

City of Port Moody - Land Use Contract

201-288 Balmoral Place

Underlying Zone: RM1

Proposed New Zone: RM4

0m 50 100

SUBJECT PROPERTIES

CITY OF PORT MOODY

BY-LAW NO. 1344

A BY-LAW OF THE CITY OF PORT MOODY TO APPROVE A LAND USE CONTRACT

WHEREAS by By-law No. 1253 of the City of Port Moody, dated the 8th day of September, 1976, the area of lands described as:

Lot "H" District Lot 470 (South and East Plan No. 48196)
and (By-law Plan 48136) Group One, Plan 22558, New
Westminster District;

AND

Lot 104, District Lot 470, Group One, Plan 48196, New
Westminster District

was designated as a Development Area within the meaning of Section 702 and 702A of the "Municipal Act" and pursuant to the provisions of the said Act;

AND WHEREAS by By-law No. 1253 of the City of Port Moody, dated the 8th day of September, 1976, the City was authorized to enter into a Land Use Contract with the Owner for the use and development of the said Development Area, pursuant to the provisions of the "Municipal Act";

AND WHEREAS notice of the Public Hearing to be held by the Council of the City of Port Moody, in the Town Centre Cultural Centre, 300 Ioco Road, Port Moody, B.C., on the 25th day of May, 1977, at the hour of 7:30 P.M., was published in the issues of the "Columbian" Newspaper, dated Tuesday, May 17, 1977 and Wednesday, May 18, 1977;

AND WHEREAS the said Public Hearings were held at the time and place mentioned above;

NOW THEREFORE the Municipal Council of the City of Port Moody, in open session assembled enacts as follows:

1. TITLE

This By-law may be cited for all purposes as "City of Port Moody Land Use Contract No. 2, Authorization By-law, 1977, No. 1344".

2. APPROVAL OF CONTRACT

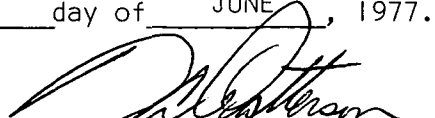
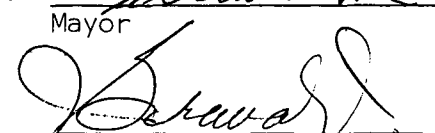
The Land Use Contract attached hereto and marked Schedule "A" is hereby adopted by the Council of the City of Port Moody.

READ A FIRST TIME this 30th day of MAY, 1977.

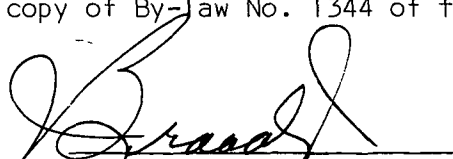
READ A SECOND TIME this 30th day of MAY, 1977.

READ A THIRD TIME this 30th day of MAY, 1977.

RECONSIDERED AND FINALLY ADOPTED this 6th day of JUNE, 1977.


Mayor

Municipal Clerk

I HEREBY CERTIFY that the above is a true copy of By-law No. 1344 of the City of Port Moody.


Municipal Clerk

LAND USE CONTRACT NO. 2, 1977 2nd day of December, 1977

BETWEEN: THE CORPORATION OF THE CITY OF PORT MOODY,
a Municipal Corporation having its
Municipal Offices at 2425 St. John's Street
in the City of Port Moody, in the Province
of British Columbia

(Hereinafter called the "City")

OF THE FIRST PART

AND: COMMUNITY BUILDERS LTD., a corporate body
carrying on business at 302 Oxford Drive in
the City of Port Moody, in the Province of
British Columbia

Hereinafter called the "Owner")

OF THE SECOND PART

WHEREAS upon the application of an owner of land within a development area, the Council of a Municipality, pursuant to Section 702A of the Municipal Act, may by by-law notwithstanding any by-law of the Municipality, or Sections 712 or 713 of the Municipal Act, enter into a land use contract containing such terms and conditions for the use and development of land as may be agreed upon with a developer, and thereafter the use and development of the land shall be in accordance with the land use contract;

AND WHEREAS the Municipal Act requires that the Municipal Council consider the criteria set out in Sections 702 (2) and 702 (1) in arriving at the terms, conditions and considerations contained in a land use contract;

AND WHEREAS the Developer has presented to the Municipality a scheme of use and development of the within described lands and premises that would be in contravention of a by-law of the Municipality or Sections 712 or 713 of the Municipal Act or both, and has requested that the Council of the Municipality enter into this contract under the terms, conditions, and for the consideration hereinafter set forth;

AND WHEREAS by By-law No. 1253 of the said City, dated the 8th day of September, 1975, the area of lands described as:

Lot 112, District Lot 470, Group One, Plan 53410
New Westminster District,

was designated as a Development Area within the meaning of Sections 702 and 702A of the Municipal Act and pursuant to the provisions of the said Act.

AND WHEREAS by By-law No. 1253 of the said City dated the 8th day of September, 1975, the City was authorized to enter into this Land Use Contract with the Owner for the use and development of the said Development Area, in accordance with the terms and conditions hereinafter contained and pursuant to the provisions of the Municipal Act;

AND WHEREAS notice of a Public Hearing to be held by the Council of the City of Port Moody in the Council Chamber of the Public Safety Building, Port Moody, B.C. on Monday, September 29th, 1975, at the hour of 7:30 P.M., was published in the issues of the "Columbian" newspaper, dated Friday, September 19, 1975, and Saturday, September 20, 1975;

AND WHEREAS notice of a further Public Hearing to be held by the Council of the City of Port Moody in the Social Room of the Town Centre Cultural Building, Port Moody, B.C., on Wednesday, May 25, 1977, at the hour of 7:30 P.M., was published in the issues of the "Columbian" newspaper, dated Tuesday, May 17th, 1977 and Wednesday, May 18, 1977;

AND WHEREAS the said Public Hearings were duly held at the times and places above mentioned;

NOW THEREFORE, this Agreement witnesseth that in consideration of the premises and conditions on covenants hereinafter set forth, the City and the Owner covenants and agree as follows:

1. The Owner is the registered owner of an estate in fee simple of all and singular that certain parcel of land and premises situate, lying and being in the City of Port Moody, in the Province of British Columbia, more particularly known and described as:

Lot 112, District Lot 470, Group One, Plan 53410,
New Westminster District

2. The Developer has obtained the consent of all persons having a registered interest in the lands to the use and development set forth herein.
3. The following maps, plans and schedules, marked as Schedule "A" are attached to form part of this contract:

(a)	<u>Drawing No.</u>	<u>Description</u>
	S - 01	Site Plan
	F - 01	Floor Plans - 3 bedroom uphill
	F - 02	Floor Plans - 2 bedroom uphill
	F - 03	Floor Plans - 3 bedroom downhill
	F - 04	Floor Plans - 2 bedroom downhill
	E - 01	Sectional Elevations - Models A,B,C,D.
	E - 02	Elevations Models A,B,C,D.
	P - 01	Playground Equipment
	L - 01	Landscape Plan

(b)	<u>Schedule</u>	<u>Description</u>
	A - 1	Exterior Finishes

4. The following terms and conditions shall apply to the said Development Area:

(a) Registration of Title

All buildings, structures and lands shall be registered under a Strata Plan in conformance with the "Strata Titles Act", being Chapter 14 of the revised Statutes of British Columbia.

4. (b) Permitted Uses of Land, Building and Structures

The following uses and no others shall be permitted:

Eighty-Eight residential dwelling units contained in Eighty-Eight principal buildings, as shown on Drawing No. S - 01 for residential use, with accessory off-street parking use. One recreation area as shown on Drawing Nos. S - 01 and L - 01.

(c) Size, Shape and Siting of Buildings and Structures

All buildings and structures to be constructed on the said land shall conform to:

Drawing No. F-01, F-02, F-03, F-04, E-01, E-02

with respect to the size, shape and siting of buildings and structures.

(d) Notwithstanding the plans attached hereto, all buildings and structures on the lands shall conform to the provisions of the National Building Code and to all pertinent Fire Prevention Laws and Regulations, and reasonable access for fire fighting purposes shall be provided to all buildings.

(e) Off-Street Parking

Shall be located in conformity with site plan, Drawing No. S-01

88 - covered parking spaces
88 - uncovered parking spaces

and shall be constructed in accordance with the provisions of the City of Port Moody Zoning By-law, 1974, No. 1204, with respect to their size, shape and finish.

(f) Aesthetic Quality of Buildings and Structures

Exterior finishes shall be as shown and described on Drawing No. E - 02, and as detailed in Schedule A - 1.

(g) Development and Landscaping of Site

Landscaping and grading details shall be constructed in conformity with Drawing No. L-01, and shall be carried out and completed in accordance with the standard and requirements of the Parks and Recreation Director, and maintained in perpetuity in a manner satisfactory to the Parks and Recreation Director.

Innovative and ornamental street lighting shall be provided by the developer upon all vehicular rights of way within the development of design and location as approved by the City Engineer.

Pedestrian walkways as shown located on Plan No. L - 01 shall be constructed to conform to City standards and requirements of the Parks and Recreation Director.

A green buffer strip shall be installed in addition to a cedar board fence in the area adjacent to the one family residential homes facing on Guildford Drive in accordance with Plan No. L-01.

(g) Development and Landscaping of Site (Continued)

The existing stand of coniferous trees adjacent to Guildford Drive, north to the most southerly building sites shall remain at the existing density. The developer shall provide additional planting as shown on Plan L-01 in sparsely treed areas of this Green Belt.

Should the owner fail to keep and maintain the said landscaping to the satisfaction of the Parks and Recreation Director, the City may at its discretion, order its workmen and/or others to enter and effect such maintenance at the expense of the persons so defaulting, and may further order that the charges for so doing, if unpaid by December 31st of the year of default, shall be added to, and form part of the taxes payable in respect of these lands or real property taxes as taxes in arrears.

(h) Development and Landscaping of Recreation Area and Playground Areas

Construction of the recreation area and tot lots shall be constructed in conformity with Drawing Nos S-01, L-01 and P-01.

(i) Inspections

The City may at all reasonable times enter upon the lands and carry out all necessary inspections to ensure that the land is used and developed in accordance with the terms and provisions of this agreement.

(j) Maintenance of Buildings and Structures

General maintenance of all buildings and structures shall be carried out under a regular programme to assure a continuing pleasing aesthetic appearance, and to provide for the safety of residents in manner satisfactory to the City Building Inspector.

Should the owner fail to maintain the said buildings and structures to the satisfaction of the City Building Inspector, the City may, at its discretion, order its workmen and/or others to enter and effect such maintenance at the expense of the persons so defaulting and may further order that the charges for so doing, if unpaid by December 31st of the year of default, shall be added to and form part of the taxes payable in respect of these lands or real property taxes, as taxes in arrears.

(k) Municipal Services, Works and Utilities

All utilities, including Water, Sanitary Sewer, Storm Sewer, and Domestic Gas, shall be placed underground and provided in accordance, at locations shown on Drawings submitted to and approved by the City Engineer prior to construction, and constructed in accordance with the requirements contained in By-laws provided for such installation.

Telephone and Electrical services shall be provided and placed in such a manner to connect to existing services, as provided by B.C. Hydro and B.C. Telephone, and constructed in accordance with regulations provided for such installations.

(l) Warranty Programme

The owner further covenants and agrees with the City that all Buildings and Structures to be constructed upon the said lands shall be registered under the "New Home Warranty Programme of British Columbia" prior to commencement of construction.

(m) Signs

Signs shall only be permitted in accordance with Section 402 (2) (d) of the City of Port Moody Zoning By-law, 1974, No. 1204.

(n) Construction Vehicles Traffic Control

The owner shall provide adequate supervision over all commercial vehicles and construction equipment entering upon or leaving the construction site to provide for the safety of pedestrians or others during school hours. Construction traffic shall be diverted from Guildford Drive to Guildford Way, when feasible, immediately upon construction thereof.

(o) Amendments

This Land Use Contract may be amended for minor alterations to plans and specifications by mutual written agreement of both parties.

5. Covenants of the Owner and Security for Due Performance

- (a) The Owner covenants and agrees that he will commence construction in conformity with the terms and conditions of this Land Use Contract within the period of three months from the date of its execution, and shall complete all such works undertaken within a period of eighteen months from commencement of construction.

In the event that the owner is unable to proceed with construction of the works by reason of any cause outside of its control, the dates herein provided shall be postponed for a period equal to the said delay suffered by the owner.

- (b) As security for the due and proper performance of this contract and the covenants and agreements herein contained, the Owner has deposited with the City, prior to the execution of this document, a cash deposit or irrevocable letter of credit drawn by a Canadian Chartered Bank or other such financial security, that is mutually acceptable to the City and the Owner, in the total amount of ten percentum of building costs of stage one of the project as outlined in a construction permit issued by the Building Inspector of the City. Subsequent construction stages shall be bonded in a similar manner as per stage one. Upon issuance of a permit of occupancy of any stage by the Building Inspector of the City, the City shall release to the Owner any aforesaid security.
- (c) The period of deposit or expiry date of letters of credit or other financial security, shall be for a minimum period of two years from the execution date of this document or upon receipt of Completion Certificate.
- (d) The Owner further covenants and agrees that he shall not, during construction, nor after completion, remove or deliberately injure any trees that are shown as existing or placed on Drawing No. L-01, nor shall alter any finished gradients, as shown on Drawing No. S-01, without prior written consent of the City.
- (e) The Owner further covenants and agrees to ensure that this Development, when constructed, will qualify for the Municipal Incentive Programme Grants providing such funding is applicable and available.
- (f) The Owner further covenants and agrees with the City that it will reimburse the City for all legal fees and costs incurred by the City in drawing up and executing this Contract.

5. Covenants of the Owner and Security for Due Performance

- (g) This Contract shall inure to the benefit of and be binding upon the Owner, his successors and assignees, and upon the City, its successors and assignees. This Contract shall not be assigned to any third party, prior to its completion, without prior written consent of the City, provided such approval shall not be unreasonably withheld.
- (h) The Developer covenants to save harmless and effectually indemnify the City against:
 - (i) All actions and proceedings costs, damages, expenses, claims and demands whatsoever and by whomsoever brought by reason of the construction of the said works.
 - (ii) All expenses and costs which may be incurred by reason of the execution of the said works, resulting in damage to any property owned in whole or in part by the City by duty or custom is obliged, directly or indirectly, in any way or to any degree to construct, repair or maintain.
 - (iii) All expenses and costs which may be incurred by reason of liens for non-payment of labour or materials, Worker's Compensation assessments, Unemployment Insurance, Federal or Provincial Tax, check-off and for encroachments owing to mistakes in survey.
- (i) The owner covenants and agrees to accept his share of pro rata major shared services as per an agreement between the City and the Province of British Columbia.
- (j) This Contract shall have the force and effect of a restrictive Covenant running with the land and shall be registered in the Land Registry Office by the City of Port Moody.

6. Covenants of the City

The Municipality hereby covenants and agrees with the Developer to permit the Developer to perform all the said work upon the terms and conditions herein contained.

- 7. In the interpretation of this Land Use Contract, all definitions of words and phrases contained in the City of Port Moody Zoning By-law 1974, No. 1204, shall apply to this Land Use Contract and to the attachments hereto.
- 8. It is understood and agreed that the Municipality has made no representations, covenants, warranties, guarantees, promises or agreements (verbal or otherwise) with the Developer other than those in this Contract.
- 9. WE, Community Builders Ltd., the Owner of the lands described above do hereby agree and consent to all of the terms and conditions herein expressed and set forth.

IN WITNESS HEREOF this Land Use Contract has been executed under signature of Norman A. Patterson, Mayor and John I. Brovold, Municipal Clerk, and under seal of the Corporation of the City of Port Moody, at Port Moody, British Columbia, the 2nd day of December 1977.

ACKNOWLEDGMENT OF OFFICER OF A CORPORATION

I HEREBY CERTIFY that, on the 16th day of JANUARY, 1978,
at Port Moody,
in the Province of British Columbia,
(whose identity has been proved by the
, who is) personally known
evidence on oath of
to me, appeared before me and acknowledged to me that he is the
of Community Builders Ltd.,
the person who subscribed his name to the annexed instrument as
of the said Company
seal of the said Company
Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said
Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British
Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office, at Port Moody,
in the Province of British Columbia, this 16th day of JANUARY, one thousand nine hundred
and EIGHT Seventy-seven.

A Notary Public in and for the Province of British Columbia
A Commissioner for taking affidavits for British Columbia

ACKNOWLEDGMENT OF OFFICER OF A CORPORATION

I HEREBY CERTIFY that, on the 16th day of JANUARY, 1978,
at Port Moody,
in the Province of British Columbia,
(whose identity has been proved by the
, who is) personally known
evidence on oath of John Ingolf BROVOLD
to me, appeared before me and acknowledged to me that he is the Municipal Clerk
of the City of Port Moody
the person who subscribed his name to the annexed instrument as Municipal Clerk
of the said City
seal of the said City
Instrument, that he was first duly authorized to subscribe his name as aforesaid, and affix the said seal to the said
Instrument, and that such corporation is legally entitled to hold and dispose of land in the Province of British
Columbia.

IN TESTIMONY whereof I have hereunto set my Hand and Seal of Office, at the City of Port Moody,
in the Province of British Columbia, this 16th day of JANUARY, one thousand nine hundred
and EIGHT Seventy-seven.

A Notary Public in and for the Province of British Columbia
A Commissioner for taking affidavits for British Columbia