SURREY
CITY OF PARKS

Corporate Report

NO: L005

COUNCIL DATE: July 14, 2008

REGULAR COUNCIL - LAND USE

TO:	**Mayor & Council**	DATE:	**July 14, 2008**
FROM:	**General Manager, Planning and Development**	FILE:	**7908-0059-00**
SUBJECT:	**Background Information for Delegation Request Regarding Proposed Tree Protection Restrictive Covenant Amendment at 15090 - 60 Avenue (Garry Sandhu)**		

RECOMMENDATION

The Planning and Development Department recommends that Council receive this report as information.

INTENT

At the June 23, 2008 Regular Council Meeting, Council received a request for a delegation to Council from Garry Sandhu in relation to Application No. 7908-0059-00, regarding a Restrictive Covenant Amendment for the property at 15090 - 60 Avenue (the "Property"). Mr. Sandhu, the owner of the Property, wishes to appear before Council to discuss a Restrictive Covenant Amendment proposal that he submitted to the City to adjust an existing tree covenant area on the Property. Council granted the delegation, and requested that staff provide information to Council on the matter. This report responds to Council's request.

BACKGROUND

On May 12, 2008, Council considered a Planning Report for Application No. 7908-0059-00 (Appendix "A"), which recommended denial of a proposal by Mr. Garry Sandhu to amend a Tree Protection Restrictive Covenant (No. BB577502) at 15090 - 60 Avenue to allow removal of a Cherry tree located in the front yard of the Property that was protected by a Restrictive Covenant that was registered on title at the time of subdivision of the lot. The applicant proposed to remove the Cherry tree, and delete the 66.9-square-metre (720 square foot) Restrictive Covenant area surrounding the Cherry tree. Council denied the request as recommended in the staff report. The owner, Mr. Sandhu, was not present at the May 12, 2008 Regular Council Meeting when Council resolved to deny the application.

DISCUSSION

Property History (Project No. 7906-0157-00)

The subject lot is zoned "Single Family Residential (9) Coach House (RF-9)" and was created as part of a Rezoning and Subdivision application (7905-0157-00) within the South Newton Neighbourhood Concept Plan. The arborist report prepared in support of the application identified two trees on the Property: a Cedar in the rear yard and a Cypress in the front yard. The Arborist noted that the Cypress tree in the front of the lot was 20 centimetres (7.87 inches) in diameter, and had a 3-metre (10 foot) drip line.

Due to concerns from surrounding residents, substantial efforts were made to protect trees in this development, including adjustments in the lot layout and the establishment of Restrictive Covenants for tree protection on numerous lots, including the subject Property. The Restrictive Covenants were registered on the lots as part of the approval of this rezoning and subdivision application.

After the lot was created and the site was being prepared for construction, the new owner Mr. Sandhu reported to staff that the tree in the front yard, identified as a Cypress, was actually a Cherry tree and not in good health. He requested that the tree be removed and that it be replaced with another tree (of staff's choice) elsewhere on the Property, since the location of the Cherry tree was described by Mr. Sandhu as interfering with the building envelope of the lot, resulting in a reduced house size. In support of this request, Mr. Sandhu later submitted an application to amend the Restrictive Covenant (No. BB577502), as well as a report from the arborist confirming that the tree should be removed. The Planning Report (Appendix "A") documents the proposal and staff's evaluation of this issue.

As part of the review process for Mr. Sandhu's Restrictive Covenant amendment application, staff requested an arborist assessment of the Cherry tree (photograph attached as Appendix "B"). The new arborist report assessed the subject tree to be a 32 centimetre (12.6 inch) diameter, flowering Japanese Cherry, with a 5-metre (16.4 foot) drip zone. A flowering Japanese Cherry is a valuable, protected tree, and staff continued to be of the opinion that all efforts should be made to retain this tree. However, the arborist noted that during site preparation, a large pile of debris had been placed within the protective root zone of this tree. Further, the tree is growing in a depression caused by the lot grading. As a result the arborist noted that, when it rains or snows, this depression area will be filled with water and the roots will drown, and soil compaction around the roots will increase. As a result, the tree will not survive. Inspection by staff confirmed the arborist's assessment.

Despite the fact that the subject tree was wrongly identified as a Cypress in the first assessment, a Japanese Cherry is also a bylaw-protected tree. The damage to this tree, which was a result of site preparation work, is a violation of the Surrey Tree Protection Bylaw, 2006, No. 16100.

CONCLUSION

This report responds to Council's request, at the June 23, 2008 Regular Council Meeting, for background information on the Restrictive Covenant Amendment application No. 7908-0059-00, including clarification that the tree is a Japanese Cherry, not a Cypress. Despite the discrepancy in the original identification of this tree, a Japanese Cherry is also a protected tree under the Tree Protection Bylaw. On May 12, 2008, staff recommended that if this Japanese Cherry tree cannot be saved, the applicant should be required to plant a replacement tree at the same location as the damaged tree, and that the Restrictive Covenant remain in place (i.e., that the proposed amendment be denied). Under the Tree Protection Bylaw, the General Manager may require the owner of a property to plant a replacement tree at the same location as the damaged tree.

Jean Lamontagne
General Manager,
Planning and Development

AGA/kms/saw
Attachments:
Appendix "A" - Planning Report
Appendix "B" - Photograph of the Cherry Tree

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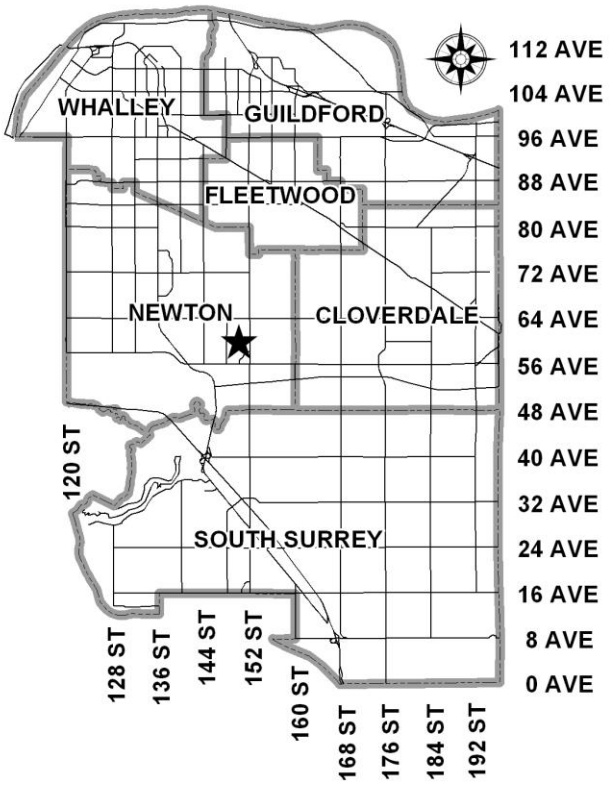
Appendix "A"
City of Surrey
PLANNING & DEVELOPMENT REPORT
File: 7908-0059-00

Planning Report Date: May 12, 2008

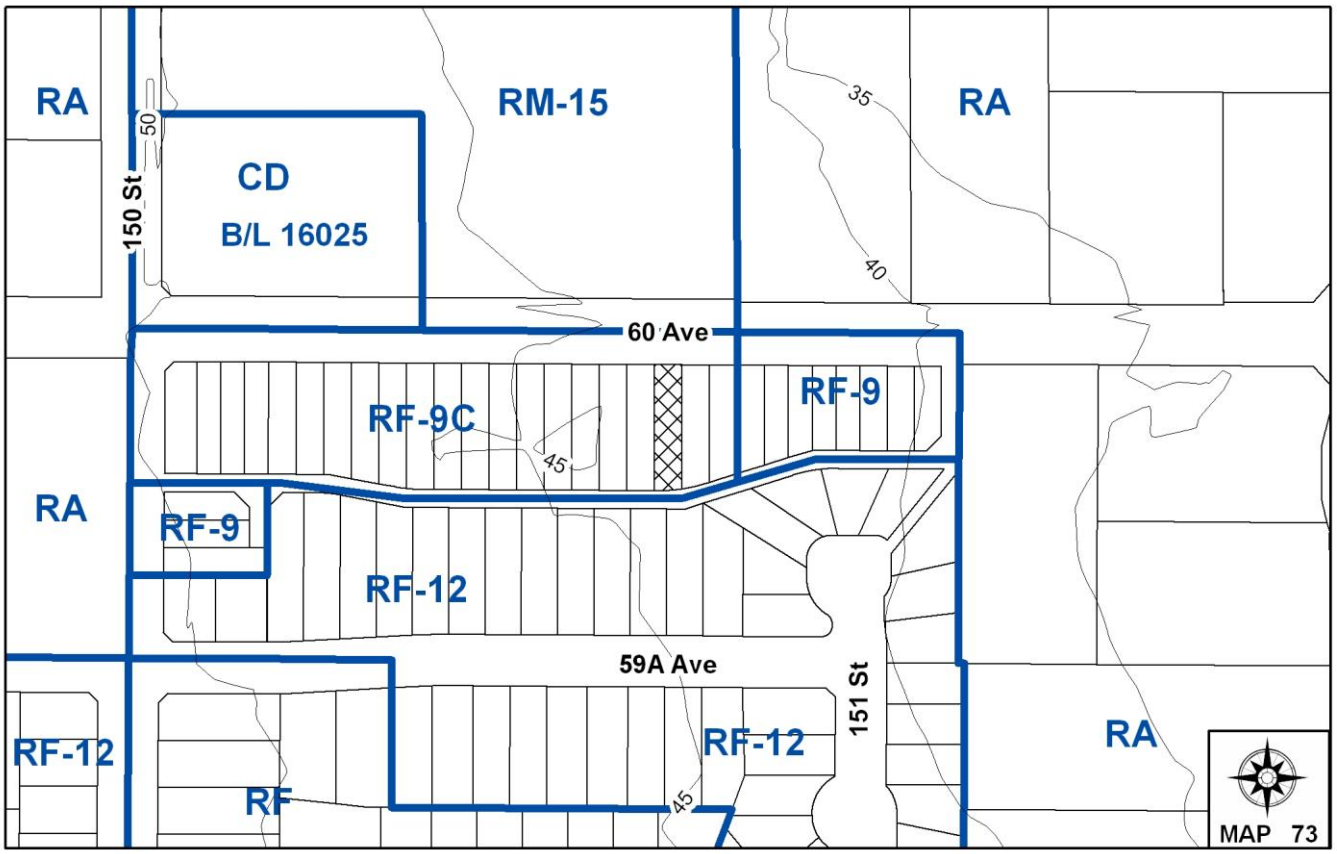


PROPOSAL:

- **Restrictive Covenant Amendment**

to eliminate an existing tree protection restrictive covenant area and allow relocation of a building envelope on a single family small lot.

LOCATION:	15090 - 60 Avenue
OWNER:	Parmjit S. Johal
ZONING:	RF-9C
OCP DESIGNATION:	Urban
NCP DESIGNATION:	Single Family Residential Small Lots



RECOMMENDATION SUMMARY

- Deny the applicant's request for a Restrictive Covenant amendment to adjust an existing tree protection covenant area to allow the relocation of a building envelope.

DEVIATION FROM PLANS, POLICIES OR REGULATIONS

- The subject lot was approved as part of development application No. 7906-0157-00. To address public concerns, tree preservation was undertaken on numerous of the approved lots.

- The current Restrictive Covenant BB577502, registered on title in 2007 established 2 restrictive covenant areas on the lot (Appendix II) to protect two retained trees. The tree on the front of the lot (a 34 cm/13.4 in diameter Cherry) has now been reassessed. The arborist assessment concludes that the tree will not survive due to improper grading and site preparation that have failed to protect this tree.

- The applicant is therefore seeking an amendment to the tree protection covenant area after this tree is removed, in order to adjust the building envelope (Appendix III) and move the house closer to the street (60 Avenue) to align with the homes on the abutting lots.

RATIONALE OF RECOMMENDATION

- Under the Surrey Tree Protection By-law, 2006, No. 16100, if a protected tree is damaged by an owner, the General Manager may require the owner to plant the replacement tree at the exact location of the damaged tree.

- The deterioration of this tree was caused by improper lot grading and site preparation, and these actions should not be rewarded by allowing this amendment.

- Staff believe that if this amendment is allowed, it will create precedent, for more tree removal. The consultant of the project (No. 7906-0157-00) and staff worked hard to preserve more trees in this area, and allowing this amendment is contrary to the efforts made to retain those trees. By requiring the replacement tree to be planted at the same location as the existing tree will discourage others from removing more trees.

- Although the restrictive covenant on this property restricts the placement of the house on the lot, there are similar situations in this subdivision, where the homes are to be located further into the lot, to save trees along the street (60 Avenue).

RECOMMENDATION

The Planning & Development Department recommends that Council deny the applicant's request for a Restrictive Covenant amendment, to allow relocation of a building envelope.

REFERRALS

Building Division: At the time of subdivision, the developer was responsible for ensuring that there were no conflicts between grades and the trees proposed to be retained. If the tree now has to be removed as a result of their oversight, the tree will have to be replaced with another tree in the same location, once the cherry tree is removed and the area is regraded. The existing restrictive covenant will then apply to the replacement tree.

SITE CHARACTERISTICS

Existing Land Use: Vacant single family lot zoned RF-9C.

Adjacent Area:

Direction	**Existing Use**	**OCP/NCP Designation**	**Existing Zone**
North (Across 60 Avenue):	Townhouses (Nature's Walk Development).	Urban/Townhouses 15 upa max.	RM-15
East and West:	Vacant single family lots.	Urban/Single Family Residential Small Lots	RF-9C
South:	Vacant single family lots.	Urban/Single Family Residential Flex	RF-12

DEVELOPMENT CONSIDERATIONS

Background

- The subject lot located on the south side of 60 Avenue, between 150 Street and 152 Street, was created under subdivision No. 7906-0157-00. It is zoned RF-9C, designated Urban in the OCP, and Single Family Residential Small Lots in the South Newton NCP.

- During the rezoning process of the subject lot from RA to RF-9C under project No 7906-0157-00, that development and two others (Project No. 7905-0378-00 and 7906-0180-00) located in the 14900 and 15000 blocks of 59A Avenue and 59 Avenue and 5800 and 5900 blocks of 150 Street, were referred to staff to review the design with a view to increase preservation of trees.

- The approach required Development Variance Permits to relax setbacks and garages, and Restrictive Covenants to restrict building envelopes and protect trees.

Subject Lot - 15090 - 69 Avenue

- Two trees were retained on the subject site. A 34 cm (13.4 in) diameter Cherry on the front and a 60 cm (24 inch) diameter Cedar at the back, within 66.9 square metres (720 sq.ft.) and 33.7 square metres (363 sq.ft.) of protection zones respectively. A Restrictive Covenant to protect these trees was developed for this lot, and was registered on the lot title.

- The Cherry has been reassessed (Appendix IV) and found to be growing in depression, caused by improper lot grading. The arborist assessment concludes that the tree will not survive because snow and water will accumulate in the depression, drowning the roots. Because the tree will not survive, the new report now recommends that it be removed and replaced with a new tree. Once the tree is removed, the applicant would like to plant the replacement tree at a different location and is seeking an amendment to the RC as discussed below.

JUSTIFICATION FOR RESTRICTIVE COVENANT AMENDMENT

(a) Requested Amendment:

- To adjust the tree protection area in the front of the lot, to allow the building envelope to be adjusted.

Applicant's Justification:

- The two covenant areas have resulted in a building envelope that only achieves an attached garage at the rear of the lot, leaving no practical back yard for this lot. Once the Cherry tree is removed, there is no scientific reason why the replacement tree has to be planted at the exact same location, as the Cherry tree was. The replacement tree, like the rest that will be planted in this subdivision does not require a covenant area around it. By planting the replacement tree closer to the street (60 Avenue) allows the house to be moved closer to the street as well. That frees some room at the rear of the lot for a rear yard for children to play. This arrangement greatly improves the value of the subject property.

Staff Comments:

- While the subject covenant restricts the placement of the house on this lot, a detailed building envelope was developed for this lot at the subdivision stage so the new owner was aware of this restriction.

- There are homeowners in this subdivision with a similar arrangement as this lot, where the homes are to be located further into the lot, to save trees along the street (60 Avenue).

- Tree preservation was a significant issue for this project and this proposal will erode the actions undertaken to protect trees on these sites.

- Under the Tree Protection By-law, the General Manager may require the owner to plant the replacement tree at the same location as the damaged tree.

- Staff believe that if this amendment is allowed, it will create precedent for others to try to justify more tree removal within this subdivision. Given that the consultant of the project (that created this subdivision) and staff worked hard to preserve more trees in this area, allowing this amendment is contrary to the efforts made to retain those trees. Requiring that the property owner plant the replacement tree at the same location as the existing tree will meet the spirit of the original agreements for tree protection and discourage others from seeking similar requests to remove more trees.

- On this basis, staff recommend that Council deny the applicant's request to amend the Restrictive Covenant.

INFORMATION ATTACHED TO THIS REPORT

The following information is attached to this Report:

Appendix I.	Lot Owners, Action Summary and Project Data Sheets and Survey Plan
Appendix II.	Existing Covenant Area Plan and Location of Cherry Tree
Appendix III.	Existing Building Envelope
Appendix IV.	Proposed Building Envelope and Location of Replacement Trees
Appendix V.	The New Tree Assessment

Jean Lamontagne
General Manager
Planning and Development

AGA/kms

APPENDIX I

Information for City Clerk

Legal Description and Owners of all lots that form part of the application:

1. (a) Agent: Name: Garry Sandhu
Address: 11620 - 88A Avenue
Delta, BC
V5C 2E2
Tel: 604-583-0810

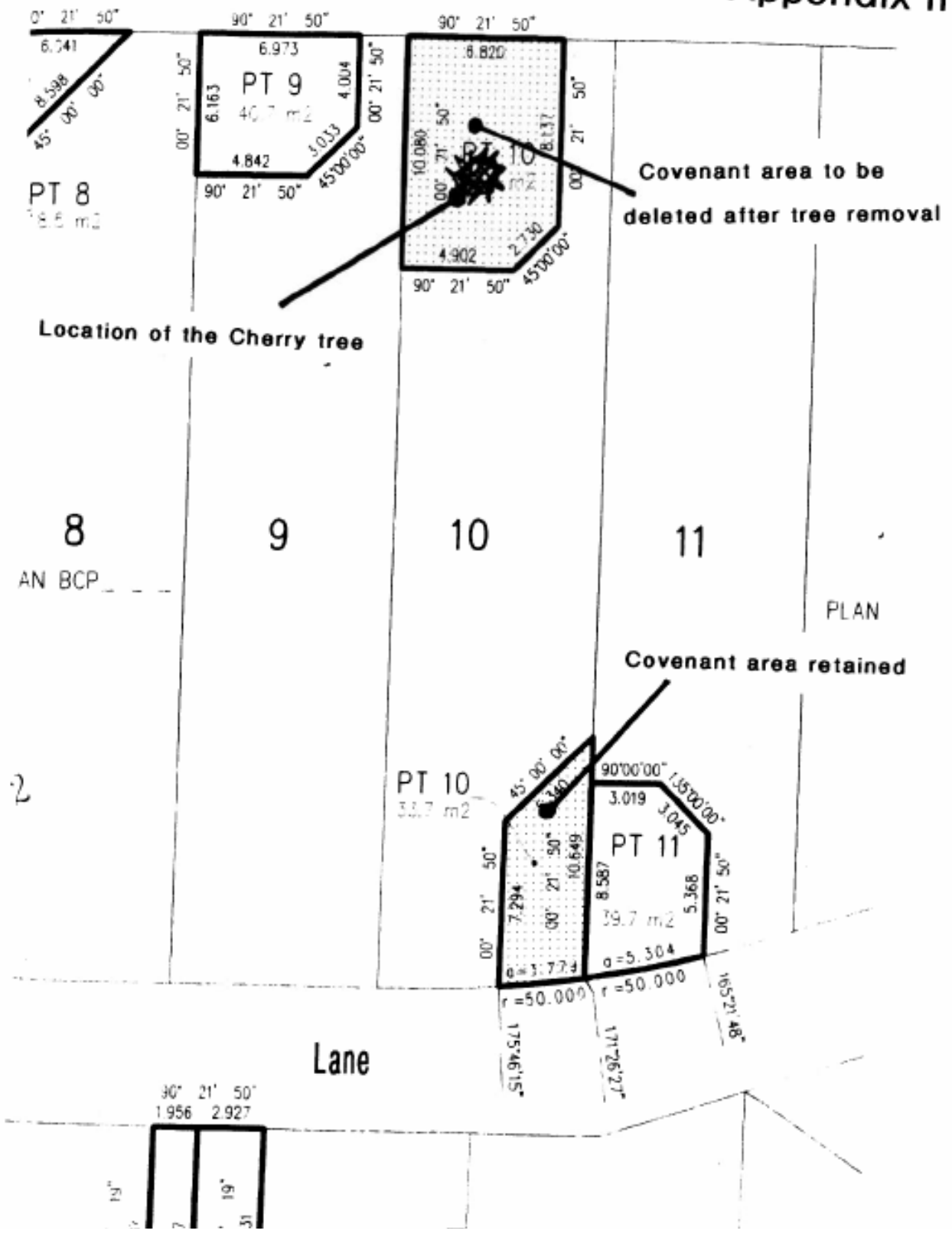
2. Properties involved in the Application

(a) Civic Address: 15090 - 60 Avenue

(b) Civic Address: 15090 - 60 Avenue
Owner: Parmjit Singh Johal
PID: 027-232-468
Lot 10 Section 10 Township 2 New Westminster District Plan BCP32588

3. Summary of Actions for City Clerk's Office

Appendix II


60 Ave
Covenant area to be deleted after tree removal
Location of the Cherry tree
Covenant area retained
PT 8
PT 9
PT 10
PT 11
8
9
10
11
AN BCP
PLAN
Lane

Tynan Consulting Ltd

Appendix III

Appendix IV

60 Ave
9.100m
New tree location
Approximate location of the Cherry tree
New Building envelope
41.095m
41.700m
Lot 10
Double Car garage
Tree retained at the rear of the lot
1.345m
a=7.787m

Appendix V

RANDY GREENIZAN
CERTIFIED ARBORIST

March 10, 2008

C. Kavolinas & Associates Inc.
Clark Kavolinas
21308 – 86th Avenue,
Langley, B. C.
V1M 2Z7

Dear Clark:

Re: Development at 15126 – 60th Avenue, Surrey, B. C.

I revisited the above-mentioned site to evaluate tree # 5884.

Tag #:	5884
Species:	Cherry
DBH:	34 cm
Drip Line:	5 m

Condition: This tree is in good condition. There is a large pile of debris that has been dumped within the tree protective zone. The lot grading has also been roughed in. The tree is growing in a depression that is caused by the lot grading so when it rains, snows etc this area is filled with water and the tree roots will drown and the soil compaction around the roots will increase. This tree will not survive because of the water retention and compacted root zone. It is also in the building envelope.

Recommendation: This tree be removed for the above-mentioned reasons.

If I can be of any further assistance, please contact me.

Sincerely,

Randy Greenizan

Randy Greenizan
ISA CERTIFIED ARBORIST, PN – 0712 A

Appendix "B"