

Malcolm G. McMicken  
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Our File No.: 10,216-015  
*Reply to the attention of: Malcolm G. McMicken*

June 21, 2017

City of Victoria  
Development Services Division  
#1 Centennial Square  
Victoria, BC V8W 1P6

Attention: Michael Angrove, Planner

Dear Sir:

**RE: Termination of Land Use Contract  
Public Hearing June 22, 2017  
Bylaw No. 17-062**

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Please be advised that the writer acts on behalf of A.H.K. Enterprises Ltd., owner of the property at 1633 Hillside Avenue, Victoria, B.C. and 3055 Scotts Street, Victoria, B.C. with respect to the above-noted Bylaw.

The above-noted Bylaw was introduced unilaterally by the City of Victoria without any consultation with the owner nor with any Notice of the Introduction of the Bylaw.

Council must be aware that the unilateral termination of a valid Land Use Contract will jeopardize the viability of the commercial building. The City previously initially refused to issue a Building Permit for Tenant Improvement on the grounds that the building did not comply with existing zoning regulations with respect to parking. After it was brought to the City's attention that the current parking facilities complied with the existing Land Use Contract, the City relented and issued a Building Permit. If the proposed Bylaw is enacted, the owner may well face a situation wherein the building cannot be rented.

The owner is willing to discuss with the City proposed zoning such that the building remains a viable commercial business. On behalf of the owner, I suggest that the City enter into negotiations with the owner with a view to affecting a compromise to implement comprehensive planning, yet allow the building to operate as a commercial enterprise. The procedure the City is adopting is backwards, it is asking that the Land Use Contract be terminated without any negotiations or discussions about what zoning bylaw will be in place at the time the Land Use Contract is terminated.

On behalf of the owner I would suggest that any further proceedings with respect to the Bylaw be adjourned until negotiations have taken place. To act in a manner in which the City is acting is high handed and draconian and contrary to the principles of natural justice.

I would ask that this correspondence be introduced at the Public Hearing.

Yours truly,

**McMicken and Bennett**

Malcolm G. McMicken  
MGM/ceb



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Our File No.: 10,216-003

Reply to the attention of: Malcolm G. McMicken/Richard D. Bennett

May 23, 2012

City of Victoria  
Planning and Development Department  
1 Centennial Square  
Victoria, BC V8W 1P6

Attention: Tom Pebernat

Dear Sir:

**RE: 1633 Hillside Avenue, Victoria, BC  
PID: 002-491-061  
Lot A, Section 29 - 30, Victoria District, Plan 42972  
Registered Owners: Bhagwant Singh Jawanda / A.H.K. Enterprises Ltd.**

Further to our several telephone conversations since I forwarded my correspondence to you of April 3, 2012, I confirm that I am waiting a response from your solicitor. As I advised by telephone, my client has tenants interested in leasing the subject premises, and I understand a tenant may be applying for a business license.

In the event that the City of Victoria fails to issue to a business license to a tenant in accordance with the subject Land Use Contract, the City will be held liable for all damages resulting from such failure. I have earlier in my correspondence put the City on notice to this effect, but have received no reason why the City fails to honour the existing and registered Land Use Contract. The delay in receiving a reply to my correspondence of April 3, 2012 is simply unacceptable.

My client reserves the option to commence legal proceedings without further notice.

Yours truly,

**McMicken and Bennett**

Malcolm G. McMicken  
MGM/ceb



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Our File No.: 10,216-003  
Reply to the attention of: Malcolm G. McMicken

April 3, 2012

City of Victoria  
Planning and Development Department  
1 Centennial Square  
Victoria, BC V8W 1P6

Attention: Rob Pebernat

Dear Sir:

**RE: 1633 Hillside Avenue, Victoria, BC**  
**PID: 002-491-061**  
**Lot A, Section 29 - 30, Victoria District, Plan 42972**  
**Registered Owners: Bhagwant Singh Jawanda / A.H.K. Enterprises Ltd.**

I confirm I act on behalf of the Registered Owners of the above-noted property.

It is my understanding that the City of Victoria is not prepared to issue a business license or allow occupancy of a portion of the commercial building situate on the above-noted lands by reason that the proposed use of the building, including use by the current tenants, does not conform to the current City Zoning Bylaw and more particularly, Schedule C thereof. As I advised your Mr. Pebernat by telephone, it is my clients' position that the current Zoning Bylaw, and more particularly Schedule C thereof, has no applicability to the use of the lands and premises, which use is governed by an existing valid Land Use Contract. I understand that the City has requested the applicant apply for a Development Variance Permit pursuant to Section 930 of the *Local Government Act* to address the parking issue. It is the position of my clients and the purpose of this letter, that no amendment to the Land Use Contract is necessary; and the proposed use of the building, and the use by the tenants therein, is lawful and authorized by the Land Use Contract.

I enclose for your reference:

1. Section 930 of the *Local Government Act*;
2. Section 911 of the *Local Government Act*;
3. Land Use Contract dated October 31<sup>st</sup>, 1978;
4. Land Use Contract amendment dated September 20<sup>th</sup>, 1982;
5. Zoning Bylaw 1956 – Index Part 8 / Part 9;
6. Zoning Bylaw 1980 – Index Part 4 / Part 6;
7. Schedule C to current Zoning Bylaw; and
8. Land Title Search.

The existing Land Use Contract made between the Registered Owner of the subject lands and premises and the City of Victoria dated October 31<sup>st</sup>, 1978 contains specific provisions respecting parking requirements. Section 2 (a) of the contract specifically provides that the lands may only be used provided that twenty-four parking spaces be provided and maintained. The amendment to the Land Use Contract dated the 20<sup>th</sup> of September, 1982 affirms the existing Land Use Contract and provides that the "consolidated land" as provided in the amending agreement be used only for the purpose of providing automobile parking. The "consolidated land," in fact, continues to be used for purpose of automobile parking. My clients have complied with the parking requirements as set out in the Land Use Contract and the amending agreement.

In order to enforce the provisions of the current Zoning Bylaw, and more particularly Schedule C to that bylaw, the Land Use Contract would require amendment pursuant to Section 930 of the *Local Government Act*. The City has requested that such an application be made. My clients do not wish to amend the existing Land Use Contract and see no reason to do so.

If the City is requesting a Development Variance Permit to allow parking allocations different from the current Schedule C, my clients' position is that such an application is unnecessary as Schedule C has no application to the existing Land Use Contract as amended.

The existing Land Use Contract provides that the lands and buildings shall be used solely for "commercial purposes". This term is not defined in the Land Use Contract, and the ordinary and plain meaning of the word would include use of the building by the proposed tenant, a commercial yoga facility. I enclose herewith the Index from the 1956 and 1980 Zoning Bylaws of the City to indicate that the word "commercial" has very wide use for zoning purposes. The bylaws indicate various limitations of "commercial" use which would indicate that all commercial uses as set out in the bylaw are included within the definition "commercial," provided that my client has provided the parking spaces as required by the Land Use Contract, which he has. There is no authority for the City to ignore the clear provisions of the Land Use Contract and attempt to impose the current bylaw regime. I am somewhat disconcerted that during the extensive negotiations between the City and my clients and its agents, the City has insisted upon the current Schedule C and did not refer to the Land Use Contract or bring this document to my client's attention.

I also point out that Section 911 of the *Local Government Act*, the non-conforming uses and siting provision, is also applicable in the current case. Provided that the lands and premises are used for a "commercial" purpose, Schedule C to the current Zoning Bylaw has no application pursuant to Section 911. I would also point out that Section 8 of the Land Use Contract provides that upon the expiry of the Land Use Contract (fifty years) the use of the land shall be controlled by the provisions of the Zoning Bylaw in force at that time and further that if the use of the lands pursuant to the Land Use Contract is in conflict with the provisions of the Zoning Bylaw in force at that time, such use shall be deemed to be lawful non-conforming use. It is clear that if the provisions of the Land Use Contract are complied with, use of the building shall remain a lawful non-conforming use, and that Schedule C to the current Zoning Bylaw is inapplicable.

My clients, as you are aware, have a proposed tenant for the premises. If the City fails to allow occupancy and use of the premises by the tenant by reason of the existing Zoning Bylaw and Schedule C, my clients will obviously suffer loss and damages. Unless I receive an expeditious reply to this letter indicating and substantiating that the opinion set out is incorrect, I will advise my clients that the City is liable in damages to my clients for Breach of Contract and Breach of the *Local Government Act*.



I look forward to your timely reply. If you have any questions, please contact me.

Yours truly,

**McMicken and Bennett**

Malcolm G. McMicken  
MGM/ceb