

CORPORATION OF THE CITY OF PORT COQUITLAM

PARKS & RECREATION COMMITTEE

A meeting of the Parks and Recreation Committee was held in City Hall (Heritage Room) on October 3, 1990 at 5:00 pm.

In attendance were Alderman Mike Gates and Alderman George Laking.

Also in attendance was Larry J. Wheeler, Recreation Manager, School District #43 Representatives, Sven Urdahl, Doris Westrand, and Marg Gordan were in attendance to discuss a number of shared issues under Item No. 1.

Item No. 1 School District #43 Representatives

Representatives from School District #43 met with the Parks and Recreation Committee to discuss a number of shared issues.

1. Development of Hazel Trembath site and play areas.

- * Would like the City to push for a letter from Genstar confirming their participation in this project.
- * School District #43 is prepared to initiate the development of a site plan once this letter has been received.

2. Scheduling of School Fields.

School District is concerned that school fields are being used when we have closed our Department fields down. They agreed that we are not in a position to tell the schools when they can or can not use their fields. The Committee agreed to provide the School District with information on our Field Closure information line and to call a designated representative of the School Board when we were closing our fields.

3. Future Developments to Hyde Creek Facility.

School District representatives wanted to know when the City would be going ahead with the Hyde Creek expansion. Committee indicated that Hyde Creek is a high priority project and a timeline should be attached to it early next year.

4. Anticipated Timeline For the Development of Riverwood.

School District representatives wanted to know when the first construction at Riverwood might start. Committee indicated that the first 40+ acres should start to be developed in the Spring. However, the direction of the economy will be a big factor.

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5. Development of Joint School/Park Sites.

School District #43 has developed a joint site development agreement with the District of Coquitlam. They wanted to know if we would be interested in pursuing a similar arrangement. Committee indicated they would be interested in finding out more about these arrangements and asked the representatives and asked the representatives to forward some samples of existing agreements. Sven Urdahl indicated he would forward this information and a copy of a model agreement they have developed.

6. Playground Apparatus on School Sites.

Alderman Gates indicated that we have received several requests over the last year or two from parent groups requesting grants to help with playground development. He was wondering how the School Board dealt with these requests. Sven Urdahl indicated they are currently developing a policy to deal with this issue and will forward us a copy when it is completed.

Recommendation:

That the presentation by representatives of School District #43 be received.

Carried

Item No. 2

Cedar Drive Pathway

The attached letters received from the City Solicitors were reviewed.

Recommendation:

1. That the motion to develop this pathway with Park DCC money be rescinded.
2. That development of this pathway instead be funded from the Capital Budget.
3. That this item be referred to Committee of Council for review.

Carried

Item No. 3

Tempered Glass (New Arena)

The Recreation Manager reported that the PoCo Minor Hockey Association is interested in cost sharing the installation of tempered glass in the new arena. Alderman Laking requested staff to ensure that tempered glass is safe for lacrosse as well as hockey.

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Recommendation:

That the verbal report from the Recreation Manager be received as information.

Carried

Item No. 4 Girl Guides - Request for Free Facility Use

The Recreation Manager reported that the Girl Guides had called requesting free use of City meeting facilities (same as Boy Scouts). It was confirmed that the intent of the recommendation regarding the Boy Scouts request for free use was intended to be applied to both organizations.

Recommendation:

That the verbal report from the Recreation Manager be received as information.

Carried

Item No. 5 B.C.'s Year of Music

The Recreation Manager reported on department efforts to get one or more of the Year of the Music activities in Port Coquitlam. Information was initially distributed through Art Councils and Chambers of Commerce. Port Coquitlam is currently not on the interary because the Coquitlam Area Fine Arts Council put in an application and they have a Port Coquitlam mailing address. We have discussed this issue with Year of Music staff, and they are currently taking a look to see what they can do.

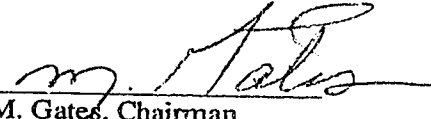
Recommendation:

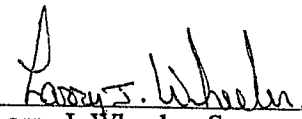
That the verbal report from the Recreation Manager be received as information.

Carried

ADJOURNMENT

The meeting adjourned at 6:15pm.


M. Gates, Chairman


Larry J. Wheeler, Secretary

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LIDSTONE, YOUNG, ANDERSON
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BY TELECOPIER

September 27, 1990

K. Janna Taylor
Parks and Recreation Director
2253 Leigh Square
Port Coquitlam, B.C.
V3C 3B3

Dear Janna:

Re: Proposed Cedar Drive Walkway
Your File No. L 1290 JT
Our File No. 19-70

Further to our telephone conversation today, we confirm that interest on development cost charge reserve funds may not be used for construction of the Cedar Drive Walkway. Although Section 986(5) of the Municipal Act provides that interest earned on money in the park land development cost charge reserve fund may be used for "fencing, landscaping, drainage and irrigation, restrooms and changing rooms, play ground and playing field equipment", that authority is limited to improvements on "park land" owned by the City or owned by the Crown and managed by the City (as in the case of parks dedicated by plans of subdivision).

In this case, the proposed walkway is located on land owned by the Crown and shown as "road" on a plan of subdivision. Accordingly, Section 986(5) is not applicable as no "park land" is involved.

However, we confirm that the construction of trails on other areas owned or held by the City as "park land" is a viable use of reserve fund interest, provided the trail construction is integrated with a "landscaping" project which involves planting of shrubs and trees or the construction of decorative rockeries, walls, fencing and similar features.

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In any event, the construction of trial improvements on park land with park reserve fund interest is unlikely to result in public controversy.

Sincerely,

LIDSTONE, YOUNG, ANDERSON

Grant Anderson

Grant Anderson

GA/2757

cc: Mr. Bryan Kirk, Administrator
cc: Mr. Ronald Freeman, Clerk/Deputy Administrator

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BY TELECOPIER

September 21, 1990

K. Janna Taylor
Parks and Recreation Director
City of Port Coquitlam
2253 Leigh Square
Port Coquitlam, B.C.
V3C 3B8

Dear Janna:

Re: Proposed Cedar Drive Walkway
Your File No. L 1290 JT
Our File No. 19-70



As requested, we have reviewed your memorandum to Council, dated July 5, 1990 concerning construction of a public walkway on the Cedar Drive road allowance between Lombardy and Prairie. We have also reviewed the letter dated September 11, 1990 from the solicitors for Mr. and Mrs. Christensen, challenging the City's right to construct the walkway and to fund construction from interest accrued in the open space development cost charge account. Our conclusions are:

1. Council has authority to authorize construction of the walkway.
2. Neither the principal nor the interest in the open space development cost charge fund may be used for the walkway. Therefore if the project is to proceed, Council must authorize funding from some other budgeted source.

Power to Construct the Walkway

We agree with the Christensen's solicitor that the effect of the deposit of Subdivision Plan No. 59612 was to dedicate that portion shown as "road" as a "highway" under Provincial Crown ownership, pursuant to Section 107 of the Land Title Act.

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We are not familiar with the designation "interceptor ditch" shown on the subdivision plan but presumably it forms part of the Cedar Drive right of way. In any event, the Christensens would likely have no standing to challenge use of the "interceptor ditch" area for other purposes as their property is not adjacent to the ditch area and the ditch does not appear to have been installed for the benefit of their property.

We also agree that the City does not own the area shown as road, but rather has the "right of possession" of the roadway, pursuant to Section 571 of the Municipal Act.

We further agree that one power relevant to the improvement of the roadway is Section 578(1)(a) of the Municipal Act, which empowers Council, by bylaw, to "authorize the establishment of a highway".

However, there are two statutory provisions not referred to in the opinion which are also relevant. First, Section 578(2)(a) empowers Council (by resolution or bylaw) to "construct, maintain and improve highways or any portion of them". That power must be considered in conjunction with the definition of "highway" in Section 1 of the Municipal Act:

"'highway' includes a street, road, lane, bridge, viaduct and any other way open to public use ...".

Accordingly, Section 578(2) authorizes Council, by resolution, to improve any way which is open to public use. In our view, a "highway" need not be improved for automobiles or vehicles - improvements for pedestrian use of road allowances come with the power to improve a way open to public use.

There is little relevant case law on this point. In Watt v. District of Saanich (1921) 21 B.C.R. 268 (B.C.C.A.) the District cut trees on a road allowance adjoining Mr. Watt's property. He claimed that the trees were unlawfully cut down and claimed damages for the resulting reduction of value to his property.

The Court of Appeal held that the plaintiff had no special property in the trees on the highway so as to enable a trespass action. McPhillips, J.A. concluded:

"... I fail to see that any cause of action has been established in the appellant Watt for the cutting down of the trees upon the highway adjoining or abutting upon his land. The respondent is by statute entitled to the possession of the highway, it is in public use, and the respondent, the road authority, in the exercise of its corporate powers was entitled to be in control thereof and was exercising its duty in all that it did, was ensuring the stability of the highway and providing for the safety of the travelling public."

In summary, while the Christensens may petition the court to quash the resolution authorizing improvement of the walkway, they have no standing for a claim to damages. If they do petition to quash the resolution, in our view they will be unsuccessful as Council has authority to improve a road allowance for any form of use by the travelling public.

Use of Development Cost Charges

Under Section 983(2)(b) of the Municipal Act, Council may impose development cost charges for the purpose of "providing parkland". Under Section 985, development cost charges are to be paid into separate reserve funds for each purpose. The relevant portion of Section 985(3) provides as follows:

"(3) Money in development cost charge reserve funds, together with interest on it, shall be used only to

(a) pay the capital cost of ... parkland acquisition ...".

In addition, Section 985(4) provides that staff authority to make payments from development cost charge reserve funds shall be authorized by bylaw.

No parkland acquisition is involved in the construction of the Cedar Drive walkway. The land is already in the possession of the City and the intended purpose of the expenditure is trail improvement, not acquisition of property.

Therefore, we agree with the Christensens' solicitors that Council may not authorize the use of development cost charge reserve funds for the Cedar Drive walkway.

Please call if you have any questions or comments regarding this opinion.

Sincerely,

LIDSTONE, YOUNG, ANDERSON

(Grant Anderson)

Grant Anderson

GA/sz
SZ15/1484

cc: Mr. Bryan Kirk, Administrator
Mr. Ron Freeman, Municipal Clerk

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