

Dear Mayor and Council,

I looked at the submission for this variance and I have a question about sound.

I live at Dockside Green. We knew before we moved here that there was a lot of industrial activity across the Gorge. We expected to hear noise, and we do. Every day. Noise is a funny thing. The sound from the plant across the Gorge is actually louder at our ground floor unit, which has two buildings between it and the Gorge, than it is from the patio of Caffe Fantastico, which overlooks the water! My concern with this proposal is that while Council, staff, and the ADP have addressed the issues of the lighting, light pollution, etc., I did not see noise discussed at all.

While I am not in any way, shape, or form a sound engineer, my impression is that the higher up a noise is generated, the farther it will carry. It may be that the elevator they plan to use is quiet and that there is no problem. I don't know, but I would like to know that council and the ADP have considered additional noise from this site and its effect on Victoria's increasingly urban population.

Sincerely,

Jim Mayer
389 Tyee Road, Unit G3, Victoria BC V9A 0A9

October 5, 2020

Norton Rose Fulbright Canada LLP
1800 - 510 West Georgia Street
Vancouver, BC V6B 0M3 CANADA

Sent By E-mail

Mayor and Council
City of Victoria
One Centennial Square
Victoria, BC V8W 1P6

F: [REDACTED]
nortonrosefulbright.com

R. Max Collett

[REDACTED]
Assistant

Your reference
[YourRef]

Our reference
1000385659

Dear Mayor L. Helps and Members of Council:

Re: Development Permit with Variance Application (No. 00139) for 2800 Bridge Street

We are legal counsel for Pt. Ellice Properties Ltd. ("Pt. Ellice").

Pt. Ellice is the registered and beneficial owner of seven lots located in the Rock Bay neighbourhood of Victoria, BC. In particular, the properties owned by Pt. Ellice are located at civic addresses including: 2802 Pleasant Street; 2790 Pleasant Street; 2770 Pleasant Street (Lot 3); 2770 Pleasant Street (Lot 4); 2730 Pleasant Street; 2720 Turner Street; and 2850 Turner Street (the "**Pt. Ellice Properties**").

The Pt. Ellice Properties form a parcel which is located adjacent and to the west of 2800 Bridge Street (the "**Bridge Street Property**"). We understand a development proposal and height variance request has been submitted with respect to the Bridge Street Property (Application No. 00139), which is currently under consideration by City Council (the "**Application**"). The Application has been submitted by the owner of the Bridge Street Property, which we understand to be a member of the Ralmax Group of Companies ("**Ralmax**").

Based on our review of the publicly available documents, the Application relates to a proposal to construct a silo more than 30m high, in an area zoned for structures with maximum heights of 15m. The apparent purpose of the silo is to store raw aggregate materials for a concrete plant, which is also located on the Bridge Street Property. The proposed location for the silo is directly on the property line between the Bridge Street Property and the Pt. Ellice Properties, with no set back. Despite obviously being the property owner most affected by the Application, Ralmax has not taken any steps to discuss the Application with Pt. Ellice.

While we are aware that the proposal and Application will soon be moving to a public hearing and opportunity for comment, we wish to put certain concerns on the record at this stage, and to request that the Application be suspended until such time as those concerns are addressed, or a workable solution is reached between our client and Ralmax.

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INADEQUATE ACCESS FOR INCREASED BARGE TRAFFIC

Our client's primary concern arises from the proposed increased capacity of the silo, and the method of transporting aggregate, all of which turns on reliable and lawful barge access. In particular, the Application indicates that the aggregate to be transported to, and stored in, the silo will be transported by barge. The increased capacity of the silo will obviously coincide with increased barge traffic for the movement of raw materials (we understand that the increased barge traffic is in fact submitted as a positive feature of the Application, as it indicates it will greatly reduce truck traffic and related emissions). However, Ralmax is aware that South Bay, as presently configured, cannot accommodate the increase in barge traffic identified in the Application. As a result, if the Application is approved in its current form, there will be, among other things, inevitable conflict with Pt. Ellice and its tenants' use of Pt. Ellice's pre-existing dock. As set out below, Pt. Ellice strongly objects to any restriction to the use of its dock resulting from increased demand for barge access to the Bridge Street Property.

Pt. Ellice possesses a water lot lease for the foreshore area directly adjacent to the water lot lease associated with the Bridge Street Property. Pt. Ellice's water lot lease is used primarily by Pt. Ellice's tenants for their normal business operations, which includes the loading and unloading of materials to and from barges that are brought alongside a dock located on one of Pt. Ellice's Properties. This dock and its related use, which is permitted under Pt. Ellice's water lot lease, was in place well before any dock, and related use, was constructed at the Bridge Street Property. In fact, the Pt. Ellice Properties have had a dock in place since prior to Pt. Ellice's ownership, and dating back to a time when a significant portion of the Bridge Street Property was unfilled harbour.

Increased barge traffic to the Bridge Street Property, via its water lot lease, has the potential to cause serious negative consequences for Pt. Ellice. This is, in part, because of the configuration of the harbour. The thrust of the Application is predicated on ready barge access, and the Application states that barges will require access to the Bridge Street Property "every 4-7 days depending on market condition". However, Pt. Ellice's tenants typically have barges alongside the Pt. Ellice dock for several days, if not weeks, at a time. As depicted below, when a barge is alongside at Pt. Ellice's dock, the passage is too narrow to allow barges to pass by to reach the Bridge Street Property.



The resulting conflict is significant, and would interfere with the ongoing use of the Pt. Ellice Properties. We enclose, as **Appendix "A"**, additional photographs showing the configuration limiting barge access, and historical photographs documenting the existence of the dock on the Pt. Ellice Properties.

We are advised by our client that Ralmax has been aware of the issue of barge access for many years. Prior to 2000, Ralmax expressed an interest in constructing a dock on the Bridge Street Property, and approached Seaspan about supplying barges and undertaking hauling for the proposed new dock and facility at the Bridge Street Property. At that time, Seaspan had been providing barges for unloading and transportation at the Pt. Ellice Properties for at least a decade. In response to Ralmax's proposal, Seaspan took the owners of Pt. Ellice and Ralmax on a tour of the South Bay area and advised Ralmax about the access challenges for any future dock at the Bridge Street Property. At that time, Ralmax confirmed that its barge access requirements were minimal and would be subject to the schedule of barges using Pt. Ellice's dock.

If barge traffic to the Bridge Street Property increases to the degree anticipated as a result of the Application and proposed silo construction, there will be constant and costly disputes with respect to ongoing access. Pt. Ellice does not wish to be obstructionist, but we seek to highlight for the City that, under the present circumstances, the Application and proposed silo cannot be reliably supplied as intended. In our view, without reliable barge access, the proposed purpose of the silo is moot. Therefore, the issue of barge access must be properly addressed before further progress of the Application.

Pt. Ellice is of the view that this obstacle can be overcome by developing a solution involving improved barge access to South Bay. In order to examine this opportunity and canvass possible solutions, Pt. Ellice intends to reach out to Ralmax, and to other major property owners in the area (in particular, Jawl Properties), as well as

the tenants on the Pt. Ellice Properties (including Schnitzer Steel). Assuming Ralmax and other property owners and tenants are in agreement, Pt. Ellice welcomes the participation of the City of Victoria in any such meetings.

While the primary concern is the issue of barge access and the likelihood of resulting conflict between neighbouring property owners, we also wish to take this opportunity to make other concerns with the Application known to Council. These are set out below.

LACK OF SET BACK

Based on the plans submitted with the Application, it appears the proposal involves the silo being situated directly on the property line adjacent to the Pt. Ellice Properties, with a 0m set back. While we understand there is no minimum setback for M-3 Zone properties, our client has obvious concerns about having such a tall structure (in excess of 30 metres, or more than twice the pre-variance allowable maximum) directly on the property line, including the potential consequences this will have for the use and value of the Pt. Ellice Properties. It could, for example, directly prevent Pt. Ellice from building anything near the property line on its side of the divide, and otherwise strictly limit the type of future development available to Pt. Ellice. As a result, consideration of the Application should involve careful and fulsome consideration of the effect of the over-height silo specifically on the valuation and potential limitations of use for neighbouring properties, including the Pt. Ellice Properties.

LIGHT FEATURE

We understand that one of the other “selling” features of the Application is the proposed installation of an LED light feature for aesthetic purposes. Our client is concerned about the impact of such a light feature on the businesses, including our client’s tenants, in the immediate vicinity. While efforts to increase the aesthetic appeal of the Bridge Street Property are understandable, the proposal gives rise to real concerns that a 30m light installation will dominate and disrupt neighbouring businesses. We ask that more information be made available with respect to the proposed light installation, including its size, quality of light and illumination, and proposed hours of operation.

CONSTRUCTION AND OTHER DETAILS

The plans submitted with the Application show a proposed structure of 31.8m in height. However, the plans also indicate this will be built above a new grade, and not the existing grade. As a result, our client is concerned that the true height of the structure will be even greater than indicated.

The length of the structure along the property line is also unclear. While the plans indicate that the wall of the silo along the property line will be 12.8 meters in length, the plans also appear to include a screen wall extending beyond that length. Our client is entitled to know the precise length of the wall proposed for its property line.

In addition, the plans indicate perforated metal screens will be built along the property line, as well as on the two sides of the proposed silo at right angles to the property line. Our client seeks assurance that, for fire protection and general safety, these perforated screens cover solid walls.

In addition, our client is also concerned about the construction of the proposed over-height silo in this particular location, given the underlying land is simply a fill site over the original harbour bed. Our client seeks assurance that the underlying land can support the weight of the silo, when filled to capacity.

We also note that, while not directly adjoining, there are a considerable number of residential units in the area, and in particular to the north, on Jutland Road and Waterfront Crescent. Our client seeks assurance that all residents in the vicinity are or have been appropriately notified with respect to the Application, as an over-height structure (twice as tall as others in the area) with a substantial light feature will affect not only the immediately adjoining properties.

Finally, our client does not agree that there is precedent in the area for over-height variances such as the subject Application. While there is an over-height structure at the Lafarge concrete plant on Bay Street, we understand that this is not on the property line, and thus not comparable to the current Application.

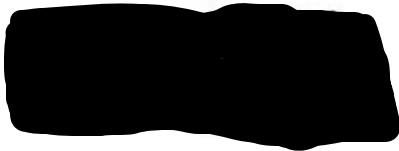
CONCLUSION

We reiterate our view that the Application should not proceed, and no further steps should be taken by the City towards advancing the Application, without first consulting with the affected neighbouring property owners and tenants.

As discussed above, our client is of the view that the concerns highlighted herein are best addressed through discussions between the applicant and those affected property owners and tenants. We will be reaching out to those parties shortly, and we welcome the participation of the City in any resulting discussions that take place. We would similarly welcome the City's facilitation of discussions in order to enable a mutually satisfactory solution is arrived at for all affected property owners and tenants.

We thank you for your attention to this matter.

Yours very truly,



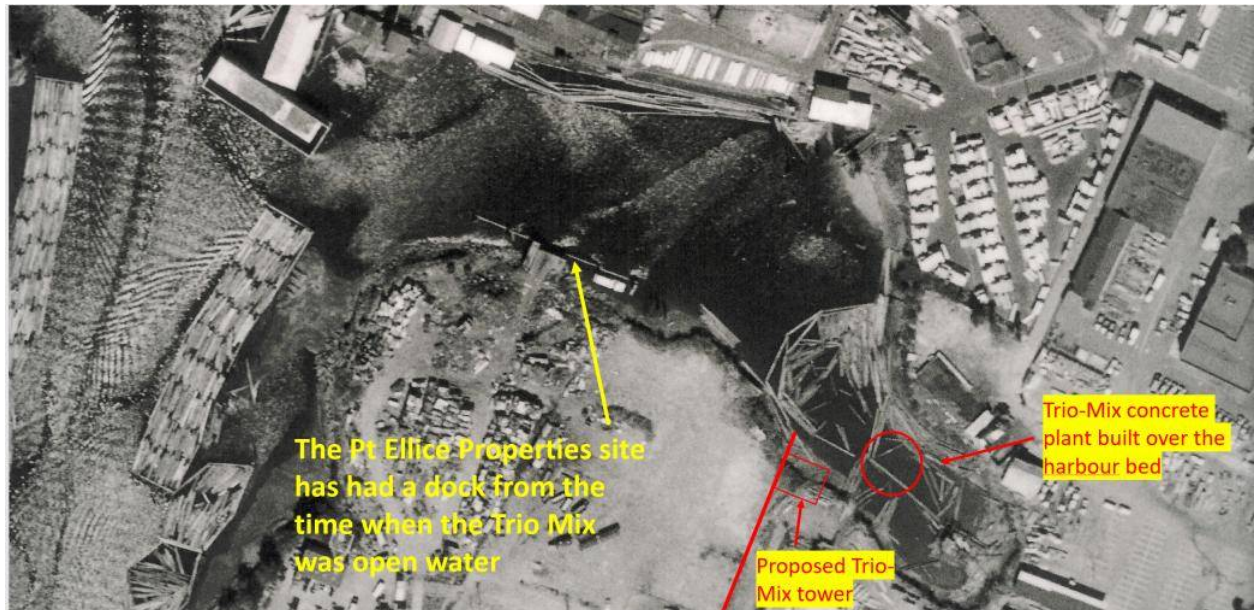
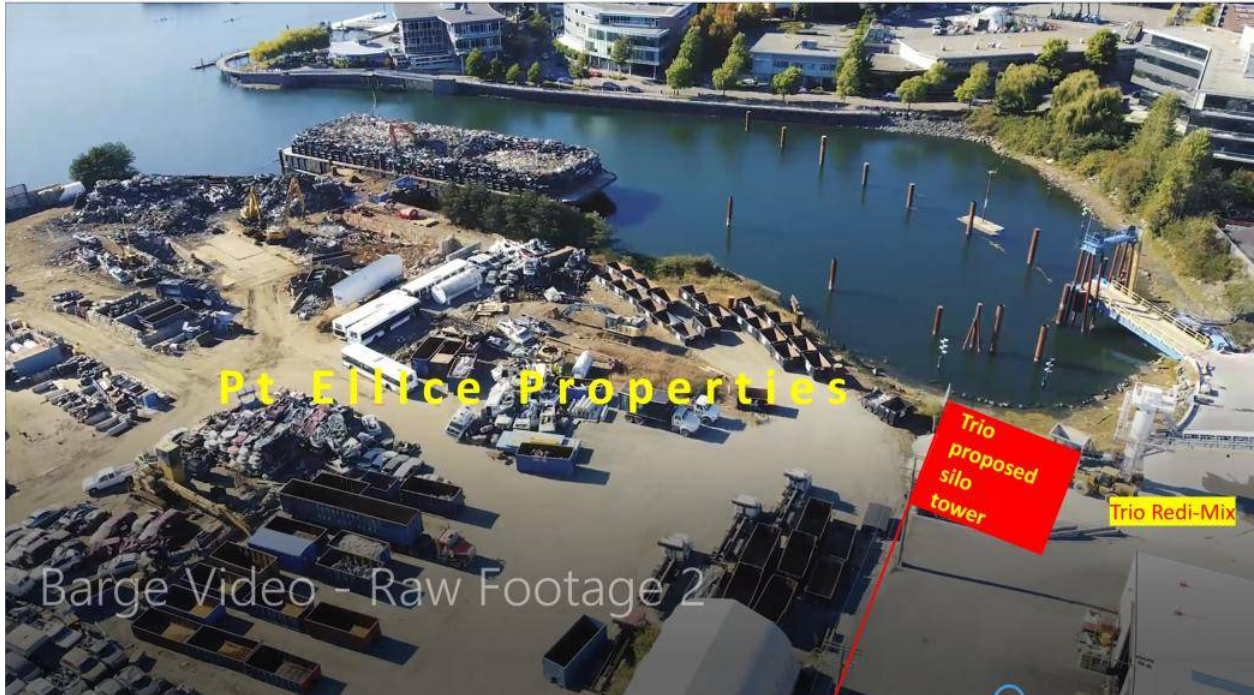
R. Max Collett*

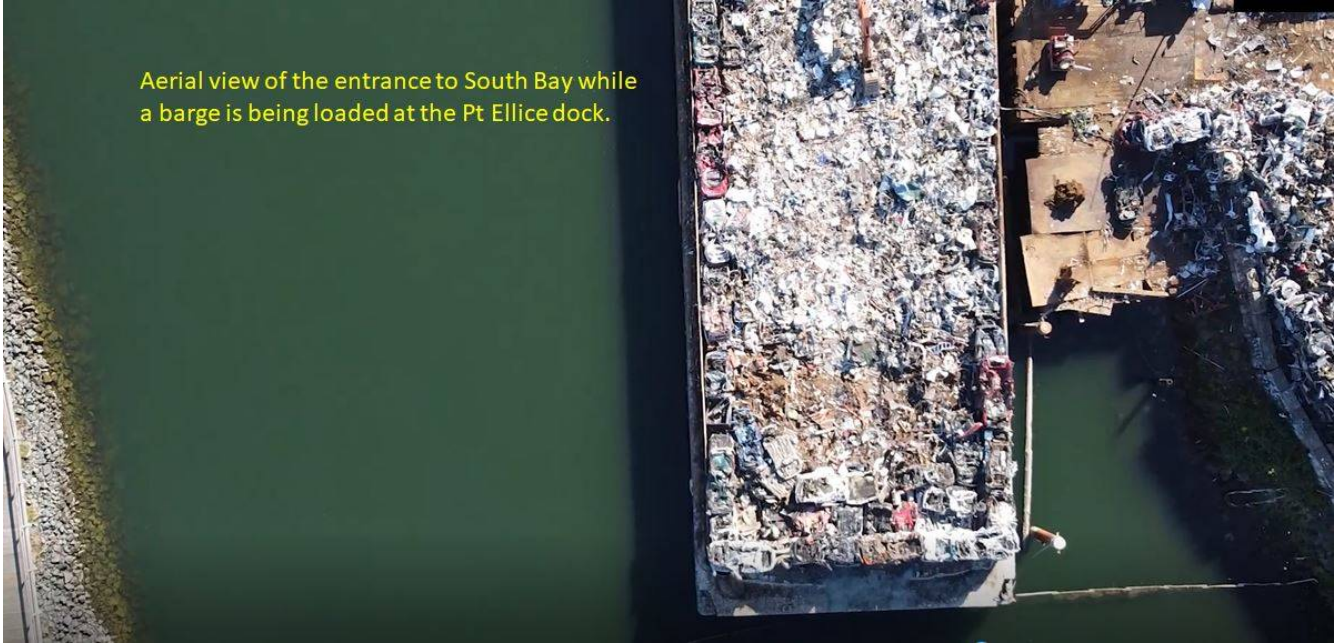
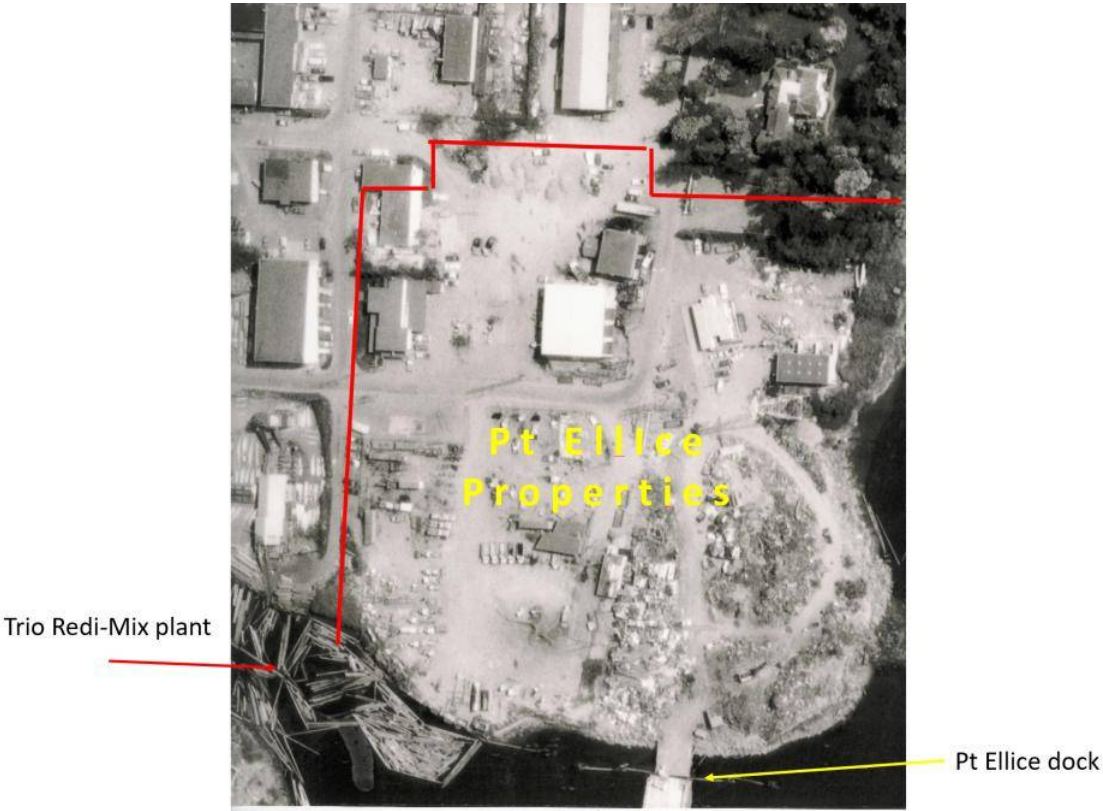
RMC/tjm

*Law Corporation

Enclosure

Appendix "A"





Pamela Martin

From: Victoria Mayor and Council
Sent: November 20, 2020 3:18 PM
To: Public Hearings
Subject: Fw: Proposed silo at 2800 Bridge Street

From: Fred [REDACTED]
Sent: November 12, 2020 7:43 AM
To: Leanne Taylor <ltaylor@victoria.ca>
Cc: Victoria Mayor and Council <mayorandcouncil@victoria.ca>
Subject: Re: Proposed silo at 2800 Bridge Street

Ms. Leanne Taylor
Area Planner,
City of Victoria
by email to ltaylor@victoria.ca

Dear Ms. Taylor,

Your reply does not acknowledge that our property is the one most effected by this proposed silo. It is enormous and will have a lifetime impact on our property, and we need time to study this impact on us.

The question of barge access is a practical one that the City should take into account. If the logic for the silo is because it can use barges, but barge access is not assured, then proceeding with the silo application before the barge access is determined is a waste of the public time and resources. (For your information, we have scheduled a meeting with Ralmax for November 16 to discuss ideas to allow them better barge access.)

Our email of November 4 was our request for information and time has been running since then. This is from the BC government website on how to make a request (with my emphasis)

1. A formal freedom of information request is any written request for access to a record where the public body has not made a prior determination that the record is available through routine channels. The Act does not replace existing procedures for access or limit in any way access to information that is available to the public outside the Act.

.....

4. An applicant is not required to submit a written request under the Act in any particular form. An applicant may write a letter or submit a [Request for Access to Records Form](#) to the public body that the applicant believes has custody or control of the record containing the requested information. A request may also be made by electronic mail (email), further to [section 5 of the Electronic Transactions Act](#) which provides that a requirement under law that a record be in writing is satisfied if the record is both in electronic form and accessible in a manner usable for subsequent reference.

<https://www2.gov.bc.ca/gov/content/governments/services-for-government/policies-procedures/foippa-manual/make-request>

These were our information requests made to you on November 4, 2020, and, as I mentioned, time has been running since then:

Please provide us with copies of all the communications and other records relating to the negotiation and sale of Turner Street to Ralmax.

Please provide us with details of the filling in this navigable public harbour, including the authority for doing so.

(the detail relating to these requests was provided in that November 4 email)

I ask again that you delay the public hearing until after you have provided us the information we requested, and we have had reasonable time to assess that information.

Sincerely,

Fred Berman
Pt Ellice Properties Ltd

On Nov 10, 2020, at 19:02, Leanne Taylor <ltaylor@victoria.ca> wrote:

Dear Mr. Berman,

Thank you for your email and sharing your concerns with me. My huge apologies for not getting back to you last week.

The Development Permit with Variance Application was received on February 7, 2020 so this application has been in process for nine months. More information on the application is available on the City's Development Tracker. Please follow this [link](#). Staff have also encouraged the applicant to reach out to all immediate neighbours throughout the application process.

The Opportunity for Public Comment is tentatively scheduled for December 10. The virtual Hearing is an opportunity for members of the public to share concerns with Council regarding the development application. In addition, you are welcome to provide written comments to be attached to the Council Agenda for Council's consideration and form part of the public record. All immediate neighbours will receive notices in the mail regarding the upcoming Opportunity for Public Comment and instructions on how to participate in a virtual hearing.

I suggest reaching out to Ralmax, Department of Fisheries and Oceans, the Harbour Master and/or Transport Canada regarding the concerns related to barge traffic and operations as this falls under Federal jurisdiction.

The City's Real Estate Division may be able to provide information on the sale of Turner Lane to Ralmax so I suggest reaching out to the Head of Strategic Real Estate, Peter Rantucci at prantucci@victoria.ca. A formal [FOI request](#) for copies of all the communications and other records relating to the negotiation and sale of Turner Street to Ralmax as noted below may be required.

If you have any other questions, please do not hesitate to contact me.

Thanks,

Leanne

Leanne Taylor, MCIP, RPP

Senior Planner

Sustainable Planning and Community Development

City of Victoria

1 Centennial Square, Victoria BC V8W 1P6

T 250.361.0561 F 250.361.0386

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Pamela Martin

From: Chris Davies [REDACTED]
Sent: December 2, 2020 11:32 AM
To: Public Hearings
Subject: Development permit and Variance application for 2800 Bridge Street.

We are the owners of the properties directly across the street civically described as 2825 Bridge St. and 524 David St. The use of our property is light industrial and will in no way be impacted by the request for additional height. We are in favour of the use and the requested variance.

Yours Truly
Chris Davies

Megison Investments Ltd