

Goodwin & Mark LLPBarristers & Solicitors
Trade Mark AgentsJOHN R. GOODWIN (Ret.)
ALEX SWEZEY
PETER J. GOODWIN
MICHELLE J. RANDALLDONALD T. MARK (Ret.)
VIRGINIA HAYES (Ret.)
HERMAN C. CHEUNG
PATRICK J. MARCH

To Public Hearing
Date: <u>December 15, 2015</u>
Item # <u>6</u>
Re: <u>Amendment Bylaw 9505</u>
<u>RZ 15-703150</u>

Schedule 16 to the Minutes of
the Public Hearing meeting of
Richmond City Council held on
Tuesday, December 15, 2015.TELEPHONE (604) 522-9884
FAX (604) 526-8044
E-mail: alex@goodmark.ca217 WESTMINSTER BUILDING
713 COLUMBIA STREET
NEW WESTMINSTER, B.C. V3M 1B2REPLY ATTENTION OF: Alex Swezey
OUR FILE #41,403s

December 11, 2015

Mayor/Councillors
City of Richmond
6911 No. 3 Road
Richmond, B.C.
V6Y 2C1

Fax to: (604)278-5139

Attention: Director, City Clerk's Office

Dear Sirs/Mesdames:

**Re: Application RZ 15-703150 by Maryem Ahbib for Rezoning at 9131 Steveston Hwy -
Amendment Bylaw 9505 to Zoning Bylaw 8500 - Public Hearing December 15, 2015 - 7PM**

We have been consulted by Qaiser Iqbal and Naureen Qaiser, the owners of 9093 Steveston Highway, and by M. Anandraj Dorairaj and Nisha Cyril the owners of 9097 Steveston Highway, with respect to this rezoning application.

This letter will not address the merits of the rezoning application generally; our clients and other neighbours have done that separately.

However, our clients have consulted us more specifically about the significance of Statutory Right of Way ("SRW") BW406323 to the rezoning application. Our clients have expressed surprise at the recent change in the City's interpretation of the SRW. City staff have always looked at the SRW as simply for sewers, drains, etc., and what our clients and their neighbours otherwise did with the SRW area over their property was up to them.

Now, however, the City seems to be viewing the SRW as a public roadway, available to the current applicant, for example, to use for access instead of their own driveway.

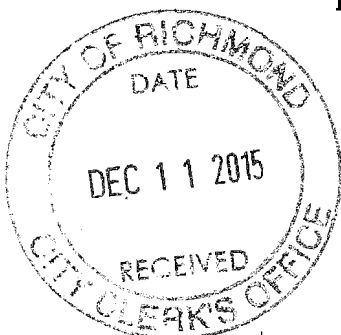
In our opinion, this is an untenable interpretation of the SRW, as well as an unrealistic one.

It is instructive to read the SRW carefully.

In Part 1, setting out the objectives of the SRW

"(b) Richmond desires to obtain from the Owner a statutory right of way to construct certain Works on, over and under the hereinafter described portion of the land;

(c) The statutory right of way is necessary for the operation and maintenance of Richmond's undertaking."



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This is the whole of the purpose of the SRW. There is no other purpose or objective.

In Part 2, the specific grant is stated:

"...the Owner does hereby grant unto Richmond the full, free and uninterrupted right of way for Richmond, its licensees, servants, officials, workmen, machinery and vehicles, at any time and at their will and pleasure for the benefit of Richmond."

Again, the grant itself does nothing to expand the purpose set out in Part 1.

Part 3 then merely sets out the usual specific ways in which Richmond can exercise the grant given in Part 2, for the purpose set out in Part 1. Anything in Part 3 must be interpreted as merely implementing Parts 1 and 2, and not as expanding them. If the intent of the SRW was to establish a public roadway, that would have been stated in Parts 1 and 2.

Or, in the normal way, in a wholly separate SRW, not imbedded in two or three words buried away in a sewer and drainage SRW.

In fact, in 40 years of practice, I don't believe I have ever seen one single combined SRW used for both purposes, rather than separate SRWs.

And a SRW intended for a public roadway would have considerably more provisions specific to such use.

To illustrate the impracticality of this being intended for a public roadway, consider the very limited restrictions placed upon the Owner. He is not required to do any maintenance of a roadway, or even to provide one at all. In fact he is prohibited from having a concrete driveway.

There is nothing to prevent him from removing all existing ground cover and replace it with grass, bushes or other vegetation (as long as he does not diminish or increase the depth), and allowing children to play in the whole area.

There is nothing to prevent him from parking vehicles across the SRW area, or installing a fence (so long as he allows Richmond access for its "Works".)

There is a "Lane" across the North end of the Lots, and perhaps the Applicant can access that from the West end. But, in our opinion, Richmond has no right to purport to allow the Applicant the use of the SRW.

If you have a legal opinion to the contrary, please provide a copy, and we would be pleased to address it.

Yours truly,

GOODWIN & MARK LLP

Alex Swezey
ALEX SWEEZEY