

REGIONAL DISTRICT OF NANAIMO

**COMMITTEE OF THE WHOLE
TUESDAY, MARCH 11, 2008**

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ENVIRONMENTAL SERVICES

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Chartwell Projects Legal Settlement – Area G.



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| RDN REPORT | | |
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MEMORANDUM

TO: John Finnie, P.Eng.
General Manager Environmental Services

DATE: February 26, 2008

FROM: Wayne Moorman, P.Eng.
Manager of Engineering Services

FILE: 2210-20-NEV

SUBJECT: Legal Settlement
Chartwell Projects
French Creek Water Local Service Area

PURPOSE

To provide the Board with information on the financial/legal settlement between Chartwell Projects and the Regional District of Nanaimo.

BACKGROUND

Chartwell Projects was a large, phased residential subdivision development project in the Chartwell Subdivision (Chartwell), adjacent to the Sandpiper Subdivision in the French Creek Area (see attached map). Prior to December 2004 Chartwell was within the Regional District of Nanaimo and part of the French Creek Water Local Service Area. The Chartwell area was transferred to the Town of Qualicum Beach in 2004 after residents requested they be amalgamated into the town. Prior to the amalgamation the Chartwell/Sandpiper subdivision comprised a total of 714 properties (Chartwell 478 properties and Sandpiper 236 properties).

In the late 1980's Chartwell Projects commenced development of their land holdings in Chartwell and by mid 1993 they had completed 6 phases of subdivision with only one phase remaining. Almost 10 years later, in 2002, the developer decided to complete the last phase (phase 7), a subdivision of approximately 27 lots.

Prior to 1993 the RDN did not have Development Cost Charges (DCCs) and all developers were required to install, at their cost, all necessary infrastructure to RDN standards to service their properties (wells, water distribution systems, sanitary sewer systems and streetlights) and to contribute funds towards RDN reservoir and pumphouse improvements for the water service area. After 1993 and prior to 2002 the RDN approved DCCs for bulk water and for sanitary sewer and passed the necessary bylaws to require payment of these charges upon subdivision of property within the Chartwell/Sandpiper subdivisions. In 2002 when Chartwell Projects met with the RDN to discuss their phase 7 subdivision staff informed them of these new charges. The developer requested that the RDN grandfather him arguing that he had started his phased development prior to the establishment of the DCCs. Staff could not support this request as the charges were imposed by bylaw. In March 2003 Chartwell Projects filed a Statement of Claim launching legal action against the RDN claiming that DCCs and the reservoir/pumphouse improvement charges were not fair and should be waived and further, that they had suffered damages due to delay in obtaining their approvals.

Chartwell became part of the Town of Qualicum Beach in December 2004. In mid 2005 Chartwell Projects filed an Amended Statement of Claim which included the original items listed in their March 2003 claim plus a new claim for "unjust enrichment". The developer was now claiming that the wells installed by Chartwell Projects in the late 1980's and early 1990's had excess capacity and that the RDN was enriched by this excess water and was able to benefit financially.

Chartwell Projects had developed two water wells within the Chartwell subdivision as required by the RDN and they transferred these wells and the associated statutory right of ways on which the wells were located to the RDN. These transfers did not restrict the use or capacity of the wells for the benefit of the Chartwell and Sandpiper subdivisions.

The action proceeded through the legal system with affidavits, examinations for discovery, correspondence between lawyers, discussions on settlement etc. and at least two court dates were set but cancelled for various reasons.

In April 2007 the Board authorized Staples McDannold Stewart (SMS) to make a financial offer to Chartwell Estates to settle the action rather than proceeding through an expensive and time consuming litigation to trial. On April 24, 2007 SMS, on behalf of the RDN, made an offer to settle for \$50,000. On May 17, 2007 the RDN received a reply from Chartwell's lawyer rejecting the settlement offer and proposing a counter offer to settle at \$751,246.55 which included Chartwell's legal fees of \$157,112. SMS felt this to be a grossly exaggerated claim and were of the legal opinion that the RDN had good defense to all of the Plaintiff's claims should the matter proceed to trial. However, they also advised that there was risk in any court action and even if the RDN won the litigation they would still face significant legal costs in their defense.

RDN staff and Chair and SMS met on July 26, 2007 with staff from the Ministry of Community Services to discuss the pending legal action and the potential financial impact on the remaining 236 properties in the French Creek WLSA. The 478 properties within Chartwell that had been incorporated into the Town of Qualicum Beach were excluded from any liability in this matter by the Supplementary Letters Patent issued by the province to the Town of Qualicum Beach and the RDN. The Ministry was not prepared to offer any financial assistance on this matter until the outstanding litigation was settled. The ministry recommended the RDN proceed to a negotiated settlement at which time they would review a request for financial assistance.

In September 2007 RDN and SMS staff met with Chartwell Projects and their lawyer to try to resolve the issue prior to trial. This meeting resulted in the RDN presenting an offer of \$125,000 to settle the dispute. This offer was accepted by the plaintiff thereby avoiding further litigation. A request was submitted to the Ministry of Community Services to financially assist the RDN and the service area residents with the costs in the amount of \$82,500 (2/3 of the settlement amount). This amount was based on the service area losing 478 of 714 properties to Qualicum Beach and arguing that the remaining 236 properties should not be expected to absorb the total cost. The Ministry supported the request but would not approve funding to cover our legal expenses in defending the action.

FINANCIAL IMPLICATIONS

The negotiated settlement for this legal action was \$125,000. The province agreed to cost share in the settlement to a maximum of \$82,500, leaving the residents of the Sandpiper subdivision (236 properties) with an outstanding liability of \$42,500. This balance was paid for by the service area from reserve funds within the operating budget.

SUMMARY/CONCLUSIONS

Chartwell Projects was a phased land development project in the Chartwell area of French Creek and within the French Creek Water Local Service area. Chartwell shared the water system with the Sandpiper Subdivision and combined they were 714 properties. The Chartwell subdivision consisted of 478 properties. In 2002 Chartwell Projects elected to finish its last subdivision in Chartwell. By this time, development in French Creek was subject to new DCCs and reservoir/pumphouse improvement charges. Chartwell Projects requested that they be grandfathered as their phased developments had started prior to DCCs being imposed and they did not pay DCCs on their previous 6 phases. The RDN could not cancel the charges as they were imposed by bylaw.

Chartwell Projects filed legal action against the RDN in 2003 opposing the charges and claiming damages to their project. In December 2004 the Chartwell area (478 properties) was incorporated into the Town of Qualicum Beach and in mid 2005 Chartwell Projects amended their legal claim and introduced a new claim for "unjust enrichment", alleging that RDN had benefitted from the wells Chartwell Projects had provided for the first 6 phases of their development. A settlement offer was made by the RDN in April 2007 for \$50,000; Chartwell Projects countered with an offer to settle for \$751,246.55.

RDN staff and legal counsel met with Ministry of Community Services staff to discuss the litigation and to request financial assistance. The ministry would not support assistance at that time and suggested that the case be decided first.

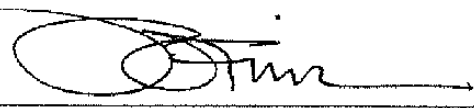
In September 2007 RDN staff and legal counsel met with Chartwell Estates and their lawyer to discuss a settlement. An RDN offer of \$125,000 to settle was accepted. Staff again approached the Ministry of Community Services and requested assistance in the amount of \$82,500 (2/3 of the settlement). The Ministry supported this request but would not contribute to our legal expenses incurred over the course of the litigation.

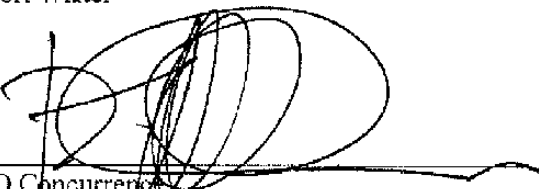
The final settlement of this matter was cost shared by the Province in the amount of \$82,500 leaving the French Creek Water Local Service Area (Sandpiper Subdivision at 236 properties) responsible for the remainder of the costs. \$42,500 from the operating budget reserve funds was used to cover the remaining costs. The Consent Dismissal Order concluding this legal matter was entered into the court records on November 15, 2007.

RECOMMENDATION

That the Board accept this report for information.


Report Writer









GM Concurrence

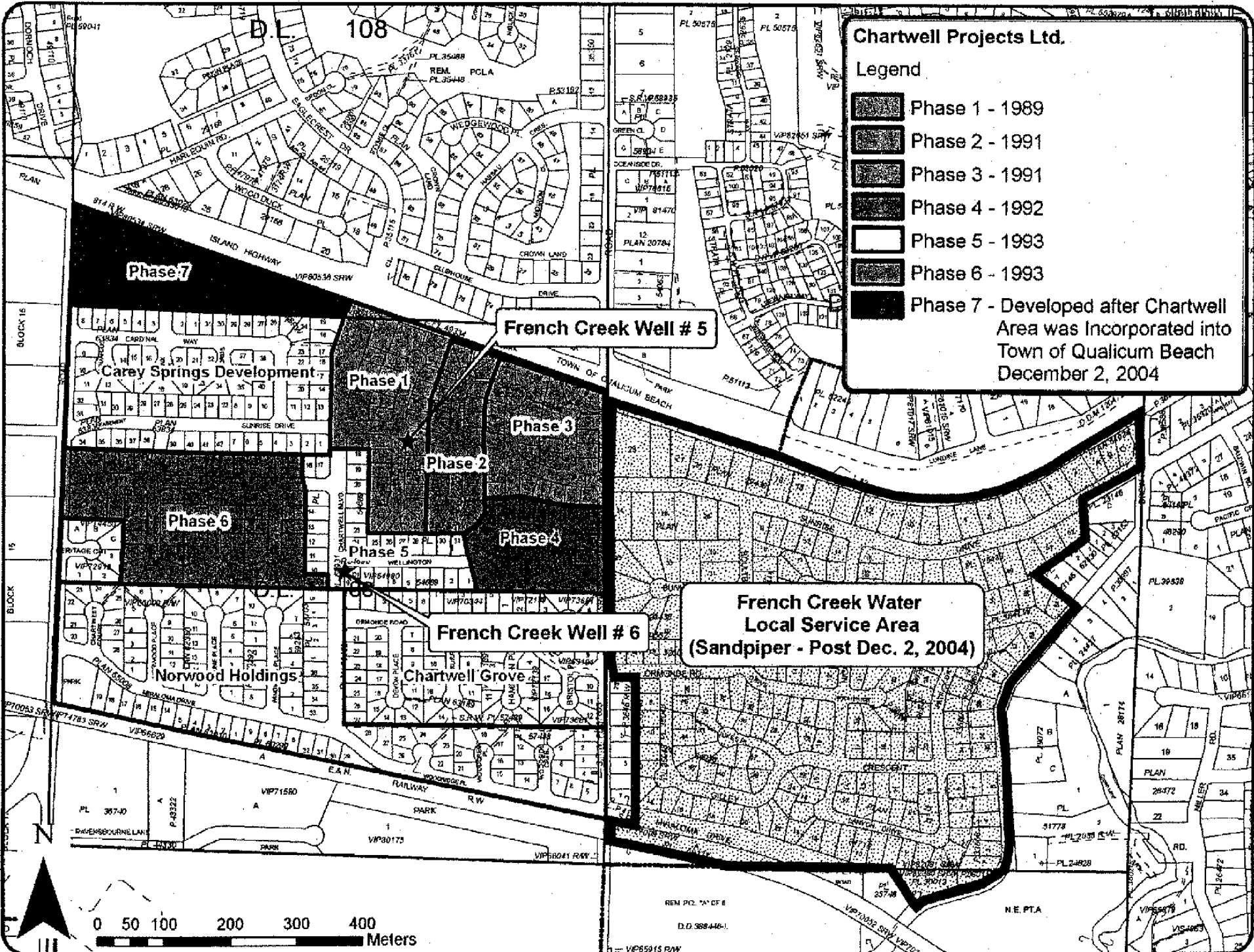

CAO Concurrence

COMMENTS:

Chartwell Projects Ltd.

Legend

-  Phase 1 - 1989
-  Phase 2 - 1991
-  Phase 3 - 1991
-  Phase 4 - 1992
-  Phase 5 - 1993
-  Phase 6 - 1993
-  Phase 7 - Developed after Chartwell Area was Incorporated into Town of Qualicum Beach December 2, 2004



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