



# **Corporate** NO: L001

# **Report** COUNCIL DATE: February 5, 2001

<b>REGULAR COUNCIL - LAND USE</b>			
TO:	<b>Mayor &amp; Council</b>	DATE:	<b>January 31, 2001</b>
FROM:	<b>General Manager, Planning &amp; Development</b>	FILE:	<b>5505-119</b>
SUBJECT:	<b>Delegation by Newton Community Protection Group Concerning Large Houses in their Community</b>		

## **RECOMMENDATION**

The Planning & Development Department recommends that:

1. Council receive this report as information; and
2. The staff be instructed to forward a copy of this report to the delegation representing the Newton Community Protection Group and subsequently to meet with representatives of this Group to review the options which are available to them related to amending the Land Use Contract covering their neighbourhood.

## **INTENT**

The intent of this report is to provide Council with information related to amending a Land Use Contract, to review alternate courses of action available to address the concerns of the Newton Community Protection Group (representatives of which appeared before Council as a delegation) and to advise on follow up actions that staff intend to take regarding the issue of amending Land Use Contracts.

## **BACKGROUND**

The Newton Community Protection Group (NCPG) is comprised of a number of property owners from the neighbourhood bounded by 130 Street to the west, 132 Street to the east, 69A Avenue to the south and 70B Avenue to the north (Appendix 1). The lots in this area are subject to Land Use Contract (LUC) No. 119. The underlying zone in this LUC area is the Single Family Residential (RF) Zone in Zoning By-law No. 12000.

Three representatives of the NCPG appeared as a delegation before Council on January 8, 2001. A petition and letters from some of the owners of properties in the neighbourhood were submitted to Council at the same time that documented opposition to the imminent construction of a large house at 7004 - 131 Street. A demolition permit for the removal of an existing small house and a building permit to allow the construction of a 431 sq. m. (4,637 sq. ft.) house on the lot had been issued by the City's Building Division in late December 2000. The delegation expressed concerns that Land Use Contract No. 119 (LUC) does not prescribe a maximum floor area for a house on any lot in the area covered by the LUC, as is the case in all areas of the City zoned Single Family Residential (RF) under Zoning By-law No. 12000. The delegation explained that older, smaller homes are being demolished and replaced by houses that are significantly larger than the average size of the existing houses in the neighbourhood, and larger than the size that would be permitted if the area were zoned RF. The delegation expressed the opinion that the large houses are significantly altering the character of their neighbourhood. The delegation requested that Council take action to protect the character of their neighbourhood.

Subsequently to hearing the delegation, Council requested that staff review the delegation's concerns and report to Council on alternatives available to the City to address the concerns.

## DISCUSSION

Land Use Contracts (LUCs) were allowed under the Municipal Act between the mid-1960s and 1979 as a means for a municipal government to regulate the use and permitted density of development of a specific area of land within a municipality subject to Council approval. In 1979 the Municipal Act was amended to eliminate the use of Land Use Contracts. However, LUCs which were executed during the period of time when they were permitted under the Act did not include a "sunset clause" and, as such, remain valid through to the present time even though in some circumstances the provisions contained within the LUC are out of step with current Zoning provisions.

Land Use Contract No. 119 was approved by City Council in 1976 and makes reference to the R-3 Residential Zone in "Surrey Zoning By-law, 1964, No. 2265" with respect to yard setbacks, site coverage and maximum building height for houses constructed on each lot within the area covered by the LUC (Schedules "C" and "D"). There is no specific limit on the building floor area on any lot under this LUC as is the case in the current RF Zone in Zoning By-law No. 12000. As a result where the property owner takes advantage of the full building potential of any lot by building to the limits allowed by the setbacks, lot coverage and maximum height allowances the resulting house size is much larger than the houses that currently exist in the subject neighbourhood.

Existing homes in the area are a mix of ranchers, 2 storey split levels and some 2 level houses. The existing houses in the neighbourhood range in size from about 90 to 210 square metres (1,000 to 2,300 sq ft.). A new home was constructed on one of lots in the LUC area approximately 3 years ago and as mentioned above a building permit has been issued for the construction of another new home on another lot in the area. These new homes are two storey structures, with a floor area (including the garage) of about 427 square metres (4,600 sq. ft.). By comparison, the maximum floor area for any lot in the Single Family Residential (RF) Zone is 330 square metres (3,550 sq. ft.).

The solution to the resident's concerns is to set a maximum limit on the floor area that can be built on any lot in the LUC area in addition to the current setback, lot coverage and height restrictions. This could be accomplished by either amending the language in Land Use Contract or, alternatively, by discharging Land Use Contract and allowing the underlying RF Zone to come into effect. The question that needs to be addressed is: "What is the process to accomplish this?" The following is a summary of previous opinions and reports from the Planning & Development Department and from the Legal Services Division that deal with this question:

## **1. Applying Zoning By-law No. 12000 in place of Zoning By-law No. 2265.**

Schedule "C" of Land Use Contract No. 119 cites Surrey Zoning By-law No. 2265 "as amended" in relation to building setbacks, lot coverage and building height. It is arguable that since Zoning By-law No. 2265 is repealed and Zoning By-law No. 12000 is the current successor, the provisions of the current by-law might apply in whole or in part. For instance, since the Land Use Contract is silent on the matter of maximum floor area, then a provision contained in Zoning By-law No. 12000 could apply. Based upon legal cases, Legal Services has advised that the provisions of Zoning By-law No. 12000 cannot be substituted, in whole or in part, for those in Land Use Contract No. 119 because the rights granted in the Land Use Contract cannot be derogated.

Therefore, this option is not available.

## **2. Amending the Land Use Contract through agreement of owners.**

The Local Government Act Section 930 addresses the process for amending or discharging Land Use Contracts. The processes rely on voluntary agreement by the owners of the properties covered by the LUC. There are a number of instances where LUCs have been amended under these processes. The processes are particularly effective if a LUC applies to only one lot or where one owner controls all the lots covered by the Land Use Contract. These types of situations are more common in industrial or commercial LUCs than with respect to LUCs covering residential areas.

The amendment or discharge process is clearly more complex if the consent of many individual owners is needed, as is the case with most LUCs covering residential subdivisions. In most circumstances, some of the lot owners may wish to build in accordance with the more liberal provisions of the Land Use Contract or to sell their lots with the Land Use Contract in place on the basis that the unamended Land Use Contract is more attractive to potential buyers than an amended LUC. On this basis, unanimous agreement for a change to a Land Use Contract in a residential area is unlikely. Legal Services has advised that a Land Use Contract may not be unilaterally amended by the City without the consent of the owners affected by the amendment.

Alternatively, the owner of an individual lot covered by a Land Use Contract may apply to the City to amend or discharge the Land Use Contract in relation to their individual lot even if the Land Use Contract covers several or many lots. This process is initiated by an application to the City and ultimately requires Council approval. The remaining lots covered by the Land Use Contract retain the rights that they are afforded under the original Land Use Contract. On this basis, with respect to the neighbourhood that is the subject of this report, if the owners of lots who want to have a maximum floor area provision added to the Land Use Contract (or alternatively, want to discharge the LUC on their lot and have the underlying RF Zone take effect) consent to such a change for their individual lots, an application for such an amendment (or discharge) could be processed. Subject to Council approval of the application, the maximum size of houses in some sectors of the neighbourhood could be reduced. The Newton Community Protection Group could be a catalyst in obtaining the consents necessary to proceed with making partial changes to Land Use Contract No. 119 to achieve their objectives, or to selectively discharge Land Use Contract No. 119 to allow the underlying Single Family Residential (RF) Zone under Zoning By-law No. 12000 to come into effect. A Public Hearing is necessary to discharge or amend a Land Use Contract if the amendment relates to use or density.

## **3. Seeking Provincial Legislation to give Council the power to unilaterally amend Land Use Contracts.**

Surrey is not unique in struggling with antiquated Land Use Contracts and having difficulty in amending them. Staff understands that Abbotsford and Delta are also seeking more effective ways to deal with Land Use Contract issues.

To date, the City has investigated two avenues to lobby for legislation permitting Council to unilaterally amend, modify, vary or discharge existing Land Use Contracts:

- Council approved a recommendation from the Legal Services Division (Report S962, July 28, 1997) and the City applied for a Private Members Bill in the BC Legislature. This process requires a Member of the Provincial Legislature to sponsor such a bill. One of the local MLAs was approached in this regard. Unfortunately, the City Solicitor received a letter dated March 26, 1998 in which the Clerk of the Legislative Assembly advised that the MLA would no longer sponsor the bill.
- The matter was also raised at last year's Union of British Columbia Municipalities Convention, as resolution No. B83 "Amending Land Use Contracts". No information is on file about the status of this item but staff is attempting to obtain an update from the UBCM staff.

Legal Services is of the opinion that Provincial concern about liability issues surrounding unilateral changes to contracts is the reason why general legislation from the Province has not been forthcoming in relation to allowing municipal Council's to make unilateral changes to LUCs.

In the meantime, City staff will initiate discussions with Abbotsford, Delta and other municipalities to discuss approaches that are being taken in situations that are parallel to the one presented to Council by the Newton Community Protection Group. Another potential ally is the professional association of planners. The Planning Institute of British Columbia (PIBC) has been investigating a number of pressing planning and legislative issues in recent years and may be interested in pursuing the issue of Land Use Contract legislation.

Staff will keep Council apprised of any developments from the PIBC, UBCM, and consultation with other communities and Provincial officials.

## CONCLUSION

Land Use Contracts by virtue of the fact that they are "contracts" can only be changed or discharged by agreement between the entities that are party to the contract. For the City to amend Land Use Contract No. 119 in accordance with the request from the Newton Community Protection Group, the owners of each lot covered by the contract would need to agree to add a maximum floor area clause, or to discharge the LUC in favour of Zoning By-law No. 12000.

However, individual owners of lots covered by Land Use Contract No. 119 can apply to the City to amend or discharge the Land Use Contract in relation to its applicability to their own lot. As such, those property owners in the subject Newton neighbourhood expressing the desire to amend or discharge the Land Use Contract could proceed as a group to apply for an amendment to the LUC for their individual lots and may gain some benefit from this approach in having a sector of the neighbourhood limited to smaller homes and could thereby help to preserve the character of the neighbourhood.

In the interest of finding a workable solution to allow Land Use Contracts to be amended without the unanimous consent of all parties to the contract, staff will undertake further consultation with the UBCM, other municipalities and the Province. Council will be advised of any developments in this regard. It should be recognized that amending a Land Use Contract to introduce new limitations or restrictions would quite probably bring objections from those property owners who believe that the amendments to make the Land Use Contract more restrictive undermine the value of their properties. As such, even if a process is developed to allow Council some authority to amend LUCs unilaterally, it would quite likely lead to different concerns by a different group of property owners.

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Appendix I: Newton Community Protection Group Property Owners Map

c.c. - City Solicitor

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