



Special General Purposes Committee Meeting

Date: Monday, February 16th, 2004

Place: Council Chambers
Richmond City Hall

Present: Mayor Malcolm D. Brodie, Chair
Councillor Derek Dang
Councillor Evelina Halsey-Brandt
Councillor Sue Halsey-Brandt (4:02 p.m.)
Councillor Kiichi Kumagai
Councillor Bill McNulty
Councillor Harold Steves

Absent: Councillor Linda Barnes
Councillor Rob Howard

Call to Order: The Chair called the meeting to order at 4:00 p.m.

1. CONSULTATION WITH MUSQUEAM – PROPOSED CASINO RELOCATION

Mayor Brodie indicated that the purpose of the meeting was to consult with Musqueam pursuant to the *Gaming Control Act and Regulations* to determine the extent to which they were materially affected by the proposed casino relocation.

The Musqueam delegation comprising Chief Ernie Campbell, for Musqueam, Robert Duncan, Band Manager, Executive Director, Councillor Wendy Grant, Councillor Delbert Guerin, Leona Sparrow, Director, Treaty Operations, and Councillor Wayne Sparrow, were present. Also introduced were Don Rosenbloom and James Hickling, legal counsel for Musqueam.

The Mayor then asked the delegation to advise the Committee how they saw their interests being materially affected by the application to relocate the Great Canadian Casino from Sea Island Way to the site of the former Bridgepoint Market.

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Chief Campbell spoke about the Bridgeport lands, noting that these were Musqueam lands, that Bridgepoint was in the heart of the traditional Musqueam territory, that the Band had been in existence since time immemorial, and that all of the other lands which surrounded the Bridgepoint properties were in their reserve. He further stated that he did not think that anyone could seriously question their aboriginal title to the subject property.

Chief Campbell talked about the treaty negotiations in which the band had been involved with the Federal and Provincial Governments since 1994. He stated that Bridgepoint had always been considered an important part of the treaty settlement as these were Crown held lands in their traditional territory, and were important to the Band's existence and survival. Chief Campbell further advised that gaming was also an important part of the treaty settlement, that gaming was part of their culture, part of their framework agreement, and part of their future economic development and well being.

Chief Campbell expressed concern about the City's approach to Bridgepoint, stating that for many years Richmond had been aware not only of Musqueam's aboriginal rights and title, but also of the treaty negotiations and Musqueam's interest in gaming. He further stated that Richmond had ignored Musqueam's legal and constitutional rights and did not understand the effect of land developments on Musqueam. As well, he indicated that Richmond had not tried to accommodate Musqueam's interest nor had the City dealt fairly with Musqueam. Chief Campbell stated that Richmond should realize that every parcel of Crown land in Richmond was significant for Musqueam, and that Musqueam would fight to protect what was rightfully theirs. He advised that the courts had dictated that governments must consult with First Nations and accommodate their interests, and had stated that First Nations must be protected from developments which had a negative impact on their rights and treaty negotiations.

Chief Campbell referred to the recent success of Musqueam in obtaining an injunction to prevent the transfer of the DFO property at Garden City Road and No. 4 Road to the City. He stated that that case had been about proper consultation, and that the Federal Court issued an injunction in Musqueam's favour. Chief Campbell, with reference to the Garden City property, acknowledged that Musqueam and Richmond had been working in cooperation to resolve mutual concerns, however, he expressed concern that the Bridgepoint property could jeopardize that relationship. He expressed the hope that Richmond would recognize its legal responsibilities and consult in good faith. He expressed concern that Richmond seemed determined to 'fast track' the casino application without concern for Musqueam interests and without any attempt to accommodate the Musqueam people. Chief Campbell stated that as a result, Musqueam had engaged legal counsel who had been asked to state "in no uncertain terms", Musqueam's views on the Bridgepoint property and the consultation process.

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At this point, the Chair advised that the purpose of the meeting was to talk only about how Musqueam were materially affected by the casino relocation and not the DFO property. He stated that the procedure being followed today was as set out in the *Gaming Control Act and Regulations* and not under common law, and he requested that any comments be kept relevant to the consultation process under this *Act*.

Mr. Rosenbloom, referencing the comments made by the Mayor that the purpose of the meeting was to deal only with the Bridgepoint land, suggested that the City had a responsibility to consult with Musqueam in respect to common law and juris prudence.

Mr. Rosenbloom then addressed the Committee on the proposal to relocate and expand a gaming facility at the Bridgepoint site. A copy of his presentation is attached as Schedule A and forms part of these minutes.

During the presentation, Mr. Rosenbloom was again requested by the Mayor to address how Musqueam were materially affected by the proposed relocation and expansion. The Chair stated that the City wished to consult with Musqueam and wished to know in what way Musqueam were materially affected by the proposal, and Mr. Rosenbloom was asked to address that point. In response, Mr. Rosenbloom stated that he was indeed addressing that point by first making the submission that the manner in which the process had been restricted first by the City's definition of 'materially affected', and second, by indicating that any discussion about the aboriginal title and rights to the property, would not be entertained. He stated that Musqueam took the position that their rights were far more extensive than whether they agreed to the parking configuration or traffic flow at the subject property. Mr. Rosenbloom stated that Musqueam had the right to come before Committee and inform the City that the approach being taken was so restrictive that it did not comply with what the Musqueam thought was the City's legal obligation to consult with a First Nation.

Following the conclusion of Mr. Rosenbloom's presentation, a brief discussion ensued between the delegation and the Mayor on whether Musqueam had been aware of the application prior to August of 2003.

It was moved and seconded

That the General Purposes Committee resolve into closed session to obtain legal advice, as permitted under Section 90(1)(i) of the Community Charter (4:53 p.m.).

CARRIED

The open Committee meeting reconvened in open session at 5:09 p.m.

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The Chair addressed the delegation, asking that within the context of the *Gaming Control Act and Regulation*, that the Committee be advised exactly how Musqueam would be materially affected by the relocation of the casino. The Chair stated that it was the view of City Council that land claims and all the issues that were involved with land claims were outside the jurisdiction of what was taking place at this meeting and outside the jurisdiction of the City.

Considerable discussion then ensued between Mr. Rosenbloom and the Mayor on the definition of 'materially affected', on the intent of the word 'includes', and whether 'aboriginal rights and titles' should have been included in the list. During this discussion, the Mayor asked Mr. Rosenbloom several times to explain how Musqueam would be materially affected by the relocation of the casino. In response, Mr. Rosenbloom stated if the City was limiting discussion to anything other than all the issues which related to aboriginal title and rights, then Musqueam would be affected by the economic issues which arise from the project proceeding in the face of well-known information by Richmond, of Musqueam's desires to establish a destination casino at Bridgepoint.

The Chair announced that the consultation was now concluded, and the delegation was thanked for its presentation.

2. COUNCIL CONSIDERATION OF THE APPROVAL OF THE PROPOSED CASINO RELOCATION

It was moved and seconded

That the relocation of the Great Canadian Casino from its present location to 8811 River Road, and the addition of slot machines, be approved, and that the British Columbia Lottery Corporation (BCLC) and affected parties be so advised.

CARRIED

ADJOURNMENT

It was moved and seconded

That the meeting adjourn (5:20 p.m.).

CARRIED

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Certified a true and correct copy of the Minutes of the special meeting of the General Purposes Committee of the Council of the City of Richmond held on Monday, February 16th, 2004.

Mayor Malcolm D. Brodie
Chair

Fran J. Ashton
Executive Assistant, City Clerk's Office

SUBMISSION TO CITY OF RICHMOND ON BEHALF OF MUSQUEAM INDIAN BAND

RE: PROPOSED RELOCATION AND EXPANSION OF GAMING FACILITY AT BRIDGEPOINT

Thank you for affording us an opportunity to address the Committee today on the subject of the proposal to relocate and substantially expand a gaming facility at the Bridgepoint site.

Unfortunately, we must inform you of our view that the City has not been consulting the Musqueam in good faith in respect of the Bridgepoint casino, as is required under the *Gaming Control Act and Regulation* and at common law.

INTRODUCTION

The Musqueam were not even contacted by the City in relation to Bridgepoint until August 14, 2003, after the City had taken numerous steps to facilitate the establishment of the Bridgepoint casino. By that time, the City had already rezoned the Bridgepoint land (the rezoning bylaw was passed on March 12, 2003) and had issued necessary demolition and construction permits for the development of the casino.

At the point of first contact with the Musqueam, the project was in full-fledged construction. The City therefore failed to contact the Musqueam until an unacceptably late stage of the process.

The City has also failed to meet directly with the Musqueam for the purpose of consulting the Musqueam about the Bridgepoint casino and accommodating Musqueam concerns and interests.

When City officials met with the Musqueam on December 4, 2003, they began the meeting by advising the Musqueam that they were not authorized to consult the Musqueam about the Bridgepoint casino for the purposes of the *Gaming Control Act and Regulation*.

The Musqueam have been waiting ever since for consultation to take place. City officials advised the Musqueam that genuine consultation would take place. The Musqueam believed that today's meeting was to be the commencement of such consultation.

The Musqueam were therefore surprised to be informed by City staff that the City was insisting that today's meeting take place in public, despite the confidentiality of certain aspects of the matters in question, despite the request of the Musqueam that the meeting take place *in camera*, and despite the provisions of the *Community Charter* mandating and permitting *in camera* meetings in such circumstances.

The Musqueam were also shocked to be informed by City staff that the City was insisting on confining discussion at this meeting in a fashion that excludes numerous Musqueam concerns and interests relating to the proposed Bridgepoint casino.

The Musqueam were further dismayed that the City staff's Report to Committee on the Bridgepoint casino stipulates that the City has already completed all required consultation processes relating to Bridgepoint, and recommends that the City inform the British Columbia Lottery Corporation of the City's approval of the Bridgepoint casino and request the Lottery Corporation to undertake the proposed relocation of the casino to Bridgepoint, with the addition of slot machines.

In light of the above, the Musqueam are compelled to ask if there is any real purpose to be served by our appearance here today. The die was clearly cast long ago. The City has already taken every step that it can to facilitate the establishment of the Bridgeport casino and has avoided meeting with the Musqueam in *bona fide* consultation. We regret that we must express the view that the City's process, as it relates to the Musqueam, has been a sham.

UNACCEPTABLE DELAY IN CONTACTING THE MUSQUEAM

As of August 19, 2002, the City had statutory obligations to consult immediately adjacent municipalities and first nations before it could give its approval of a proposed casino relocation or expansion under the *Gaming Control Act and Regulation*. The City also had common law obligations to consult the Musqueam, arising from Musqueam aboriginal title and rights.

Nonetheless, the City did not even contact the Musqueam about the Bridgepoint proposal until August 14, 2003, long after the rezoning had taken place, the demolition and construction permits had been issued, and the construction of the casino was well underway.

FAILURE TO CONSULT AND ACCOMMODATE THE MUSQUEAM IN GOOD FAITH

The City has not yet even met with the Musqueam for the purpose of consulting the Musqueam about Musqueam concerns and interests relating to the proposed Bridgepoint casino and accommodating those concerns and interests.

City officials did meet briefly with Musqueam officials on a preliminary basis on August 18, 2003 in order to discuss the situation and to report to Musqueam officials on the consultation process that the City proposed to follow.

City officials also met with the Musqueam on December 4, 2003. However, the City officials explicitly declared at the outset of that meeting that they were not authorized to consult the Musqueam about the Bridgepoint casino and that whatever discussion took place at the meeting would not constitute consultation for the purposes of the *Gaming Control Act and Regulation*.

As set out in our introduction, the Musqueam have since that time been waiting for the City to engage in consultations. City officials advised the Musqueam that genuine consultation would take place. The Musqueam believed that today's meeting was to be the commencement of such consultation.

However, today's meeting falls lamentably short of *bona fide* consultation. The City has inappropriately insisted that the meeting take place in public. The City has inappropriately insisted on restricting the scope of the meeting. The Report to Committee that has been prepared by City staff (provided to the Musqueam late last week) and recent correspondence from the City solicitor make it clear that the City has no intention of seriously considering and accommodating Musqueam concerns and interests relating to the Bridgepoint casino. The Report holds that consultation with the Musqueam has already been completed and recommends that the City immediately communicate its approval of the Bridgepoint casino to the British Columbia Lottery Corporation.

We regret to say that in these circumstances, the City appears to be doing no more than grudgingly going through the motions of hearing from the Musqueam. We can draw no conclusion other than that the City is not discharging its duty to consult the Musqueam in good faith.

CONSULTATION OF THE MUSQUEAM SHOULD HAVE TAKEN PLACE *IN CAMERA*

Consultation is not a process of public hearing. Indeed, if the process of consultation and accommodation were to proceed properly in respect of the proposed Bridgepoint casino, both the City and the Musqueam would be expected to divulge sensitive information and engage in frank discussion. For instance, the Musqueam would be expected to divulge confidential information relating to ongoing Treaty negotiations with the provincial and federal governments. The City would be expected to divulge confidential information relating to revenues and contractual relationships, among other things. A public forum is simply not conducive to the success of such a process.

Yet the City has insisted that the whole of this meeting take place in public, over Musqueam objections. The Musqueam say that the City's insistence on a public forum is objectionable on two grounds.

First, there is no reason that the City must meet with the Musqueam through the General Purposes Committee. It would be a simple matter for properly mandated City representatives to meet with the Musqueam outside of this formal Committee setting.

Second, even if there were a valid reason for the City to meet with the Musqueam through the General Purposes Committee, the *Community Charter* both mandates an *in camera* meeting of this Committee under section 90(2) and permits an *in camera* meeting of this Committee under section 90(1), in the circumstances that pertain here.

CONSULTATION OF THE MUSQUEAM SHOULD HAVE TAKEN ACCOUNT OF MUSQUEAM CONCERNS AND INTERESTS

Consultation of the Musqueam must fairly take account of Musqueam concerns and interests, with a view to accommodating those concerns and interests. The City cannot unilaterally confine the process of consultation to a limited spectrum of issues.

Yet in a letter dated February 10, 2004, City staff advise that the City is insisting on restricting discussion at today's meeting to "... the land use issues and not land claim issues". The Musqueam object to this restriction.

The Bridgepoint land is located in the heart of the Musqueam Traditional Territory, close to current Musqueam reserves and nearby numerous important archaeological sites. The Musqueam assert aboriginal title to the Bridgepoint land in its full form, encompassing "... the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those aboriginal practices, customs and traditions which are integral to distinctive aboriginal cultures..." (*Delgamuukw v. B.C.*, [1997] 3 S.C.R. 1010, at para. 117); "... the right to the land itself ..." (*Delgamuukw*, at para. 138); and "... a right to choose to what ends a piece of land can be put ..." (*Delgamuukw*, at para. 168).

Additionally, the Musqueam assert that the practices, customs and traditions integral to their distinctive culture include gaming. In this regard, see *R. v. Van der Peet*, [1996] 2 S.C.R. 507.

Furthermore, the Musqueam assert that their right of self-government includes the right to regulate gaming. In this regard, see *Campbell v. B.C. (Attorney General)* (2000), 79 B.C.L.R. (3d) 122.

Musqueam aboriginal title and rights are ineluctable. The City cannot pretend that they do not exist. Nor can the City wish away the fact of Musqueam Treaty negotiations and the adverse effect that the proposed Bridgepoint casino would have on those negotiations. Nor can the City ignore the fact of Musqueam financial and community development interests related to gaming in this very area.

The City must consult the Musqueam about such matters and must accommodate Musqueam concerns and interests. The *Gaming Control Act* and *Regulation* mandate the City to do so. The City has misconstrued the breadth of its obligation to consult the Musqueam and the meaning of the term "materially affected" under the *Act* and *Regulation*.

In any event, even if the *Gaming Control Act* and *Regulation* did not mandate the City to consult the Musqueam about such matters, the common law does. The City, as a statutory delegate of the Province that has long had notice of the aboriginal title and rights asserted by the Musqueam, and

as a party with a considerable financial interest in the proposal to relocate and substantially expand a casino at Bridgepoint, has a common law fiduciary duty to the Musqueam to consult the Musqueam and to accommodate Musqueam concerns and interests relating to the proposed Bridgepoint casino.

DEFICIENCIES IN THE REPORT TO COMMITTEE FROM CITY STAFF

We regret to say that the Report to Committee from City staff in respect of the Bridgepoint casino is deficient in its reporting of facts, in its characterization of the Musqueam position, and in its analysis of the City's obligations to the Musqueam.

Deficiencies in Reporting of Facts

Attachment 2 to the Report purports to set out the facts of the City's communications with the Musqueam relating to the Bridgepoint casino proposal. However, Schedule 2 omits the following salient facts:

1. At the December 4, 2003 meeting, City staff advised the Musqueam that the meeting was not a consultation and that City staff attending the meeting did not have authority to consult.
2. By letter dated December 8, 2003, the Musqueam wrote to Mayor Brodie stating briefly the Musqueam position on Bridgepoint and requesting a first meeting for the purpose of consultation.
3. Mayor Brodie replied by letter dated December 15, 2003, saying, "We look forward to further discussion on this matter whenever possible".
4. By letter dated January 8, 2004, the Musqueam confirmed their earlier request for a meeting with the City for the purpose of consultation. The Musqueam were informed by City staff that instructions from City Council were necessary and would be obtained on January 12, 2004.
5. By letter dated January 19, 2004, City staff stated that "The City wishes to move the consultation process required under the Gaming Act, [sic] and the regulations under that Act to a conclusion...". City staff proposed meetings on February 2 and 9, 2004. City staff also advised that the meetings would be open to the public and stated that "You and your clients are invited to attend either or both of these meetings to explain the Band's position and to add other concerns if that is deemed appropriate."
6. By letter dated January 26, 2004, the Musqueam advised that any meetings should be held *in camera* and requested that the City provide certain

documents in the City's possession relevant to the Bridgepoint proposal. The City has still not provided a number of the documents requested.

7. By letter dated January 27, 2004, City staff advised that "... the City is attempting to consult with Musqueam ..." and stated that "Musqueam are encouraged to attend the meeting and discuss the issue with the Committee".
8. By letter dated January 28, 2004, the Musqueam again advised that any consultation must be held *in camera*.
9. On or around January 29, 2004, City staff advised that the proposed February 2, 2004, meeting was cancelled and might be rescheduled for February 16, 2004.
10. By letter dated February 10, 2004, City staff confirmed that a meeting could proceed on February 16, 2004 and stated that the City "... will not and cannot conduct any of the meeting in a closed session and ... will insist that the discussion remain focused on the land use issues and not land claim issues ...".
11. On February 12, 2003, City staff provided the Musqueam with a copy of the Report to the Committee dated January 29, 2004.

Deficiencies in Characterization of Musqueam Position

The Report does not mention the fact that the Bridgepoint site is in the heart of the Musqueam Traditional Territory and that the Musqueam assert constitutionally protected aboriginal title and rights to the Bridgepoint land.

The Report fails to indicate that the December 8, 2003 letter to Mayor Brodie was not intended to, and does not, exhaustively set out Musqueam concerns and interests relating to the proposed Bridgepoint casino. That letter was rather intended to, and does, provide a general overview of Musqueam concerns and interests. The letter states on page 2:

"The proposed casino relocation and development at Bridgepoint materially affects the Musqueam **in many ways, including by:**

1. infringing Musqueam aboriginal rights and title over the land comprising the Bridgepoint site;
2. prejudicing the Musqueam in their ongoing treaty negotiations, by

reducing the amount of land in the Musqueam Traditional Territory available for the settlement of the Musqueam Comprehensive Land Claim;

3. prejudicing the Musqueam in their ongoing treaty negotiations with regard to gaming and authority over gaming;
4. adversely affecting Musqueam financial interests in gaming and gaming-related business ventures;
5. adversely affecting Musqueam interests in community development directly or indirectly related to gaming.”

[Emphasis added.]

The objective of this letter was to provide the City with a general sense of Musqueam concerns and interests, in order to assist the City to prepare for consultation meetings. It did not purport to be comprehensive in scope or detail, and it did not purport to serve as a substitute for face-to-face consultation.

Deficiencies in Analysis of City's Obligations to Musqueam

The Report wrongly concludes that the City has completed all required consultation processes in respect of the Bridgepoint casino, including with the Musqueam.

The Report wrongly concludes that the City's approval of the casino relocation and expansion will not result in the infringement of Musqueam rights.

The Report wrongly characterizes the nature and extent of the City's obligation to consult the Musqueam in respect of the proposed Bridgepoint casino and accommodate Musqueam concerns and interests. The Report wrongly suggests that the City is not obligated to take account of the infringement of Musqueam aboriginal title and rights, the prejudice to Musqueam Treaty negotiations and the damage to Musqueam financial and community development interests that would result from the relocation and expansion of the casino at Bridgepoint.

The Report wrongly suggests that the Musqueam would not be materially affected by the Bridgepoint casino within the meaning of the *Gaming Control Act and Regulation*. There can be no doubt that the Musqueam would be materially affected by the proposed casino. The consequences for the Musqueam would be severe and profoundly damaging on a number of different levels, including the economic level.

The City has long been aware of the Musqueam initiative to own and operate their own gaming facility in the area. Indeed, Councillor Steves has publicly expressed concern that the Musqueam gaming initiative would materially affect the City's interest in a casino such as the one proposed for Bridgepoint. On June 3, 2002, Councillor Steves stated that Richmond urgently needed a full-service casino because the Musqueam could soon open one of their own, which would dash Richmond's chances for one of its own. Referring to his status as a member of the Lower Mainland Treaty Advisory Committee, Councillor Steves said, "I'm in the land claims, I see what's going on".

The City clearly considers that it would be materially affected by the establishment of a Musqueam gaming facility. And yet City staff, in their Report to Committee, suggest that the Musqueam will not be materially affected by the proposed Bridgepoint casino. The double standard is obvious.

CONCLUSION

The City should have consulted the Musqueam about the proposed Bridgepoint casino when the proponent first applied to the City for the necessary rezoning, over a year ago.

The City did not even communicate with the Musqueam on the subject of Bridgepoint until after the City had completed rezoning of the Bridgepoint land and issued necessary demolition and construction permits to the casino proponent.

Every indication is that the City has already taken the decision to approve the relocation and expansion of the casino at Bridgepoint. Why else would the City facilitate the casino proponent's investment of millions of dollars in a construction project which is already at an advanced stage of completion?

The City appears to have done no more than grudgingly go through the motions of a superficial hearing of the Musqueam. An invitation to respond to a deeply deficient City report in a public forum with restrictions on discussion is far wide of the mark of *bona fide* consultation. There has been no accommodation of Musqueam concerns and interests. The City has not discharged its legal obligations.

In all of the circumstances, the Musqueam invite the City to take the following steps:

1. reject the conclusions and recommendations set out in the Report to Committee on Bridgepoint;
2. schedule a date to meet with the Musqueam *in camera* to engage in *bona fide* consultation;

3. withhold approval of the proposed casino relocation and expansion at Bridgepoint until Musqueam concerns and interests are accommodated.



ROSENBLOOM & ALDRIDGE
Legal counsel to MUSQUEAM INDIAN BAND

per: Don Rosenbloom