

SUBMISSION FOR PUBLIC HEARING ON DEC 15TH, 2015**FAX NO. 604-278-5139**

Attn: The Mayor and Councillors – Director, City Clerk's Office
 City of Richmond
 6911 No. 3 Road
 Richmond BC V6Y 2C1

To Public Hearing
Date: Dec 15/15
Item # 6
Re: 9131 Steveston Hwy
RZ 15-703150

From: The residents of 9091, 9093, 9097 and 9099 Steveston Hwy, Richmond
 December 14th, 2015
 Schedule 17 to the Minutes of the Public Hearing meeting of Richmond City Council held on Tuesday, December 15, 2015.

Letter to the Council with strong objections to the re-zoning application (RZ 15-703150)

Dear Mayor and council,

Since the last council meeting on Nov 23rd, we have had opportunity to consult a lawyer with respect to the use of the SRW between 9097 and 9093 as a public road as proposed by this re-zoning application. We have been advised by a reputable law firm that the Statutory Right of Way document for our properties is for public utilities only. A different document needs to be registered for the use of the SRW as a public road. Our lawyer has faxed this information to council directly on December 11th, 2015. The reason our notaries told us the wording indicated maintenance of public works is because that is the way the document is drawn. We no longer believe that it was our mistaken impression, lack of due diligence or the ignorance of our notaries that led us to believe this was not a public road.

Further to the legal aspect, law requires that a certain distance must separate a home from a public road. This law exists for good reason. Only a driveway can exist right off someone's living room. So why are we wrong to have thought this was a private driveway with courtesy access for 9099 and 9091 that were built at the same time? If this SRW was intended to be used as a public road, why did the original plan allow the homes to be built right up to the edge of the road? Why was a serious law over-ridden in the name of SRW?

We are told repeatedly by staff that this is a temporary access plan. There are NO other homes in the entire line with a back-lane at this time. When we try to get more information on what plan is in place to ensure that this is temporary, the planning staff have no answers for us.

Staff's response to our questions: No we cannot stop anyone from building a larger single family home, blocking the anterior lane and making this access permanent. No we have no information on how many other homes are ready to implement this. No we cannot wait to implement this solution by bringing the lane in from Mortfield Gate or Roseland Gate. No we cannot do anything about the risk of the lane getting blocked at any time.

So we have come to the conclusion that no work or planning has been done to ensure the implementation of the anterior lane. In the private sector, when we prepare a "temporary plan" we are required to support it with feasibility studies, risk assessments, time line for implementation of permanent solution, budgets and actions for implementation. It comes as a BIG disappointment that the same standards do not apply in the public sector. That all it takes to constitute a "PLAN" is a color print-out presented by the staff at the planning meeting (Nov 17th) with purple paint depicting where they WISH the anterior lane to eventually appear.

We now present a real case to show the outcome of such planning - Mr Qaiser Iqbal (9093) and Mr. Anand Dorairaj (9097) spoke to the owner affected by a similar situation that Ms. Cynthia L (staff) told

us about on No 2 road and Colville road. The owner expressed that he was told that the anterior lane would work its way out and he would have his land back. Many years have gone by and increased numbers of homes are using the lane but a large home on both sides has stopped the lane-progress and made the so-called temporary solution permanent. His words were "I will not get my land back in this lifetime". He expressed his dissatisfaction and helplessness at the situation. When asked why he did not fight back at that time, the answer brought the true helplessness of the Richmond resident to the fore. Many residents are not native English speakers, not only do they find speaking in front of Council too daunting, they also are not able to understand fully what goes on and express themselves well enough to be convincing. Today we speak for this gentleman as well (Ms. Cynthia L who told us about him knows the address) as the voice of the voiceless. The elected council is intended to be the voice of the voiceless. The average resident is not a trained lawyer or a leader who can communicate well in public. ***In a city like Richmond, we need a council who can visualize the common man's pain beyond what mere words can convey because the sad truth is that the common man often cannot convey.***

At the last meeting, we spoke of the city acquiring the land to Mortfield gate, constructing the lane now and having future builders reimburse the city later. We hear there are only 3 homes in the way. His Worship turned to the staff and said "If this goes to public hearing, can we see some options?" To us this meant that even if the Council voted in favour of this application (going to public hearing) the options would be looked at. Despite the Mayor's words, no staff has communicated to us that they even called any of the homeowners to Mortfield Gate asking if they are amenable to selling the city the last 6m of unused jungle on the back of their lots. Or that even 15 minutes was spent by the staff considering any other option. The only communication we had was regarding traffic regulation during construction.

We have expressed safety concerns that while turning in from a fast road like Steveston hwy, a large turning radius is required, and another car waiting to come out makes for a very difficult situation. The only answer we receive is that "22ft meets requirements". No one has advised us that the staff/transportation have tried out this scenario to see the merit in our concern. To check if it is possible to turn in without coming to a complete stop on Steveston Hwy while another car is trying to come out. Transportation can look up the chances of being rear-ended in such situations. It does not matter whose fault it is when a bus or truck hits a small car from the back on a dark, rainy night – the folks in the car will be the ones getting hurt. No one seems to consider it worth trying out despite all of us saying that we are having difficulty with the existing situation, so we wonder if we are not significant enough in the large scheme of things to be considered. ***We feel truly sorry for the buyers of the proposed new homes if this goes forward. They will not know what they are getting into till they move in and start using this access. Just like we did not realize how difficult this type of access would be for us.***

To summarize, we completely object to this re-zoning application on the grounds that it is immature with no proper access plan. The access should be made first before the homes. We object to the use of our private property as a public road. We further object to the road width being measured from the start of our living room wall and not 3 feet away as all public roads should be. We also state that the current access is not even safe for the existing homes, that the lane from Mortfield Gate should be built at the earliest, and we should be allowed the safety of enclosing our property (subject to allowing the city in for maintenance works). Finally we strongly object to the mis-use of the word TEMPORARY to sell a poor plan (if this can even be called a plan without steps for implementation) when there is no by-law/ plan in place to ensure the temporariness.

Everyone agrees that the anterior lane from Mortfield Gate is the solution. ***Perhaps the reason no steps are being taken to implement that is because there appears to be a free and easy out.***



Please stop this free and easy out now. That and ONLY that will make the interested parties spend the money, time and effort to implement the better solution. A solution that will benefit not just us, but the future owners of the proposed homes, the builders (can sell the new homes for a better price), the city (guaranteed anterior lane), the owners of the 3 properties on the way to Mortfield Gate (who are listing but are unable to sell possibly due to access issues and will also benefit the owners of the properties to the West. The city's buying out the lane area from 3 homes can be the catalyst to the development of the entire area. Please stop this re-zoning application in a conclusive way, so that no new builder files a similar application.

The staff has told us that they understand our frustration but the staff and Council have a duty towards the greater public. We are having the hardest time believing that the greater public of Richmond wants this. Thankfully getting public opinion is not difficult. As we belong to Facebook groups of Richmond parents, Richmond furniture resale, Richmond Toy swap and several other community based ones; we may be able to cover most residents between 18 and 45. After we know the outcome of this case being delivered in the name of the greater public of Richmond, we would like to know what the true public sentiment is for the below questions –


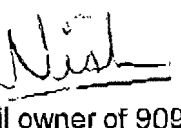
- 1) If the council is presented with opposing legal positions from the city legal department and private residents through a reputable firm, which one should they favour?
- 2) With the cost of land making it almost impossible for the growing family to afford land for their own home, is it acceptable anymore for the city to use private property for public roads in the name of SRW?
- 3) Is it acceptable for a public road to start at the wall of someone's residence?
- 4) Is it acceptable for the city to take over SRW land without owner consent and direct more and more traffic on someone's property and not take any steps to ensure that it is returned in any fixed time or even "in their lifetime"?

The staff has advised us that we cannot communicate with council about this case if it is approved at public hearing so we may not be able to send you the results but if the resident poll is different from the case outcome, we may publish them in the Richmond paper for your information.

Thank you!

 
Qaiser Iqbal/ Naureen Qaiser owner of 9093 Steveston Highway, Richmond BC


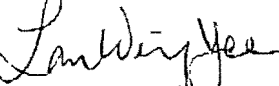
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Peter Tsang / Wing Yee Lam owner of 9099 Steveston Highway, Richmond BC

Email: petersang8@hotmail.com

Attachment: 1. An independent legal interpretation letter on the SRW document # BW406323 from Goodwin & Mark LLP

Goodwin & Mark LLP

Barristers & Solicitors
Trade Mark Agents

JOHN R. GOODWIN (Ret.)
ALEX SWEZEY
PETER J. GOODWIN
MICHELLE J. RANDALL

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VIRGINIA HAYES (Ret.)
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217 WESTMINSTER BUILDING
713 COLUMBIA STREET
NEW WESTMINSTER, B.C. V3M 1B2

REPLY 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