



Corporate Report

2003

NO: L017

COUNCIL DATE: November 17,

REGULAR COUNCIL – LAND USE

TO: Mayor & Council DATE: November 13,
2003

FROM: General Manager,
Planning and
Development FILE: 7902-0325-00

SUBJECT: Rezoning Application at 9161 - 140 Street, B & J
Homes Ltd.

RECOMMENDATION

The Planning and Development Department recommends that Council:

1. Receive this report as information;
2. Deny Rezoning Application No. 7902-0325-00, which proposes to rezone the site at 9161 – 140 Street from Single Family Residential Zone (RF) to Comprehensive Development Zone (CD) to permit the development of a local commercial building with two dwelling units on the second storey;
3. File Zoning Amendment By-law No. 15010; and
4. Instruct the City Clerk to forward a copy of each of this report and Council's resolution related to this report, to B & J Homes Ltd., the owner of the lot at 9161 - 140 Street.

INTENT

The purpose of this report is to advise Council of the results of additional community consultation undertaken by the applicant regarding Rezoning Application No. 7902 0325 00, related to the property at 9161 – 140 Street, which consultation has occurred since the Public Hearing was held on May 26, 2003 and to recommend a course of action for Council's consideration.

BACKGROUND

On October 29, 2002, the owner of the property at 9161 – 140 Street submitted a Rezoning and Development Permit Application (No. 7902-0325-00) to rezone the property from Single Family Residential Zone (RF) to Comprehensive Development Zone (CD) to allow the construction of a local commercial building with two dwelling units on the second storey. At its Regular Council Land Use meeting on May 5, 2003, Council considered the application (Appendix A), gave first and second readings to the related Rezoning By-law No. 15010, set the Public Hearing date for May 26, 2003 and authorized staff to draft the Development Permit.

At the Public Hearing on May 26, 2003, Council:

- Received a petition containing 646 signatures supporting the proposed rezoning;

- Received a petition with 7 signatures opposing the proposed rezoning;
- Received a petition containing 487 signatures opposing the proposed rezoning;
- Received information that a total of 253 people indicated in writing of their position on the proposed rezoning application including 101 in support, 150 in opposition and 2 undecided.
- Heard a total of 22 people who appeared before Council at the Public Hearing, including 6 in support, 15 in opposition and 1 expressing concerns regarding the rezoning application.

The concerns expressed by those making presentations against the proposal at the Public Hearing include increased traffic, crime, drug trafficking and prostitution in the area, safety of school children and the area already having a sufficient number of stores to meet the neighbourhood's needs.

After the Public Hearing, Council adopted the following resolution (Res. R03-1451):

That Council refer the application for the development at 9161 – 140 Street to the applicant to work with the community.

The Rezoning By-law was not given third reading.

DISCUSSION

In response to Council's resolution, the Planning and Development Department contacted the applicant on May 30, 2003, to determine if they intended to continue with the application and, if so, how they proposed to address the community concerns or undertake further dialogue with the community. On July 17, 2003, the applicant met with Area Planning staff and indicated that they intended to continue with the application.

Planning staff advised the applicant that they should consult the owner of the adjoining business (Ham's Market) and his consultant, and the residents adjacent to the application site to determine if there are means by which to address the concerns expressed at the Public Hearing. Staff further suggested to the applicant that they hold a second Public Information Meeting to present any revisions to their original proposal that result from the consultation with the owners of the adjacent business and adjoining residential properties.

Consultation with Owners of Surrounding Properties

During the summer, the applicant had a series of contacts with the owner of Ham's Market, the business enterprise adjacent to the subject site and the business owner's consultant, as well as with the other residential neighbours, in an attempt to resolve outstanding concerns. The following is a summary of these contacts:

- August 10, 2003 – The applicant approached the consultant retained by the owner of Ham's Market to discuss issues raised by the owner of Ham's Market. Ham's Market at 13990 – 92 Avenue is immediately north of the subject property. The consultant suggested the applicant present him with a written statement to show his client. The applicant faxed a letter to the consultant responding to the issues raised at the Public Hearing. The consultant forwarded the letter to his client, the owner of Ham's Market. In this letter, the applicant proposed to register a Restrictive Covenant on the title of the rezoned lot that would act to prohibit the sale of all prepared packaged foods, including, without limitation, candy, chips, candy bars, popcorn, canned or bottled pop, milk and other like substances. The applicant also advised that the Restrictive Covenant would prohibit the sale of lottery tickets. The consultant advised that he was prepared to arrange a meeting between the applicant and his client, the owner of Ham's Market.
- August 22, 2003 – The consultant advised the applicant that Ham's Market was no longer his client.
- September 7, 2003 – The applicant talked to the owner of Ham's Market and was advised that the owner of Ham's Market was against the project and did not want any other stores to be located in the area.
- September, 2003 – The applicant tried to contact the owners of residential properties immediately adjacent to the application site including, 13955, 13966 and 13978 – 92 Avenue and 9153 – 140 Street. Despite these attempts to approach these property owners, the applicant advised staff that some of these owners were not willing to discuss the proposal with the applicant individually and some did not respond to the applicant at all.
- September 29, 2003 – The applicant submitted a report to City staff documenting his discussions with the owners of the properties adjacent to the development site.

The applicant advised City staff that they would rather proceed with a second Public Information Meeting to obtain

further input from the public and address community concerns. The applicant advised that responses from the immediate neighbourhood should be given due consideration, while individuals outside the immediate neighbourhood should be recognized, but their opinions given less weight. The applicant advised that they intended to present the results of the Public Information Meeting by presenting the responses from people representing properties within 100 metres (300 ft.) of the development site separately from responses from individuals representing properties outside of 100 metres (300 ft.) from the development site. This is consistent with the boundary for Public Hearing Notices and pre-notification letters.

Second Public Information Meeting

The second Public Information Meeting was held on Thursday, September 18, 2003 at the Creekside Elementary School at 13838 – 91 Avenue. The meeting was scheduled from 6:30 p.m. to 8:00 p.m. The applicant mailed notices of the Public Information Meeting on September 5, 2003 to property addresses within 100 metres (300 ft.) of the application site. There are about 70 properties within a 100-metre (300-ft.) radius of the application site. In addition, a notice of the Public Information Meeting was advertised in the Leader newspaper on September 12, 2003 and September 14, 2003.

On September 10, 2003, prior to the Public Information Meeting, a representative from Ham's Market at 13990 – 92 Avenue and the owner of the residential property at 13978 – 92 Avenue met with Planning and Development Department staff and the applicant. The neighbouring property owners advised that they were concerned that the applicant would bring in his own supporters to the Public Information Meeting and questioned how the addresses of the meeting attendees could be confirmed. As a result of these concerns, the applicant and the neighbouring property owners agreed to ask those signing in at the Public Information Meeting for proof of address to confirm their place of residence. In addition it was agreed that the comment response forms used at the Public Information Meeting should be pre-labelled for those addresses within 100 metres (300 ft.) of the application site. Any member of the public residing beyond 100 metres (300 ft.) of the site who wanted to provide input could also complete a response form, but these forms would not be pre-labelled. The neighbouring owners further requested that Planning and Development Department staff monitor and check each attendee's identity. Staff advised that they had no authority to check people's identity at such a Public Information Meeting.

The Public Information Meeting was held on September 18, 2003 with more than 150 people attending the meeting. Due to the number of people who arrived at the meeting, the applicant was unable to ensure that all of the attendees signed in. The applicant also attempted to distribute response forms with labels to those within 100 metres (300 ft.) from the application site; however, he could not manage to confirm proof of address for each person in attendance as he had agreed with the neighbouring property owners.

The applicant's architect made a presentation on the project to those in attendance and commented on the means proposed to address the concerns that were raised at the Public Hearing. This included:

- A restriction on the hours of operation for the proposed businesses on the site to between 8:00 a.m. and 10:00 p.m. daily.
- Advice that the owner/operator of the businesses will reside upstairs providing surveillance after regular hours of operation and further advising that the business premises will be locked and the entrances to the parking lot will be gated so that vehicular access is not available after the regular hours of operation.
- Advice that the uses permitted under the proposed zoning do not generate noise.
- Advice that the applicant would install a fence and plant trees on the west and south sides of the premises that will help reduce any noise that may be generated by the development.
- Advice that there will not be a convenience store on the site and to address concerns regarding competition with existing businesses in the area, the owner is prepared to register a Restrictive Covenant on the title of the property prohibiting the sale on the property of items that will be in competition with goods sold at Ham's Market, the neighbouring business enterprise.

Staff observed that there were groups supporting the applicant's proposal and groups supporting Ham's Market in general opposition to the proposal. The applicant requested attendees to return the response forms in two boxes, one for those who represent properties within 100 metres of the subject site and one for those who represent properties beyond 100 metres of the site.

After the meeting concluded, the opponents strongly objected to the applicant taking the response forms and

providing the results to the Planning and Development Department. The opponents were concerned that there might be more response forms added or submitted after the meeting and that it would not be fair. As a result, the Planning and Development Department staff member present at the meeting, two representatives of the applicant and two representatives of the opponents counted the total number of response forms returned immediately after the Public Information Meeting. Due to lack of trust, the opponents insisted that the Planning and Development Department review the Public Information Meeting results rather than the applicant. Consequently, all the response forms were taken by the Planning and Development Department staff member and neither the applicant nor the opponents were aware of the results until all the response forms had been checked and compiled.

A total of 152 response forms were submitted and counted at the September 18, 2003 Public Information Meeting. The following is a summary of the results, based on those response forms. It must be noted, in compiling these results, the following have been taken into account:

- Duplicated responses from one address were counted as one response.
- Incomplete and unclear names and addresses were not counted.
- Forms containing an address from outside the City of Surrey were not counted.
- The applicant's own response was not counted and the application site was excluded from the total number of properties within the 100-metre boundary.
- The response on one form was confusing and staff had to confirm the owner's position by telephone.

Within 100 metre (300 ft.) Radius

	<u>No. of Forms</u>	<u>% of responses (24 forms)</u>
Oppose	6	25%
Support	18	75%
Total	24	100%

Outside 100 metre (300 ft.) Radius

	<u>No. of Forms</u>	<u>% of responses (89 forms)</u>
Oppose	72	81%
Support	17	19%
Total	89	100%

Combined Responses Received During the Public Information Meeting

	<u>No. of Forms</u>	<u>% of all responses (113)</u>
Oppose	78	69%
Support	35	31%
Total	113	100%

The above results were communicated to the applicant and the neighbouring property owners. The applicant advised that it was his opinion that it could be assumed that people residing within 100 metres (300 ft.) radius of the application site that chose not to attend the Public Information Meeting support the proposed development. On that basis, the applicant holds the view that 75% of the properties within 100 metres (300 ft.) of the application site support the proposed development (Appendix B).

However, based on the input from the most recent Public Information Meeting, only 18 (25.7%) of the 70 properties within the 100-metre (300 ft.) of the development site have formally advised that they support the proposal. Approximately 6 properties (8.6%) have formally advised that they oppose the proposed development while the owners of 46 properties (65.7%) did not provide an indication of their position.

Within 100-metre (300 ft.) Boundary

	<u>No. of properties</u>	<u>% of all properties within a 100 m radius (70)</u>
Oppose	6	8.6%
Support	18	25.7%
Unknown	46	65.7%*
Total	70	100%

*The petition submitted by Ham's Market described in the following section of this report provides input from many of these 46 properties.

Further Petition submitted by Ham's Market

On September 18, 2003, the date of the Public Information Meeting, a representative from Ham's Market at 13990 – 92 Avenue submitted a petition to the Planning and Development Department which was the result of a survey conducted by Ham's Market and other neighbours during August and September 2003. Staff was advised that the purpose of the survey was to demonstrate that the majority of those residing in the nearby neighbourhood oppose the proposed commercial development at 9161 – 140 Street.

This survey report documented that 122 addresses were surveyed and noted that there were 90 addresses opposed to the proposed development. The name, signature and date of the survey, for each address surveyed, were submitted. It is noted that the survey area, although in the vicinity of the application site, covered an area greater than the 100-metre (300 ft.) radius from the boundary of the development site. If for comparison purposes, the addresses outside of the 100 metre (300 ft.) radius are not counted, the Ham's Market survey would be reduced to 51 addresses opposed to the development (see Appendix C). This represents about 72.8% of the 70 properties within the 100m radius of the development site. The representative for Ham's Market advised that the survey results were consistent with a previous survey they had conducted prior to the Public Hearing in May 2003.

A further review of the survey results and the response forms from the most recent Public Information Meeting indicates that there are 9 addresses that have signed as opposed to the development in the Ham's Market survey, but indicated support for the proposed development at the Public Information Meeting held on September 18, 2003. However, for those 46 properties within the 100 m radius of the development site that did not have a representative attend the Public Information Meeting, or whose opinions were unknown or unclear from the Public Information Meeting response forms, 36 were noted as opposed in the survey submitted by Ham's Market. Combining this information with the results obtained through the Public Information Meeting responses, 42 addresses or 60% of the properties within 100-metre radius of the development site, oppose the project.

On October 10, 2003, a representative from Ham's Market and four other property owners met with City staff to express their concerns about the Public Information Meeting process. Three out of five of the property owners were unable to attend the Public Information Meeting for various reasons. One claimed that they did not receive a notice although they reside within the 100-metre radius boundary. They maintain that the community is still very much opposed to the development.

On October 28, 2003, a letter was submitted by Ham's Market regarding the Public Information Meeting results and providing a response to the applicant's proposed solutions to issues raised at the Public Hearing. The Ham's Market representative indicated that the Public Information Meeting results should not be used for preparing the report to Council for the following reasons:

- The meeting was held by the developer and was not monitored properly. Since the developer did not check the people's identity when they handed out the labelled response forms for people within the 100-metre radius, the opponents questioned if those people actually reside within the 100-metre radius boundary.

[Consistent with other development applications and the brochure for Public Information Meetings prepared by the City, Public Information Meetings are held and conducted by the applicant/developer. City staff attends Public Information Meetings as observers only. Similar to other Public Information Meetings, applicants ask attendees to sign in providing their name and address, but rarely, if ever, check attendee's proof of identity and address.]

- The City should check if the votes are genuine or not, in such a way that everyone agrees upon.

[The response sheets were counted at the Public Information Meeting and taken by City staff to compile the results after the meeting. The response forms were checked in terms of the address of respondents and whether or not they are within the 100-metre radius of the development site.]

- Contrary to the applicant's claim, the neighbouring property owners advised that they had responded to the applicant and it was inaccurate for the applicant to inform the Planning and Development Department that the neighbouring property owners did not respond to their efforts.
- The opponents consider that there are adequate stores within walking distance that provide the same services as proposed in this development. There are no strong reasons to support the rezoning application to allow commercial uses at this location.

Traffic Impact Study Submitted by Applicant

The applicant retained ND Lea Consultants Ltd to conduct a traffic impact study for the proposed development. The report findings can be summarized as follows:

- The existing roads and intersections are operating at a satisfactory level of service.
- The proposed development will generate about 60 vehicles per hour (two-way) during weekday p.m. peak hours and 80 vehicles per hour (two-way) during Saturday afternoon peak hours. Of these, probably 50% are actual new traffic volumes added to the road system.
- The added traffic is less than 5% of the total traffic on the existing roads and will not likely affect the level of service of the road system.
- Some mitigating measures, such as angling the driveway entrance to parking lot towards the street, to discourage development traffic from travelling on the west and south portion of the back lane, are suggested for improving traffic safety, minimizing disruptions to the local traffic and encouraging walking and cycling.

Therefore, the applicant considers that minimal traffic impacts would be generated by this proposed development.

The Engineering Department has reviewed the report and generally agrees with the conclusions.

Options Available to Council in Addressing the Subject Application

Option 1: Grant Third Reading to Zoning Amendment By-law No. 15010 (Appendix D) and require that a Restrictive Covenant be registered against the title of the property to restrict the sale of certain items and limit the hours of operation as proposed by the applicant.

The applicant has stated, on several occasions, that the proposed development is intended to be complementary to, rather competitive with, the existing nearby businesses. To address the closest existing business (Ham's Market), the applicant proposes to register a Restrictive Covenant on title under Section 219 of the *Land Title Act* that will act to prohibit the sale on the lands of all prepared packaged foods, including, without limitation, candy, chips, candy bars, popcorn, canned or bottled pop, milk and other like substances. The Restrictive Covenant would also prohibit the sale of lottery tickets.

Pros:

As outlined in the Planning Report to Council on May 5, 2003, the advantages of this proposal include:

- The proposal supports the Official Community Plan objectives respecting the encouragement of economic development growth;
- According to the applicant, there is a demand for additional local commercial uses to serve this neighbourhood. The proposed retail uses are limited to a bakery and video rental store. The proposed CD By-law does not permit a convenience store.
- The scale of the development should not have a significant impact on traffic and the concerns of crime and noise can be mitigated by project design and limiting the hours of operation.

Cons:

- Many of the neighbouring property owners appear strongly opposed to the development, as 42 addresses or 60 % of the properties within a 100-metre radius have indicated opposition to the proposal.
- The area is served by a local convenience store and commercial uses in close proximity to the application site. There remains concern, on the part of the neighbouring business owner, that the proposed business will undermine the viability of the existing business on this corner.
- Concerns have been expressed regarding the potential proliferation of commercial uses extending south on 140 Street in this general location.
- There may be potential difficulties in enforcing the proposed Restrictive Covenant to prohibit the sale of certain items within the bakery or video rental stores.

Option 2: Delete "Retail Store" entirely from the Permitted Uses section of Zoning Amendment By-law No. 15010 and set a new Public Hearing date for the By-law as amended (Appendix E).

Under this option Council would eliminate "retail store" from the permitted uses section of Zoning Amendment By-law No. 15010, prior to giving the by-law third reading. The commercial uses allowed on the site would be limited to eating establishment (excluding drive-through restaurants and licensed premise) and personal service uses limited to barbershop, beauty parlour, cleaning and repair of clothing and shoe repair shop. The CD By-law would continue to allow two dwelling units on the second floor.

Pros:

Same as Option 1 except:

- Community concerns with respect to retail commercial uses that may be allowed on the site will be alleviated to some extent and concerns by the owners of Ham's Market, regarding the establishment of competitive businesses on the subject site, should be reduced.
- Enforcement of the Zoning By-law is generally more straight forward than enforcement of the provisions of a Restrictive Covenant.

Cons:

Same as Option 1 except:

- The applicant does not agree with this option as they are interested in operating both a video rental store and sweet shop (bakery) on the site.

Option 3: Deny the rezoning application and file Zoning Amendment By-law No. 15010.

Pros:

- Will satisfy the concerns of those residential and business neighbours that continue to be strongly opposed to the project.
- The site is not an established or identifiable commercial node in the Official Community Plan. There is concern that a rezoning to allow commercial uses would establish a land use precedent for further linear expansion of commercial uses south along 140 Street.

Cons:

- Does not support the economic development objectives of the City's Official Community Plan.
- Will not provide any additional local commercial services for the surrounding neighbourhood.

Summary of Evaluation

Given the feedback received as part of the original pre-notification process, the first Public Information Meeting and initial petitions for and against the development, the Planning and Development Department recommended to Council that the application proceed to Public Hearing so that the public would have a formal opportunity to express their views on the application to Council, prior to Council making a decision as to whether the project should proceed. Based on the input at the Public Hearing and the further consultation that has taken place since the Public Hearing including, a second Public Information Meeting, it appears that there remain strong concerns in the neighbourhood (i.e., both within and outside the 100-metre radius of the development site) regarding the proposal. The applicant does not appear to have been able to obtain significant additional support for the project since the Public Hearing or any resolution to the concerns held by the owner of Ham's Market and the immediately surrounding residents. In consideration of the above and in view of the fact that this site was not identified as a commercial node in the Official Community Plan, the Planning and Development Department recommends that Council deny the rezoning application and then file Zoning Amendment By-law No. 15010. There is, however, some merit in principle to Option 2 as well, since it acts to address one of the most significant community concerns, that being unnecessary duplication of commercial services in the neighbourhood.

CONCLUSION

In accordance with Council's direction after the Public Hearing, regarding Zoning Amendment By-law No. 15010 related to the property at 9161 – 140 Street, the applicant has undertaken additional consultation with residents and business owners in the surrounding community, including contacting the immediate surrounding property owners and conducting a second Public Information Meeting on September 18, 2003. The applicant also submitted a Traffic Impact Study for the City's consideration. Based on the results of the feedback received through the Public Information Meeting and the further petition submitted by Ham's Market at 13990 – 92 Avenue, it is evident that there remains significant opposition to the project from many of the surrounding residents and property owners. Based on an evaluation of the options available to Council, it is recommended that Council deny the rezoning application and then file Zoning Amendment By-law No. 15010.

Murray Dinwoodie
General Manager
Planning and Development

GK/kms/saw

Attachments:

Appendix A – Planning Report dated May 5, 2003

Appendix B – Map showing Results of Public Information Meeting held on September 18, 2003

Appendix C – Map showing Survey Results submitted by Ham's Market

Appendix D – Zoning Amendment By-law No. 15010 (Option 1)

Appendix E – Proposed Revised By-law (Option 2)