

**SPECIAL REPORT NO. 18 February 1996
to
The Legislative Assembly of British Columbia**

**A Complaint Regarding an Unfair Public
Hearing Process
(City of Port Moody)**

**Ombudsman
Province of British Columbia**

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OMBUDSMAN

Legislative Assembly
Province of British Columbia

Please respond to:

☐ 931 Fort Street
Victoria, British Columbia
V8V 3K3
FAX: (604) 387-0198



☐ Suite 200, 1111 Melville Street
Vancouver, British Columbia
V6E 3V6
FAX: (604) 660-1691



General Inquiries: (604) 387-5855

Toll Free: 1-800-567-3247

TDD: 1-800-667-1303

Open letter from the Ombudsman February 1996

In 1995 complaints were received respecting the public hearing process underway in the City of Port Moody. Concerns were expressed that the process was effected by the relationships and interests of two members of Council. The fact that this Office had decided to investigate the allegations was widely publicized and became a source of controversy in the community. I have decided to make the findings of the investigation public through the vehicle of a Special Report largely due to the public nature of the allegations and to ensure that my determinations are widely available given that the subject of the public hearing continues.

This report outlines my findings with respect to the business and personal relationships, respectively, of the Mayor, Mr. John Northey, and a Councillor, Ms. Jo-Anne Parneta. In examining the facts, issues and allegations it is clear that a good deal of apprehension, and in some cases misunderstanding, exists with respect to the standards imposed by the legislation upon locally elected officials.

I recognize that the whole area of conflict of interest is an important issue within local governments. I also believe that a broader focus may be necessary to deal with this subject effectively. Therefore in the coming year I will monitor issues of this type which are brought to my attention and will then determine if a systemic review and broader report is appropriate.

Yours very truly,

Dulcie McCallum
Ombudsman for the Province of B.C.

1.0 Introduction

The complaints received centred upon two individuals, the Mayor, His Worship John Northey (hereinafter referred to as "the Mayor") and a Councillor, Jo-Anne Parneta (hereinafter referred to as "the Councillor"). The investigation has been established based upon the administrative process of a public hearing.

It has been alleged that the Mayor compromised the public hearing process through his position as Chair by being less than even handed by limiting public submissions to 5 minutes, a policy which is not enshrined within the City's Procedure Bylaw. Further it is stated that he selectively enforced this rule against those who objected to the proposed Official Community Plan (OCP) amendment while allowing those who supported the plan to speak uninterrupted. It is also suggested that the Mayor may be in a position of bias as a result of his past professional and business associations with the development industry.

It is alleged that the Councillor is in a position of conflict of interest as her husband is a Senior Vice President with a major land development company (Parklane Homes) which is involved in developing lands near to the area under OCP review. The complainants suggest that Parklane will benefit, and therefore Parneta will benefit, if the OCP amendment is approved. This is based upon the assertion that the Parklane lands (known as neighbourhood 2) will increase in value as a result of further development in the area generally and by the completion of certain road works which will improve vehicular access/egress; such works to be paid for with proceeds from the sale of land in what is envisioned to be the first phase of development in the review area.

It must be noted that the plan under consideration is controversial and has been the subject of two previous public hearings and one public information meeting. These are in addition to various newsletters detailing the scope of the proposals issued for the purpose of informing the public.

The earlier public hearings held on November 28, 1994 and January 16, 1995 did not result in adoption of a bylaw. Rather, the plan was sent back to staff for further work and refinement. The product of those

changes eventually formed the basis for the June 26, 1995 hearing. As a result of this action, I have not considered the complaint from the perspective of the impact upon those earlier processes. Pursuant to section 13(f) of the *Ombudsman Act*, I believe that such an investigation would be of no benefit to the complainants since the result of the process was to not adopt the amending bylaws.

As set out above, I have focused upon the impact of this matter in relation to the public hearing. At this point I should discuss the relationship of a meeting of Council and a public hearing. The *Municipal Act* does not define a "public hearing" in terms of a Council meeting. Conversely, the requirements for notice of the various types of meetings of Council do not reference a public hearing. Procedure and notice requirements for a hearing are set out in sections 956 and 957.

Although not specified in the legislation, I submit that the rules of conduct as set out in section 225 clearly apply to a hearing. It is required that the local government hold a hearing when considering amendments to a land use bylaw or community plan. Local Government is defined as council, which can exercise authority only when assembled pursuant to the procedure bylaw. In conclusion on this point, I submit there is no distinction between a hearing and a meeting for the purposes of section 225 of the *Municipal Act*.

2.0 Mayor John Northey

As set out above, the complaint against the Mayor relies upon his role as Chair of the public hearing and his past professional and business relationships with the development industry.

2.1 Role as Chair

In conducting a public hearing, the City of Port Moody has adopted a practice of closely controlling public submissions in order to ensure the orderly conduct of proceedings. This practice is not enshrined within the City's Procedure Bylaw. The rules of conduct are however committed to writing and are made available to the public at the commencement of each hearing. This is done by placing a copy of the document on each chair in the gallery and by placing copies on a table at the entrance. As well, the Mayor or Chair of the proceedings reads and explains the procedure at the beginning of the hearing.

The document describes the role and responsibility of Council in the setting of a public hearing. It references the *Municipal Act* and states the administrative process to be followed. This portion of the document includes the following statement:

"Presentations should be limited to five minutes, particularly if a large number of people wish to be heard."

In order to test the validity of the portion of the complaint relating to the Mayor's role as Chair, audio tapes of the proceedings were reviewed.

The hearing lasted approximately four and a half to five hours. A total of 39 speakers came forward, six of these spoke twice for a total of 45 oral submissions. The Mayor interrupted these speakers on 12 occasions for reasons as follows:

- *1 time to warn a member of the gallery not to interrupt a speaker,*
- *3 times to request a speaker to keep to the subject of the bylaws under consideration,*
- *1 time to rule a speaker out of order, and*
- *7 times to warn speakers that time was up and to provide one more minute to wrap up the presentation.*

In each case of the time warnings, the speaker had exceeded 5 minutes prior to the warning. The total time provided to these individuals ranged from a low of 6:36 minutes to a high of 10:14 minutes. All other speakers took less than 5 minutes for their presentation. Of the six who spoke twice, two spoke for more than 5 minutes but neither were issued time warnings. Only one person spoke in favour of the plan. This individual spoke for less than 5 minutes.

2.1.1 Business Relationships

Through an interview, the Mayor stated that he operates an incorporated company known as J.L. Northey & Associates. He is the president and his wife is the only other director.

This company was formed in 1979 and was the entity through which he operated his development consulting business. Mayor Northey stated that the company still exists but, from a business perspective, is dormant at this time. Not now, nor in the past has he worked for Parklane Homes. He was a Senior Vice- President of Polygon Group and was a member of the Urban Development Institute (UDI). These associations were terminated when he decided to run for public office in 1993.

It has also been pointed out that Parklane was a contributor to the Mayor's election campaign of 1993. As noted in the disclosure documents filed pursuant to section 90 of the *Municipal Act*, of the total \$2,200 raised, \$750 was contributed by Parklane.

2.2 Summary - Mayor Northey

Based upon the material reviewed and the standards imposed by section 225 of the *Municipal Act*, I am satisfied that the Mayor did not compromise the public hearing process either through the application of the City's procedure or by his past professional and business associations.

Based upon the audio tapes, it is clear that the Mayor fulfilled his role as Chair by attempting to ensure that each person who wished to speak had a reasonable opportunity to do so and that the opportunity

to make submissions was not dominated by any one individual. The procedure followed by the City in its efforts to inform the public of the rules and procedure is both clear and widely published, and I find did not operate to the detriment of any individual or group.

While the Mayor has had business and professional associations with well known members of the local development industry, none of these associations or companies are represented as having interests in the area under review. The lands known as neighborhoods 3 and 4 are almost exclusively owned by the City. One 16 acre parcel is owned by a private company and the City is currently attempting to acquire this land in order to provide a contiguous parcel under municipal control.

Finally, the Mayor complied with the campaign financial disclosure requirements as set out in the *Municipal Act* and I have found no irregularity in this aspect of the investigation.

3.0 Councillor Jo-Anne Parneta

The allegations respecting the Councillor are best described in terms of conflict of interest and should be analyzed in respect of a strict interpretation of section 225 of the **Municipal Act**. It is noted that subsection 8 refers specifically to pecuniary interests however subsection 4 speaks more broadly as follows:

"225(4) If a council member considers that he or she is not entitled to participate in the discussion of a matter or to vote on a question in respect of the matter, the member shall declare this and state the general nature of why the member considers this to be the case."

During the interview with Ms. Parneta, she stated that she voted in favour of the bylaw when it came before Council, that her husband is a Senior Vice President with Parklane, that he was formerly a shareholder in the company (that relationship ceased in 1994 upon a change of ownership), that he is a salaried employee and could only benefit from performance bonuses, although no such bonus has yet been paid.

In order to consider the effect of this private relationship on the public hearing process, I believe it is relevant to examine the nature of the interest, i.e. is it a relationship which should disqualify the member from participating in discussion of the matter before council pursuant to 225(4), is it pecuniary or not and, if so, is it indirect or direct?

The lands in question are owned predominantly by the City of Port Moody, with the exception of 16 acres owned by a private company. There is no direct interest by Parklane in areas 3 and 4. There has been no expression of interest noted by Parklane nor have there been any attempts by the City to begin marketing efforts. The allegation of conflict arises due to the proximity of the Parklane development to areas 3 and 4. In a straight line, these neighbourhoods are approximately 750 metres apart. While interesting as a potential source of the perception, based upon current case examples, notably *Greene v. Borins (1985), 50 O.R.(2d) 513 (H.C.J.(Div.Ct.))* the proximity does not affect the nature of the interest which may exist and is therefore not of critical importance.

The complainants have suggested that there may be a benefit to Parklane from the development of the road network in the area which would provide improved vehicular access. Similarly, one could argue that by building a highway in the manner envisioned in the plan, a negative impact on values could be shown on certain areas of the Parklane lands. Based on recent cases, whether there is a positive or negative implication is irrelevant. The question is; will the issue have the potential to effect the pecuniary interest of the Councillor?

The relationship between Parneta and Park Lane exists through her husband in his role as Senior Vice-President. Although a salaried employee, the potential exists for increased benefits through salary bonuses. Presumably in order to achieve such a bonus the company would have to be successful overall and the individual would have to be performing sufficiently in his general area of responsibility to warrant the benefit. While there may be the potential for a benefit to accrue to the company, it cannot be said that this benefit would necessarily flow through to the employee in a pecuniary manner. Therefore, Mr. Parneta's interest in the matter could at best be described as indirect.

Section 225(8)(c) provides that the prohibition from participation does not apply in situations where the interest is so remote that it could not be regarded as likely to influence the member.

To attempt to answer this issue it is useful to consider two additional aspects. The first is the matter of community of interest. In this situation the question is: if there is a pecuniary interest held by Parneta, is it any different from other electors? The legislation states that the prohibition does not apply "... if the pecuniary interest of the Council member is a pecuniary interest in common with electors of the municipality generally." Does this mean that if there is one elector who can demonstrate that he or she does not hold the same interest, the exclusion cannot apply?

The fact that there are other electors who are not property owners or who own property so far away from the subject area that their direct interests could not reasonably be affected, does not disqualify the consideration. It is clear that there are other land and business owners in the immediate area who will be affected to the same or greater degree as Parklane. Similarly the interest of all residents of the City

will be affected through the development since the City is the principal land owner. Any pecuniary benefits which accrue through land sales are to the community's collective good.

The second aspect with respect to the degree of interest relates to the capacity of any person who has business interests in the community and the impact of the current conflict of interest regulations on his or her ability to hold public office and function effectively. To consider this the case of *Campbell v. Dowdall* (1992), 12 M.P.L.R.(2d) 27 (O.C.J. (Gen. Div.)) is helpful. As determined in that case, there must be something to connect the individual to the particular matter, not just the potential of future business which can be seen to apply broadly to business people in the area. In this situation, Parklane does not hold any interests in the specific lands, is not a party to the application to amend the OCP and will benefit or suffer as a result of the amendment to the Official Community Plan and the Zoning Bylaw to a degree no greater than the owners of land in neighbourhood one or in the already developed lands to the west.

3.1 Summary - Councillor Parneta

In conclusion, it is my finding that the pecuniary interest which exists is so remote that it cannot be considered as a significant influence to the member. It is my position that Councillor Parneta did not display a closed mind to the submissions of the public and any association with Parklane did not create a condition of unfairness in the execution of the public hearing.

4.0 Conclusion

Much of the preceding discussion relates to the matter of conflict of interest. Such analysis is necessary as the impact upon the public hearing must be determined; that being the issue I must review.

In reviewing the audio tapes, note is made of the fact that no Councillor interjected with questions or information in response to statements and submissions of the public. The Mayor mentioned several times that Council's role was to listen, not to enter debate. Debate would be appropriate at a future meeting of Council during consideration of the bylaws. Numerous cases can be found where the courts have examined the capacity of a Council member to continue to participate in discussions of a matter after having expressed strong views. These cases follow examples of positions taken during election campaigns, statements made during a Council meeting or outside of Council and votes cast during preliminary committee considerations of the item. A standard has developed which allows that a member must display the capacity of being convinced by submissions at the public hearing. Earlier positions taken during discussion or as part of the member's duties of office do not in themselves create a disqualification.

Upon consideration of the material gathered, I am satisfied that the public hearing process was conducted fairly and was not prejudiced by the business or personal relationships of Mayor Northey or Councillor Parneta.