10mar2005b.pdf
Elizabeth_James_11mar2005.pdf
Ernie_Crist_8apr2005.pdf
* Ernie_Crist_28apr2005b.pdf
* Ernie_Crist_20may2005b.pdf

Trees /Clear-Cut

Ernie_Crist_14feb2003.pdf
Ernie_Crist_4mar2003b.pdf
Ernie_Crist_6mar2003b.pdf
Ernie_Crist_9apr2003.pdf
Ernie_Crist_9apr2003c.pdf
Ernie_Crist_23jun2003b.pdf
Ernie_Crist_19mar2004b.pdf
Elizabeth_James_14apr2004b.pdf
Ernie_Crist_14apr2004d.pdf
Elizabeth_James_6dec2004.pdf
Ernie_Crist_6dec2004.pdf
Brian_Platts_16jan2005.pdf
Elizabeth_James_8mar2005.pdf
Lyle_Craver_9mar2005.pdf
Ernie_Crist_21mar2005.pdf
Ernie_Crist_21mar2005b.pdf
* Jim_Cuthbert_28apr2005.pdf
* Ernie_Crist_3may2005c.pdf
* Ernie_Crist_4may2005.pdf

Forest Fires /Park Trails /Bike Trails & Lanes

John_Fair_25apr2003.pdf
Ernie_Crist_4aug2003b.pdf
Elizabeth_James_8aug2003.pdf
Elizabeth_James_22aug2003.pdf
Ernie_Crist_13feb2004.pdf
John_Fair_29feb2004.pdf
John_Fair_24mar2004.pdf
Ernie_Crist_11jul2004b.pdf
* Ernie_Crist_20may2005d.pdf

Banning Fireworks etc.

Ernie_Crist_5nov2003b.pdf
Brian_Platts_5nov2003.pdf
Brian_Platts_5nov2003b.pdf
Elizabeth_James_6nov2003.pdf
Brian_Platts_4dec2003.pdf
Brian_Platts_16mar2004.pdf
Brian_Platts_16apr2004.pdf
Brian_Platts_7nov2004.pdf
Ernie_Crist_7nov2004b.pdf
David_Cathcart_8nov2004.pdf
Brian_Platts_21nov2004.pdf
* Jim_Cuthbert_4may2005.pdf
* Corrie_Kost_6may2005.pdf
* Corrie_Kost_7may2005.pdf

False Alarm Fees / Permits

* Corrie_Kost_22may2005.pdf
* Corrie_Kost_7may2005b.pdf

Surveys on Council/Staff Performance

Elizabeth_James_4dec2003.pdf
* Ernie_Crist_3may2005d.pdf

Council Remuneration (Pay)

Ernie_Crist_14jul2004b.pdf
Ernie_Crist_17aug2004.pdf
Ernie_Crist_20aug2004.pdf
Ernie_Crist_21aug2004.pdf
James_Ridge_3mar2005.pdf
Ernie_Crist_10mar2005.pdf
Ernie_Crist_28mar2005a.pdf
Agnes_Hilsen_29mar2005.pdf
Agnes_Hilsen_29mar2005b.pdf
Ernie_Crist_30mar2005.pdf
* Brian_Platts_27apr2005.pdf

* Ernie_Crist_14may2005.pdf

Public Safety / Traffic

Ernie_Crist_25nov2003b.pdf
* Ernie_Crist_12may2005.pdf
* Ernie_Crist_20may2005e.pdf

Council Crist's 75th Birthday etc.

Ernie_Crist_28may2003.pdf
Ernie_Crist_30jun2003.pdf
* Ernie_Crist_3may2005.pdf
* Ernie_Crist_4may2005b.pdf

Immigration and Economy

Ernie_Crist_17dec2004.pdf
* Ernie_Crist_19apr2005.pdf

Election Reform / STV / Prov Election

Allan_Orr_1mar2005.pdf
* Ernie_Crist_15may2005.pdf

FONVCA

Minutes of April 21st 2005

Attendees:

Dan Ellis	Chair – Pro Tem
	Lynn Valley CA
John Miller	Lower Capilano C.R.A.
Diana Belhouse	Delbrook CA
Val Moller	Lions Gate NA
Brian Platts	Edgemont CA
Corrie Kost	Edgemont CA
Eric Andersen	Blueridge CA
Cathy Adams	Lions Gate N.A. (8:05pm+)
Hugh Murray	Lower Cap. CRA
Allan Orr	Seymour CA
K'Nud Hille	Norgate CA
Peter Thompson	Edgemont CA
Diana Belhouse	Delbrook CA - Notetaker
Liz James	CAGE BC (by invitation)
James Ridge	DNV CAO
Bill Yager	Council Remuneration Task Force

1. ORDER/CONTENT OF AGENDA

As Chair, Dan recommended that the meeting begin immediately with James Ridge's presentation followed by Bill Yager's discussion on the Council Remuneration Task Force. FONVCA's regular agenda will follow.

5.2 Presentation - James Ridge DNV CAO

Highlights of Mr. Ridge's presentation included the following:

- * **Sod turning** for L.V. Town Centre project will be during Lynn Valley Days on May 28th.
- * **Land Slide:**
 - 3 houses still evacuated
 - emergency drainage work and catch basin is completed
 - super saturation of the soil will weaken slope on either side of the slide
 - piezometers that measure water in the soil have been installed and are monitored regularly
 - during heavy rain, geo-tech experts monitor slope
 - investigation is being overseen by DNV insurance lawyers to determine causes of the slide
 - geo-tech analysis being conducted by Prof. Morganstern for VGC
 - question about economics to fix backyard at the top of the slide and make it usable
 - DNV has hired a contractor to repair damaged house at the base of the slide
 - DNV now has a Tier Risk Management System

- there might be some things the District can do to strengthen the slope
- question about what authority DNV has to require property owners to reduce the risks along the banks of their backyards
- natural hazard mitigation - \$40 million for debris flow; many houses are on a flood plain plus some areas of DNV would be prone to having soil liquefy during earthquakes
- cost to purchase all properties along Riverside escarpment would be roughly \$50 million
- in some remote areas it maybe cheaper to simply purchase properties
- addressed the 1980 "Don Bell Letter" - the letter was drafted for the Mayor's signature by a Mr. Stuart, a lawyer with Swinton; the lawyers included certain waivers as key elements of the letter
- question about how much the Province is funding - they have raised max \$100k per affected property owner to \$300k, all of staff costs, and 75 percent of all studies
- statute of limitation against municipality is 30 years

* **Wrongful Dismissal Case:**

- Richard Zerr was dismissed for cause
- DNV legal response to the suit will soon be made public
- suit likely won't be heard in court until early '07

5.1 Council Remuneration Task Force -

Highlights of **Mr. Yager's presentation** included:

- * Bill introduced himself as a long-time District resident and retired lawyer and Chartered Accountant
- * 1994 was the last time the mayor's pay was raised
- * 1996 was the last time councillor's pay was raised
- * TF has updated info from '95 to '04 ... DNV was 7th in mayor's pay and is now 12th of the 13 Lower Mainland municipalities
- * '97 councillors voted themselves a 22 percent increase in remuneration but they are ranked 7th today
- * TF was not appointed in time and are now way behind schedule
- * To complicate matters the TF Chair recently resigned
- * The other TF members will continue with the aim of getting a report tabled before the Nov elections
- * **Issues:**
 - should there be an automatic adjustment to Council's remuneration? i.e. CPI?
 - in addition to above should be an overall periodic review every 10 or 12 years?
 - should remuneration be weighted to the population of the municipality?
 - performance based system of remuneration?
 - is mayor's salary enough to attract the best candidates?
 - what sort of public input should be conducted?
- * **Discussion highlights:**
 - Charter exempts Councils from a conflict when adjusting remuneration level

- suggestion that a TF report be submitted to Council for adoption now and implementation in '06 after the election
- performance based results come every election
- one-third of remuneration is tax free

Action: FONVCA unanimously agree to write a letter to the Council Remuneration Task Force urging its members to forge ahead and complete its task to submit a report to Council as soon as possible, preferable before summer; and further, that the Task Force should consider soliciting public input from community associations or their executive committees. If this suggestion is not practical in the time available, then an interview process involving selected individuals would be appropriate.

2. ADOPTION of March 17th MINUTES

The minutes were approved as circulated.

3. OLD BUSINESS

3.1 Shirtsleeves meeting: FONVCA Shirt Sleeve meeting with Council on April 26 - agenda: the three topics raised by FONVCA at its March meeting.

3.2 Parkgate Community Policing: discussion deferred until May FONVCA meeting.

3.3 Alpine Recreational Strategic Plan – will ask Susan Rogers to come to FONVCA meeting after Council Workshop held on the matter.

3.4 DNV Consent Agenda – was appropriately amended so that if **any councillor** objects to an item being on the Consent Agenda then that item is removed and placed on the Regular Agenda.

3.5 Thanks to DNV staff – Brian sent email as per request of last FONVCA meeting.

3.6 Council Budget meetings at 5pm – Councillor Jim Cuthbert's notice of motion to have only 7pm meetings or a Saturday session (as per FONVCA's recommendation) has been submitted.

3.7 DNV Taxes - increase 3.75 percent - about \$300 per year for an average NV property for Translink yet we get no benefit. Gasoline tax - DNV's share (pro-rata) is approx. \$2 million a year so we must ensure the District gets this money, instead of going to RAV line project.

4. CORRESPONDENCE ISSUES

4.1 Business arising from 101 regular emails – 30 on the “Art” issue, 19 being on the Mountain Biking issue, and 15 on Bears or Dogs issues.

4.2 Non-posted letters

6 non-posted emails were briefly reviewed and the decision not to post each one was supported.

5. NEW BUSINESS

5.3 Sunday Library Openings - three month trial period Sep-Dec 2005, at a cost of \$17,000. Lynn Valley is already open Sundays so this affects Capilano and Parkgate.

5.4 Commercial Dog Walking in DNV Parks -

concern about misuse of parks – constitutes a change of use and may require rezoning?

5.5 Local road improvement initiatives – plan by council to increase this from current 30% by 5%/year till 50% in 2009.

5.6 TRANSLINK Parking Area Tax: It was felt ridiculous to charge for bicycle parking areas!

6. ANY OTHER BUSINESS

6.1 Legal Issues: Corrie provided information on the new **Bylaw Ticketing Dispute mechanism** – in particular, DNV Corporate policies describing which tickets can/should be dismissed.

6.2 Seniors Care Facilities - seismic standards below that of hospitals. Concerns discussed.

6.3 Starting Date of LAP - is the date the plan specifies, not the adoption date.

6.4 Conflict of Interest - Corrie received a legal opinion from West Coast Environmental Law firm that Councillor Alan Nixon is still in a conflict re: Elstree Place parkland sale.

7. CHAIR AND DATE OF NEXT MEETING

Next Meeting will be a **week later than usual** – on the 4th Thursday – **May 26th, 2005.**

Pro-tem Chair will be Allan Orr of the Seymour Community Association. Tel: 604-929-4408 email: allandorr@shaw.ca

Subject: Council Remuneration Task Force

Date: Wed, 27 Apr 2005 23:07:06 -0700

From: Brian Platts <bplatts@shaw.ca>

To: Bill Yager <billyager@shaw.ca>

CC: James Ridge <James_Ridge@dnv.org>, FONVCA <fonvca@fonvca.org>

Dear Mr. Yager:

I would like to thank you for addressing the *Federation of NV Community Associations* and seeking feedback on the issues facing the Council Remuneration Task Force.

FONVCA members are in unanimous agreement that the Council Remuneration Task Force should, in spite of the resignation of its Chair, forge ahead with its work to submit a report to Council before the summer of '05. If the work of the Task Force can be completed in this time-frame, it would give Council the opportunity to consider and adopt some specific remuneration policies, before this Council term expires, for implementation in '06 following the upcoming November municipal elections. FONVCA further suggests that the Task Force should consider soliciting public input from community associations or their executive committees. If this suggestion is not practical in the time you have available, then an interview process involving selected individuals would be appropriate. After a report has been submitted, Council would still have the option of holding a public meeting in Council Chambers in order to obtain some broader public input.

The *Federation of NV Community Associations* believes that the work of the Council Remuneration Task Force is extremely important to the District and we eagerly look forward to the completion of your work.

Sincerely,

Brian Platts

Federation of NV Community Associations

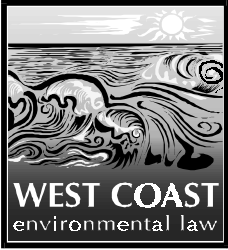
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North Vancouver, B.C.

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Ph. 604-985-5104

Fax. 604-988-5594



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Vancouver, BC V6B 1H7
www.wcel.org

tel: 604.684.7378
fax: 604.684.1312
toll free: 1.800.330.WCEL (in BC)
email: admin@wcel.org

April 18, 2005

District of North Vancouver
355 West Queens Road
North Vancouver, BC
V7N 4N5

***** BY FAX ONLY @ (604)990-2403 *****

Attn. Mayor and Council

Dear Sirs/Mesdames:

Re: Elstree Encroachment

I have been contacted by Mr. Corrie Kost concerning the above matter, and asked for my legal opinion concerning your actions to sell a portion of “Lot S” which is zoned Natural Parkland to the owners of 588 Elstree Place to “regularize” the encroachment of that property onto Lot S.

I understand that there has already been a public hearing into this matter. Consequently there are limits on what information Council may receive at this point on substantive issues related to the Encroachment. **I will therefore limit this letter to discussion of a serious procedural irregularity, which I believe that Council may still consider at this juncture.** It is my view that if you do not address this issue, any resulting bylaw will be invalid. Moreover, this irregularity, if not handled carefully, has the potential to result in the disqualification of a Councillor. For these reasons, **I ask that this letter be brought to the attention of the Mayor and Council prior to any further consideration of the above matter.** In addition, or in the alternative, I strongly advise forwarding a copy of it to the District’s legal counsel at the earliest opportunity.

The opinion expressed in this letter is, of course, based on information gleaned from your website and provided by Mr. Kost; If my understanding of the facts, as recorded below, is incorrect in any respect, then this could effect the conclusions reached. Based on that information, however, I agree with Mr. Kost that there is an apparent conflict of interest and that Councillor Nixon should probably have absented himself from participating in this decision.

The Facts

The facts as I understand them are as follows:

1. Lot S (the “Park”) is owned by the District and zoned for “Natural Parkland” under Bylaw 2546.
2. The adjacent property at 588 Elstree Place (the “Property”) is privately owned, and at some point prior to 1992 a pool was constructed on that property which encroached onto the Park. This encroachment was discovered in 1992 at the time that the Property was transferred to a new owner. At that time the Council regularized the encroachment through a licence.
3. The Property changed hands again in June 2003, and the new owners have asked that the land be sold to them, rather than entering into a new licence agreement.

4. This question came before council at a June 21, 2004 Council Meeting. The minutes indicate that “Prior to consideration of this matter, Councillor Nixon declared a potential conflict of interest due to his place of employment, and withdrew from the meeting during the discussion of this issue.” I understand from Mr. Kost that Councillor Nixon is employed with the Real Estate agency that sold the Property to the current owners. Council indicated that it was willing to consider selling the portion of the Park which was encroached upon. Subsequent to this meeting various bylaws were prepared in furtherance of the sale of the encroached area.
5. A public hearing was held on September 28, 2004. Councillor Nixon was not present, again for the stated reason of a conflict of interest.
6. A reconvened public hearing was held on March 15, 2005. At this meeting Councillor Nixon was present and participated in the meeting. Mr. Kost advises that when queried on this change, Councillor Nixon explained that he no longer had a conflict of interest, since the owners of the Property had granted him a release from any possible litigation that they might bring by virtue of their relationship with his employer (the “Release”). Apparently the sum of \$1 was paid in return for this release.
7. On April 4th the bylaws received second and third reading. I understand that the bylaws are likely to receive fourth reading on Monday, April 18th and hope to have this letter to Council before that time.

Conflict of Interest

The question of conflicts of interest in a municipal context is governed by both the Community Charter and by the judge-made common law.

The relevant section of the *Community Charter* reads, in part:

- 100 (2) If a council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the member has
- (a) a direct or indirect pecuniary interest in the matter, or
 - (b) another interest in the matter that constitutes a conflict of interest,
- the member must declare this and state in general terms the reason why the member considers this to be the case.
- (4) As an exception to subsection (3), if a council member has made a declaration under subsection (2) and, after receiving legal advice on the issue, determines that he or she was wrong respecting his or her entitlement to participate in respect of the matter, the member may
- (a) return to the meeting or attend another meeting of the same body,
 - (b) withdraw the declaration by stating in general terms the basis on which the member has determined that he or she is entitled to participate, and
 - (c) after this, participate and vote in relation to the matter.

These sections must be understood in light of the common law rule that a councillor should not have a direct or indirect interest which might compromise his or her ability to “give a disinterested vote” on any matter that arises.¹ The test for determining whether a conflict of interest exists is not a technical or narrow one. Rather the phrase “interested in” is said to be “according to the common usage of men”² and interpreted flexibly.

The courts have applied these principles with “unabated vigour”³ and the courts will not lightly infer that legislation is intended to limit this approach.

As I understand the situation, Councillor Nixon’s conflict arose because he works for the real estate company which sold the Property to the current owners. While not a direct pecuniary interest, this does at least raise the perception that he may benefit indirectly from any representations made about the boundaries of the property and/or from the perception that clients of his real estate company are able to get outstanding issues with Council resolved. For this reason, I think that Councillor Nixon was probably correct to withdraw from any consideration of this matter, as he did in June 2004.

However, Councillor Nixon appears to have been under the impression that his conflict arose solely from the possibility that the owners of the Property might sue him or his employer should the trespass not be regularized. Consequently he believed that the conflict was removed once he received a release from the Property’s owners.

With respect, this reasoning is flawed on a number of grounds. The perception of conflict arose not merely due to the threat of a lawsuit, but from the more general perception that his employer or its clients may benefit from his role as Councillor. The potential conflict was never to the detriment of the Property owner, but rather to the detriment of the public.

Not only does the Release not address this perception, but it actually exacerbates the perception of a conflict. There is a real appearance that the Release was granted because of the likelihood that Councillor Nixon would vote in favour of the sale.

Indeed, the Release can be characterised as a personal benefit conveyed to Councillor Nixon arising out of the performance of his duties, contrary to section 105 of the *Community Charter*. Although I understand that a nominal amount was paid by Councillor Nixon in return for the Release, I do not believe that this would prevent a Court from finding that a benefit beyond that nominal amount had been transferred to Councillor Nixon. And, since the purpose in obtaining the release was to allow Councillor Nixon to participate in proceedings concerning the Property, it is directly connected to the performance of his duties. I note that receiving a benefit under section 105 (1) can result in disqualification from office.

In addition, I agree with Mr. Kost’s view that section 100(4) only allows a declaration of a conflict of interest to be withdrawn if the original declaration was in error. Even if Councillor Nixon were correct that the Release removes an existing conflict, this is a different situation from that contemplated under section 100(4). According to Councillor Nixon, a true conflict did exist – there was no error. The *Community Charter* does not address the situation where an existing conflict ceases to exist (assuming for the moment that such a situation is theoretically possible, and I am not certain that it is).

Finally, the chronology reveals an additional problem. Councillor Nixon was not present at the Public Hearing concerning the sale in September 2004, as he was in a conflict at the time. As a result he was not able to hear the concerns of his constituents concerning this matter. While this would not necessarily prevent him from participating

¹ *R. v. McNamara* (1914), 7 WWR 324 (Alta C.A.).

² *Angrignon v. Bonnier*, [1935] S.C.R. 38.

³ *Wannamaker v. Patterson*, [1973] 5 W.W.R. 193.

in a final vote,⁴ and although he was present for the March 2005 public hearing, the fact that the Councillor was not present because of an existing conflict of interest, rather than through choice, means that his ability to represent his constituents has already been compromised due to the conflict.

For all the above reasons, I am of the view that Councillor Nixon continues to be in a conflict of interest. I express no opinion at this time as to whether his involvement in discussions on the issue has compromised the entire process or whether the matter can be salvaged through a new vote. However, you will want to obtain legal advice on this point.

Sincerely,

Andrew Gage
Barrister & Solicitor

cc. Corrie Kost (by e-mail only)

⁴ *Local Government Act*, s. 894(2).