



## CITY OF VANCOUVER

### ADMINISTRATIVE REPORT

Report Date: June 9, 2006  
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Meeting Date: June 27, 2006

TO: Vancouver City Council

FROM: General Manager of Engineering Services

SUBJECT: Local Improvement Reballots from May 4, 2006, Court of Revision & Tupper Street from 19th Avenue to 20th Avenue

#### RECOMMENDATION

- A. THAT Court #621, Item #007, NOT BE APPROVED for pavement & curbs & trees & bulges on Tanner Street from 29<sup>th</sup> Avenue to McHardy Street excluding 82.3 feet fronting Lot 6 (3370 E 29<sup>th</sup>).
- B. THAT Court #621, Item #013, NOT BE APPROVED for pavement & curbs & trees & bulges on 52<sup>nd</sup> Avenue from Doman Street to Brooks Street.
- C. THAT Court #621, Item #026, NOT BE APPROVED for lane pavement on the lane south of 23<sup>rd</sup> Avenue from Glen Drive to Inverness Street.
- D. THAT Court #621, Item 028, NOT BE APPROVED for lane pavement on the lane south of 40<sup>th</sup> Avenue from Marguerite Street to Churchill Street.
- E. THAT Court #622, Item 003, BE APPROVED for Pavement, Curbs, Trees and Bulges on Tupper Street from 19<sup>th</sup> Avenue to 20<sup>th</sup> Avenue as described in the notice to owners distributed in advance of the Court of Revision May 4, 2006.

#### FOR CONSIDERATION

The General Manager of Engineering Services submits motion F for Council consideration with the note that it is a variation from the normal procedure for Local Improvements.

- F. THAT Court #622, Item 003, BE DEFEATED for Pavement, Curbs, Trees and Bulges on Tupper Street from 19<sup>th</sup> Avenue to 20<sup>th</sup> Avenue.

### COUNCIL POLICY

Policies governing the Local Improvement Process are set out in the Vancouver Charter and the Local Improvement Procedure By-Law. The projects dealt with in this report have gone through the legal requirements in the process, but Council has requested additional information on project support/opposition through the rebalot before giving final approval.

### PURPOSE

At the May 4, 2006, Court of Revision, Council instructed staff to rebalot these local improvement petition projects. The results are as follows:

#### Court #621, Item #007 (Petition)

Pavement & Curbs & Trees & Bulges on Tanner Street from 29<sup>th</sup> Avenue to McHardy Street excluding 82.3 feet fronting Lot 6 (3370 E 29<sup>th</sup> Ave)

At the Court of Revision, one owner rescinded support. Staff balloted owners to determine if there is still sufficient support for this project to proceed.

Number of owners            12  
Required 2/3 majority      8

Ballot results:  
In Favour                     $\frac{4}{7}$   
Opposed                       $\frac{7}{7}$   
Total responses            11

Based on the ballot results, there is insufficient support for this project to proceed.

#### Court #621, Item #013 (Petition)

Pavement & Curbs & Trees & Bulges on 52<sup>nd</sup> Avenue from Doman Street to Brooks Street.

At the Court of Revision, one owner rescinded support. Staff balloted owners to determine if there is still sufficient support for this project to proceed.

Number of owners            4  
Required 2/3 majority      3

Ballot results:  
In Favour                     $\frac{0}{3}$   
Opposed                       $\frac{3}{3}$   
Total responses            3

Based on the ballot results, there is insufficient support for this project to proceed.

#### Court #621, Item #026 (Petition)

Lane Pavement on the lane south of 23<sup>rd</sup> Avenue from Glen Drive to Inverness Street

At the Court of Revision, five owners rescinded support. Staff balloted owners to determine if there is still sufficient support for this project to proceed.

Number of owners            17  
Required 2/3 majority      12

Ballot results:  
In Favour                    4  
Opposed                     10  
Total responses             14

Based on the ballot results, there is insufficient support for this project to proceed.

**Court #621, Item #028 (Petition)**

**Lane Pavement on the lane south of 40<sup>th</sup> Avenue from Marguerite Street to Churchill Street**

At the Court of Revision, one owner rescinded support. Staff balloted owners to determine if there is still sufficient support for this project to proceed.

Number of owners            16  
Required 2/3 majority      11

Ballot results:  
In Favour                    10  
Opposed                     2  
Total responses             12

The five owners who did not respond were sent two additional ballots and still did not respond. Based on the ballot results, there is insufficient support for this project to proceed.

**Court #622, Item #003(Initiative)**

**Pavement & Curbs & Trees & Bulges on Tupper Street from 19<sup>th</sup> Avenue to 20<sup>th</sup> Avenue**

At the May 4, 2006, Court of Revision, Council heard of the hardship that would be imposed upon the Chown Memorial Church by the proposed Local Improvement. In response to the appeal of the Church for exemption from the payment of any special assessments for the Project, we advise as follows:

**BACKGROUND**

The mode of paying for the cost of local improvements is based on the theory that the owners of property adjacent to or abutting on the work receive special benefits from the work in excess of the benefits accruing to the general public. The scheme of local improvements legislation is to tax by special rates the land being benefited with the extent of the burden of the tax being determined by the special advantages which enure to the benefit of the assessed property by reason of the improvements.

The Chown Memorial Church (the "Church") contacted the Engineering department in 2005 stating that Tupper Street was in poor repair and requesting it be re-paved. Although representatives of the Church were informed that the Church was not exempt from the payment of Local Improvement charges and of the approximate cost of \$211.08 per foot to complete the Project, they agreed that the Project should be initiated by the City for the May 4th Court of Revision.

However, when the notification letter from the City advising of the assessed charges was received by the Church, other Church officials were concerned that the Church could not cover the estimated cost of \$40, 727.89 (annual charge \$4,193.46 over 15 years). The significant cost of the Project is based on the higher zoning, (this project is mixed zoning, the east side of the street is multiple (higher) zoned and the west side is residential) and the length of the frontage of the six subdivided lots owned by the Church that front onto Tupper Street and which are linked together for assessment purposes.

The Church subsequently submitted a formal objection notice to the Project requesting that the Project be defeated by Council. Since there are four different owners of property that will specially benefit from this Project, the Charter requires that three of the four owners object in order for the Project to be defeated. However, only two objections were received. Accordingly, under normal procedure of Council, the Project would be approved to proceed, however Council does have the authority, under the Vancouver Charter section 519, to decide not to proceed with the Project. Council should, however, be aware that the Church, as mentioned, is situated on 6 subdivided lots, each lot having its own separate legal title and registered separately in the Land Title Office. However, because the 6 lots are currently linked, the Church is only entitled to one vote for all the lots and not 6 votes. The lots are linked for B.C. Assessment and taxation purposes as the buildings straddle the lots. To remove the linking the buildings would have to be demolished. If the lots were not linked, this Project would likely have been defeated, based upon the Church having a greater number of votes.

At the Court of Revision, based on the request of the speakers, Council voted to defer their decision on the Project. City staff was asked to provide to Council the section of the Charter which exempts certain properties, such as churches, from property taxes, but not from Local Improvement charges (the information below was forwarded for the information of Mayor and Council, May 8, 2006).

Vancouver Charter Part XXIV  
Section 504

*(1) Every parcel of real property that is exempt from real property taxation under Part XX*

*is liable to be specially assessed and to be taxed under this Part except:*

- (a) Crown Land or*
- (b) real property vested in the City, or*
- (c) real property vested in the Board of School Trustees of School District 39 (Vancouver), or*
  - (c.1) real property located within the boundaries of School District 39 (Vancouver) that is vested in the Conseil Scolaire Francophone de la Colombie-Britannique continued under section 166.12 of the School*

*Act,*

*or*  
*(d) real property of a hospital that is exempt for real property taxation under section 396(1) (c) (iii)*

Council also requested information from City staff regarding the possibility of amending the Charter to exempt churches from local improvement assessments. Staff advised that the procedure for seeking a Charter amendment would be carried out by the City's Legal Services Department on the request of Council. If Council wanted to pursue an amendment to the Charter so that all churches would be exempt from special assessments, the provincial government would need to be consulted and would have to formally approve of the Charter amendment by amending the legislation. The process for seeking a Charter amendment takes a considerable amount of time and, accordingly, would not be of any benefit to the Church for this Project.

## CONSIDERATION

Council also requested City staff to explore and report back on the possibility of Translink funding all or a portion of the local improvement charges that would be assessed against the Church, as work on the Canada Line will likely adversely affect the Church by diverting traffic from Cambie to Tupper. Translink's liaison was contacted and they agreed that they would make every effort to make sure the amount of non local traffic using the adjoining local streets, including Tupper, is minimized. This may include implementing some temporary traffic calming measures which the contractor would pay for. They did not agree that they would cost share on permanent improvements of adjacent or affected properties.

Council also requested City staff to review all avenues available to alleviate the cost to the Church.

### A. Special Relief:

Further to Council's request, City staff reviewed the Charter and the Local Improvement Procedure By-Law for various forms of relief that could potentially reduce the financial impact to the Church of completing the Project. Pursuant to the Charter and the Local Improvement Procedure By-Law, forms of relief are specific in order to be as equitable as possible to all affected property owners benefiting from the local improvement. City staff has determined that the Church is not eligible for flankage relief or other specific forms of relief related to the frontage or lot shape as provided for in the Charter or the Local Improvement Procedure By-law.

In addition to the specific bases for granting relief pursuant to Section 508(r) of the Charter, "Special Relief" can be granted by Council in respect of a property(ies) by a special resolution of Council where at least 2/3 of the Council Members must support a resolution or pass a by-law to grant relief or exclude the owner from local improvement charges based upon the property being "especially inequitably or unjustly affected by any special assessment imposed against such property". In accordance with existing Council Policy and Resolutions, Council has previously exercised their discretion and granted relief only to "owner occupied homes" in higher zoned areas. In such instances, the City pays the equivalent amount of the relief

given to a property owner on an annual basis from the City's general funds, subject to the property's continuing qualification for special assessment relief

Based upon our consultations with the City's Legal Services Department, Legal Services has confirmed, based upon the language of the Charter and the Local Improvement Procedure By-law, that in their opinion "Special Relief" is intended to be given to property owners on grounds related to the extent of the property being inequitably or unjustly affected by the special assessment based upon the benefit to the particular property derived from the Project and the physical characteristics of the property and not on grounds related to the property owner's ability to pay.

#### OPTIONS

- a) Council could vote to "Proceed" with the Project as presented at the Court of Revision. The Church would be financially impacted, but those in support would have an improved street.
- b) Council could vote to "Defeat" the Project, as per The Vancouver Charter Sec. 519. Tupper Street would continue to be maintained by our Street Operations Branch. The owners in support may be disappointed and may continue to pursue the Project.

#### CONCLUSION

After Departmental review and on the advice of Legal Services Council may vote to have the Project "Proceed" as presented at the Court of Revision or vote to "Defeat" the project.

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