



Planning and Land Use Committee Report

For the Meeting of February 19, 2015

To: Planning and Land Use Committee **Date:** February 3, 2015
From: Robert Woodland
Director of Legislative & Regulatory Services
Subject: 2740 Richmond Road – Easement Over City Property

Summary

The purpose of this report is to seek direction from Council in respect of an easement requested over City property at 2740 Richmond Road.

The owner of the single family dwelling at 2732 Richmond Road is contemplating redeveloping the property and constructing four townhouses on it. Prior to submitting a rezoning application, however, the owner wishes to determine whether the City would grant an easement over its adjacent lot (#2740) in order to provide pedestrian and vehicular access to enable the proposed townhouses.

A location plan and photograph of the City's lot at 2740 Richmond Road are attached in Schedules A and B respectively. A photograph of the current dwelling at 2732 Richmond Road is attached in Schedule C. A survey plan showing the extent of the City's lot and adjacent boulevard is attached in Schedule D.

The proposed development is being advanced by the owner's son-in-law who has submitted a plan of the proposed easement which is attached in Schedule E. As shown on the plan, the easement comprises a driveway for vehicular access from Newton Street, footpaths for pedestrian access from Newton Street, the ends of two parking stalls and a seating area for use by members of the public. The green space area that would be used for the various improvements (area shaded orange) is approximately 50% of the total area of the City lot and boulevard (182m² out of a total area of 360m²).

The proposal was circulated to the Sustainable Planning & Community Development, Engineering & Public Works and Parks & Recreation departments, as well as to the City Solicitor. While relocating a driveway crossing from an arterial road (Richmond) to a local road (Newton) provides a safety benefit, there were significant other concerns with the proposal which are outlined in the main body of this report.

The owner consulted with the North Jubilee Neighbourhood Association (NJNA) who provided the letter attached in Schedule F. The NJNA is not supportive of the proposal on the grounds that 2740 Richmond Road is one of the few undeveloped public green spaces in the neighbourhood.

The owner has offered to redesign his proposal to reduce the area of the easement; however, the proposed redevelopment of 2732 Richmond Road would still result in significant private use of public green space in a manner inconsistent with the City's Guiding Principles for the Use of Public Space (summary attached in Schedule G). Given this conflict and the various concerns raised by staff and the neighbourhood association, it is recommended that Council declines to enter into the proposed easement or any variation of it.

Recommendation:

That Council instructs the Corporate Administrator to inform the owner of 2732 Richmond Road that the acquisition of any interest in the City green space at 2740 Richmond Road to facilitate the redevelopment of 2732 Richmond Road is not supported.

Respectfully submitted,



Neil Turner
Property Manager



Robert Woodland
Director of Legislative
& Regulatory Services

Report accepted and recommended by the City Manager:

Date:


Feb. 13/15

Purpose

The purpose of this report is to seek direction from Council in respect of an easement requested over City property at 2740 Richmond Road.

Background

In March 2007, Council approved a motion accepting an offer of \$29,500.00 from the current owner of 2732 Richmond Road to purchase 2740 Richmond Road and consolidate the two lots. However, the North Jubilee Neighbourhood Association (NJNA) objected to the proposed sale, and Council referred the matter back to the Committee of the Whole for further consideration. In April 2007, the committee postponed further consideration of the matter pending the purchaser's review of the proposal with the NJNA and the receipt of written comments from the association. The sale did not proceed.

Since that time, as outlined in the letter attached in Schedule F, the owner has approached the NJNA several times seeking the association's support for the acquisition or use of the City's lot to enable the redevelopment of the property. Because 2740 Richmond Road is one of the few green spaces remaining in public ownership in the neighbourhood, the NJNA has consistently declined to provide its support and has continued to voice its objections.

In August 2014, staff met with the owner's representative, Stephen Cheung, and advised him that the sale of the City lot for development was unlikely, and in any event at Council's sole discretion. Mr. Cheung then advised that he may advance an application for a multi-family development entirely on 2732 Richmond Road, but might seek an easement from the City for a driveway crossing of the City lot. Staff advised that a driveway crossing might be possible, but that approval of such an arrangement would be at the Council's sole discretion as the City land is a legal parcel of land and not a highway right of way.

The owner's proposal for an easement was received November 19, 2014 and, after some clarification of the details, was circulated to Sustainable Planning & Community Development, Engineering & Public Works, Parks & Recreation and the City Solicitor.

Issues & Analysis

As shown in Schedule E, the easement comprises a driveway for vehicular access from Newton Street, footpaths for pedestrian access from Newton Street, the ends of two parking stalls and a seating area for use by members of the public. The combined area taken up by the various improvements – area shaded orange – is approximately 182m²; the total area of the City's lot and boulevard impacted by them – area bounded by thick black line – is approximately 360m². In submitting his proposal, the owner indicated that it was an initial proposal only that could be modified if necessary to address any technical concerns.

Comments from Parks & Recreation

- This lot is at the entrance to the City along Richmond Road so in the future could be used as a small "gateway" parkette.
- The Official Community Plan identifies the need for a new park in this general location.
- Our inventory data indicates a total of only 0.61 hectares of parks and greens within the North Jubilee neighbourhood – this is the second lowest amount for all neighbourhoods.
- Bowker Creek and the existing City-owned lots that form Spirit Garden are one lot away from this site. The Bowker Creek Blueprint, endorsed by the City of Victoria in 2011 states:

"As possible or feasible, daylight and improve the creek along the greenway to increase its hydraulic capacity and environmental value. This could include property

acquisition and the creation of a small park at the corner of Richmond and Newton Streets, extending south to Kings Road”.

- There is a large Garry Oak at the east side of the City lot and two boulevard trees along the Newton frontage that may be impacted by the proposed surface treatments.
- The proposed rock pit also has the potential to impact the above mentioned trees. (This comment speaks to the proponent's desire to install a rock pit on the City's lot as there is no storm water service connection on either 2732 or 2740 Richmond Road).
- There are potential impacts on the trees from utility servicing (BCH, Fortis, Shaw and Telus); 2732 Richmond currently receives these services from Newton Street.

Comments from Engineering & Public Works

- Staff support moving the driveway crossing from Richmond Road to the westerly edge of the Newton Street frontage. The likelihood of potential vehicle/pedestrian conflicts on Newton Street would be relatively low if the driveway was relocated as proposed. Retaining the driveway crossing on Richmond Road close to the Richmond/Newton intersection is less desirable, due to the higher likelihood of conflicts between cyclists, pedestrians and other vehicles using Richmond Road.
- In order to provide cycling facilities and sidewalks which are offset from the edge of the road by a boulevard, Richmond Road needs to be widened and realigned. A combination of road dedication and Statutory Right of Way equaling 6.5m will be necessary on the Richmond Road frontage of this property to achieve these objectives.
- If the rock pit proposed on 2740 Richmond is not approved, the storm drain will require a main extension along Newton Street to service the property. Provision will also need to be made in the easement over 2740 Richmond Road for installation of services to the property line at 2732 Richmond Road.

Comments from Sustainable Planning & Community Development

- The redevelopment of 2732 Richmond Road would require a rezoning application. The siting of the proposed townhouses shows minimal setbacks from the northerly lot line (1.5 m) and from the southerly lot line (3.2 m), indicating that the proposed buildings cannot be accommodated on the existing lot without acquiring additional land (or easement) or requesting a number of variances.
- This application for an easement over 2740 Richmond Road incorporates the entire lot to support the redevelopment of 2732 Richmond, and effectively alienates the use of 2740 Richmond Road for future public use.

Comments from the City Solicitor

Easements provide the means for a property owner to use part of a neighbouring property they do not own for a specific purpose, typically as means of access to his or her own property. They are non-exclusive in nature, meaning that the holder of the easement is allowed to use the property but cannot exclude others from the easement area. However, easements significantly limit the rights of the owner of the property covered by the easement by prohibiting actions that would interfere with the rights of the easement holder (typically, this includes prohibition on construction of structures or otherwise blocking or altering the easement area).

The City Solicitor is not convinced that an easement is the best way to proceed in this situation, especially since the proponent plans to construct permanent improvements. A sale or lease would be preferable from the perspective of liability and would have the added benefit that the

proponent's interest in the City's property would be taxable, unlike in the case of an easement. However, there are no legal impediments to the granting of the proposed easement.

North Jubilee Neighbourhood Association

Since the sale of the City's lot was first mooted in 2007, the NJNA has consistently objected to any private use of the space as 2740 Richmond Road is one of the few green spaces remaining in public ownership in the neighbourhood. A copy of the association's latest correspondence is attached in Schedule F.

Private Use of Public Space

A summary of Council's Guiding Principles for the Use of Public Space is attached in Schedule G. The subject proposal does not comply with the principles in several significant respects:

- Use of public space must not damage public space or the environment.
- Use of public space must not unduly impact public access, safety or mobility.
- Use of public space must be compatible with the purpose of the space.
- The City supports use of public space that increases the vibrancy of neighbourhoods.

Options and Impacts

Council has the following options:

1. Authorize staff to negotiate a lump sum payment or annual consideration, representing fair market value, for the proposed easement.
2. Invite the owner to submit a revised proposal for an easement which would have less impact on the City's lot and address staff concerns.
3. Direct staff to inform the owner that the use of public space at this location to facilitate a residential development at 2732 Richmond is not supported. (Recommended).

With respect to Option 1, staff have raised a number of significant concerns about the current proposal, and it is difficult to see how these concerns would be allayed by a redesign of the scheme. Granting the easement that has been requested, or one that similarly alienates the use of 2740 Richmond Road for future public use, would reduce the public green space available in a neighbourhood which is already deficient and would run contrary to the City's Official Community Plan. The NJNA is not supportive of the private use of the City green space at 2740 Richmond Road.

The proposed townhouses would face north with their access paths across the City's lot, which would give the impression that the area was part of their front yards rather than public space. While there is a safety benefit to relocating driveway access to Newton Street this is offset by the fact that the improvements required to enable the development would consume more than 50% of the City's green space.

In light of the City's OCP's green space objectives in this neighbourhood and the other factors outlined in this report, it is recommended that 2740 Richmond Road and the adjacent boulevard be retained as undeveloped green space available to the public (Option #3).

Recommendation:

That Council instructs the Corporate Administrator to inform the owner of 2732 Richmond Road that the acquisition of any interest in the City green space at 2740 Richmond Road to facilitate the redevelopment of 2732 Richmond Road is not supported.

**Schedule A
Location Plan**



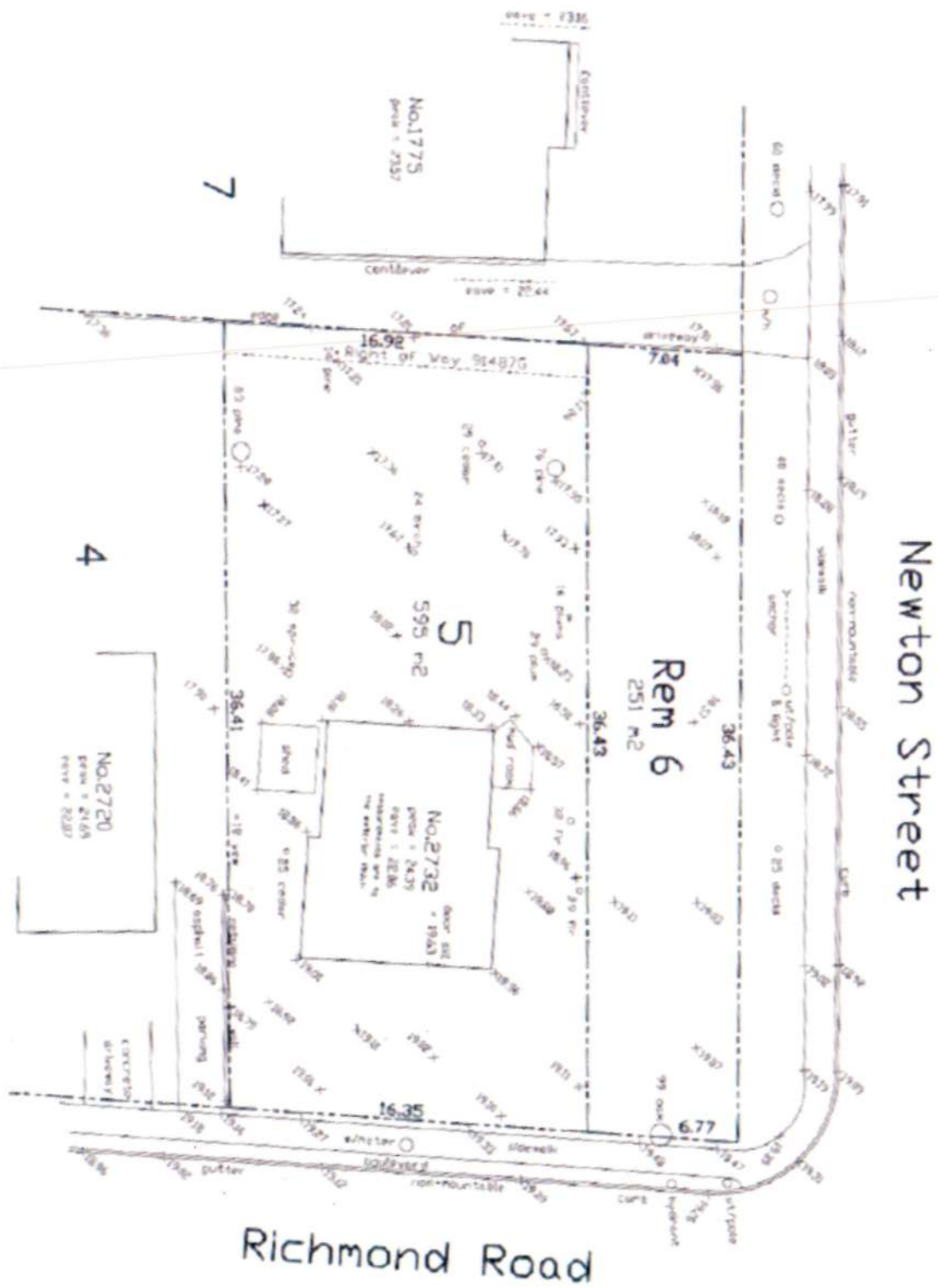
Schedule B
2740 Richmond Road and Boulevard



Schedule C
2732 Richmond Road



Schedule D



Schedule E



Schedule F



North Jubilee
Neighbourhood
Association

c/o 1766 Haultain Street

Victoria, B.C., V8R2L2

December 6, 2014

Mayor Elect Lisa Helps and City Councillors

1 Centennial Square

Victoria, B.C. V8W 1P6

Re: Proposed Rezoning Application for 2732 Richmond Road including driveway easement over Lot 6, VIP 1069, 2740 Richmond Road

Dear Mayor Elect Helps and City Councillors:

The North Jubilee Neighbourhood Association held a preliminary Land Use Meeting with Stephen Cheung and Wil Peereboom re the proposal for 4 townhouses on the property at 2732 Richmond Road. In addition the proposal includes driveway access easement over Lot 6, VIP 1069, 2740 Richmond Road (corner of Richmond and Newton). With this easement the proposed new structures would face Newton Street.

The Association has correspondence with Mr. Foofat on file re the possibility of a driveway easement since 2007, but until now there has not been any formal land use procedure followed. At that time it was our understanding that the sale of city lands, in terms of general requests, was on hold until after the Parks Master Plan process was completed. The community does consider all green spaces in our neighbourhood as a priority, including this City-owned lot in particular, due to its proximity to the NJ Spirit Garden and also as part of the vision for a possible greenway in connection with the Bowker Creek Watershed Management Plan.

The next time the Association was approached it was in 2010 by Stephen Cheung on behalf of his mother-in-law, Ms. Pearl Der (Mr. Foofat's previous spouse). On June 10, 2010 the Association advised Mr. Cheung that it did not support the sale of publicly owned green space, as our neighbourhood has long been identified as being bereft of green spaces and parks and that we could not support the sale of this land to provide driveway access for future development of 2740 Richmond Road. On July 7th Mr. Cheung approached Neil Turner asking if the Association would be prepared to meet him. North Jubilee advised that the sale of this land to provide driveway access for future development was not supported and that it did not feel that further discussion would alter this position. Neil Turner advised him on September 29, 2010 that if he wished to address Council he would need to submit an application or he

could have an informal discussion with the Mayor at one of his open door sessions. In October, 2012 the Association was approached by Mr. Cheung re a proposal to develop an area along Richmond Road between Kings and Newton. This was a proposal by a realtor for a group of property owners on Richmond Road which did not proceed past the preliminary phase and the option on the properties expired.

Then in July, 2014 North Jubilee once again received an e-mail from Mr. Cheung to "amalgamate" 2740 Richmond Road, owned by the City, with 2732 Richmond Road. North Jubilee once again advised that the community did not support the sale of publicly owned green space. After consulting with our Council Liaison Shellie Gudgeon who approached City staff for further information in connection with this matter, the North Jubilee Neighbourhood Association Land Use Committee held a preliminary meeting with Stephen Cheung and Wil Peereboom. The Association contacted Robert Woodland on November 10, 2014 for his advice on the correct process to follow with respect to this proposal, as it preferred not to hold a CALUC meeting until Council has reached a decision re the driveway easement issue. His encouraged North Jubilee to provide comments to the City on this proposal which will be brought to Council with the staff report. Mr. Cheung is currently corresponding with Neil Turner as well.

This rental property has not been maintained over the years and Mr. Cheung reported at the LUC meeting that he had toured the property last August and felt that it definitely needs to be replaced. He advised that there is a tarp covering the roof; the house is not secured to the foundation and that it is considered too expensive to renovate. It has been noted recently that a truck and/or car has been parked on the City property. The LUC committee advised the applicant that it would be corresponding with the City re the driveway access before proceeding any further with this application, as it was our understanding that any changes in use of ownership of 2740 is at the Council's discretion. The Committee also commented on the density of the proposed 4 units for this single residential lot, as it was not in favour. With the units facing Newton Street and if a driveway access was permitted at the West end, the committee is concerned that the City lot would appear to be part of this development and not public land.

If you require further information from the Association, please let us know. We would appreciate being kept informed re the status of this proposed application.

Yours truly,



Jean Johnson, Land Use Chair

On behalf of Committee Members Pat May, Janice Stewart and Heather Fox

Schedule G
Guiding Principles For The Use Of Public Space

SUMMARY TABLE

Guiding Principle	Commercial uses	Non-commercial uses
Pursuing Operational Excellence		
1. Use of public space must be consistent with all applicable legislation, bylaws, plans and agreements	✓	✓
2. The City pursues opportunities to raise revenue through the use of public space	✓	✓
3. The City charges fair market value and full cost recovery for the commercial use of public space	✓	
4. The City determines charges for non-commercial use of public space based upon the purpose of the use and the nature of any community benefits		✓
Building A Strong Community		
5. Use of public space must not unduly impact public access, safety or mobility	✓	✓
6. Use of public space must be compatible with the purpose of the space	✓	✓
7. Use of public space must be compatible with neighbouring residential or commercial uses	✓	✓
8. Use of public space must be consistent with the aesthetics and character of the space and any applicable design guidelines	✓	✓
Growing Our Economy		
9. The City supports use of public space that increases the vibrancy of neighbourhoods	✓	✓
10. The City welcomes commercial uses of public space that provide opportunities for economic growth	✓	
11. The City provides equal opportunities to commercial users who wish to access public space	✓	
Respecting Our Environment		
12. Use of public space must not damage public property or the environment	✓	✓