

**SUBMISSION FOR PUBLIC HEARING ON DEC 15<sup>TH</sup>, 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 2C1Schedule 19 to the Minutes of  
the Public Hearing meeting of  
Richmond City Council held on  
Tuesday, December 15, 2015.December 12<sup>th</sup>, 2015

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

**RE: Objection to Re-zoning Application No. RZ15-703150 relating to 9131 Steveston Hwy property – Right of Way/Public Access over our Private properties**

Objections to Re-zoning application RZ 15-703150 on the ground that it poses serious risk to adjacent homeowners and increases the possibility of accidents due to increased traffic in an unsuitable private lane (Between 9093 & 9097 Steveston Hwy)

Dear sir/madam,

We are in receipt of public hearing notice scheduled for December 15<sup>th</sup>, 2015. As we have been to two earlier public hearings with the same city staff. I am not sure what else the city wants us to present that we had not already presented. We still strongly object to giving public passage over our private properties based on all the evidence we previously presented.

We have now obtained an independent legal interpretation on document # **BW406323**. We have also attached the copy of this letter for your consideration. Our lawyer has already faxed the letter directly to the City Clerk Office on December 11<sup>th</sup>, 2015. This letter is self-explanatory and clearly states that this Statutory Right of Way (SRW) is only permitted for utility maintenance and NOT for public passage or access.

We are not objecting city re-zoning Bylaws, the city can very well re-zone but not at the expense of our private properties. We are expressing our strong objection because city is forcefully entering onto our private properties and trying to give public access through our private properties. The city must wait until the back lane is through before allowing re-zoning. Alternatively city could allow to keep atleast one access from Steveston Hwy to 9131 because 9131 property have already two approved entrances from the Steveston Hwy.

I drove all the way from Dyke to the Watermania and there are no such lanes like this one that exists on Steveston highway which has public excess. There are some roads but those are owned by the city. We also offered the city an option of buying this lane from us at the market rate value but it seems the city is adamant in grabbing our land for free of cost and use as public passage based on an interpretation of the easement that it was not intended for (i.e. public access).

Back in 2011, I made a complaint against my neighbour's off-leash dog in this SRW lane. The letter from the City Bylaw manager to me clearly indicated that Bylaws are not applicable to this lane because the lane is private property; it's NOT a PUBLIC ROAD. I am attaching the relevant script of that letter for your consideration. I am sure your City Bylaw Manager must have consulted your legal department before issuing that firm statement.

We are sure that this current controversial decision could be challenged in the court of law but unfortunately we are working people with limited resources (family expenditures, mortgage, tuition fee, etc) It is unfair that the city's legal department is using our tax money to give this controversial interpretation of SRW document # **BW406323** which is kept hidden from us under the blanket of so called "Privileged information. If you talk about fairness, then give us some budget from the City

public contingency fund to challenge this legal interpretation in the court of law. All we are asking is that you be fair to these homeowners rather than to the developer that stand to gain financially at our expense. Please don't play with our lives as we are similar to all other residents of Richmond who are paying your salaries. Put yourself in our shoes before deciding and please think about that before making your final decision

This is very unfortunate that we voted for these councillors who are supporting this re-zoning. These councillors supposed to be protecting our rights but unfortunately they blindly decide to go along with their legal and planning department's advice.

We are really expecting proper justice from the city in this case. Council really needs to connect with people and broaden their vision. One day you could also be in the same situation. It's very easy to do the postal service; you really need to analyze the whole situation before making your final decision. There should be a third independent party with no influence from city hall to handle such controversial cases.

Therefore we are requesting the city council to re-consider and reject this re-zoning application under the current situation.

Below are the main points that we have been highlighting to the council, please do consider these genuine facts before making your final decision on this issue;

1. Loss of privacy and intrusion to local community
2. Increased property damage due to vehicle hitting the walls (we have already seen 3 hits on our retaining walls by non-residents)
3. Inadequacy of parking, traffic generation and endangerment to resident safety
4. Noise and disturbance resulting from increased local traffic
5. Unfounded grounds for the application - This new one sided legal interpretation of our right of way does not provide evidence of giving the access to public through our properties. The SRW Document # **BW406323** does not automatically allow City to give public access over our private property. City does need our consent to do that which we have already declined many times.

The intent of this document (SRW document # BW406323) was to provide the City of Richmond the "right of way" for occasional access to maintain the back-lane. The City of Richmond has now taken the position to treat this "right of way" as a public road and provide access to the back-lane for general public. There are many safety concerns if this lane is to be treated as a public road with regular two-way traffic. This private lane is connected directly to Steveston Hwy where vehicles are moving at 65 km/hr and so the turning radius used by some drivers is quite large and the speed at which they turn is alarming.

This is a narrow lane which poses potential dangers of vehicle colliding with the walls of our home. Wooden retaining walls have already seen three vehicle hits. City/Builder should re-build these retaining walls of both houses (9093 & 9097) with concrete material if this re-zoning application goes through.

It is a sharp right turn into this lane with not much advance visibility of any cars coming out at the time someone is going in.

The traffic on Steveston Highway is much heavier than 10 years ago and the city should revisit this decision to reflect the real traffic situation.

**Who is liable for a traffic accident on this private lane due to the increase of traffic imposed by the City of Richmond and Department of Transportation?**

The City of Richmond planner and planning committee dismissed our concerns and deem the lane to be fit for two way traffic because it is as wide as the back-lane. The back-lane does not connect to Steveston Hwy, but this lane does.

Request for information/clarification:

1. Is there any other city road that enables a right turn from Steveston Hwy that has the same wide with no pavement? There's NONE as far as we discussed with City planning department?
2. Did transportation authority run any safety trials before approving this plan for increased traffic? (Like having someone drive out and another person turn in at the same time) We would like to know the results of these safety assessments and credible reasons why this is considered safe regulation of traffic for the public and if there are any other similar roads (precedents) on Steveston Highway. If not we would like a proper safety assessment. That it is the same width as the back lane is a poor reason and does not make us feel safe.
3. Is it acceptable means and method to use private road not design to regular city road standard as a mean to connect city road ("the back lane") and the Steveston Hwy?
4. If damage or accidents occur on our private properties will the City's insurance cover-off the costs? Will it be ICBC? Will it be the owner's property insurance?

The traffic in our private property lane will continue to increase if this re-zoning application is accepted as more builders will use this precedent on either side of our property. Please reassess and consider the appropriateness of this transport planning by the City transport department.

We do need piece of mind for our families. This is very unfair imposition. We feel like we are being victimised by the City's interpretations of this SRW document. Our original objection to give access to builder over our properties from July, 2015 still stands, and we had earlier forwarded you all the related email correspondence in this regard. This is very narrow lane and has many blind spots for turning traffic.

A few years back a pedestrian was hit by a visitor while turning onto the Steveston Hwy from this lane meaning more traffic more chances of hitting the pedestrian.

My neighbour "George", resident of 9091, was also involved in an accident. He was coming out of this lane slowly and a fast moving west bound car hit his car on the front side. These are real events that the city must re-consider.

We trust our objections will be taken into consideration in this final hearing.

Sincerely,



Qaiser Iqbal and Naureen Qaiser - owner of 9093 Steveston Highway, Richmond BC

Phone: 604-277-6493, Email: q\_iqbal@hotmail.com



Taha Qaiser and Yusra Qaiser - Children above 18 years of age at 9093 Steveston Highway

Attachment: 1. Copy of the Letter from the City ByLaw Manager dated Sept 6th, 2011  
2. An independent legal interpretation letter on the SRW document # BW406323 from Goodwin & Mark LLP

## **Goodwin & Mark LLP**

Barristers & Solicitors  
Trade Mark Agents

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217 WESTMINSTER BUILDING  
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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 Marvem Abbib 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**

**Iqbal, Qaiser**

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**To:** Mercer, Wayne  
**Cc:** MacKinnon, Deb; Mayor and Councillors; Toews, Curt  
**Subject:** RE: Alleged Dogs Off Leash - 9000 blk Steveston Hwy

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**From:** Mercer, Wayne [<mailto:WMercer@richmond.ca>]  
**Sent:** 2011, September 06 2:49 PM  
**To:** Iqbal, Qaiser  
**Cc:** MacKinnon, Deb; Mayor and Councillors; Toews, Curt  
**Subject:** Alleged Dogs Off Leash - 9000 blk Steveston Hwy

Mr. Iqbal:

Your message to the Mayor's Office has been referred to my office for investigation and response.

Thank you very much for forwarding the video as you did – it makes it very clear as to where your neighbours are removing the leashes from their dogs' collars.

In reviewing the area between your house at 9093 Steveston Hwy and your neighbour at 9097 Steveston Hwy, where the unleashing took place, this is not public property. This vehicle access is provided jointly by you and your neighbour so that vehicles can access the garages at the rear of the 4 houses in this complex. I would expect that, when you purchased your home, you agreed to provide such access as part of the purchase agreement.

Because this is private property, evenly split between you and your neighbor, the leashing requirements for dogs under the City's Animal Control Regulation Bylaw do not apply – they only apply on City-owned property. Therefore, your neighbours are not acting contrary to the Bylaw in releasing their dogs from their leashes in this area and we will not be pursuing any enforcement for these actions.

Thanks.....

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**Wayne G. Mercer**  
Manager, Community Bylaws

**City of Richmond**  
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