

**Subject: FW: Lynn Valley Library Referendum Questions and Legality of the \$ 6 MM**

**Date:** Wed, 4 Aug 2004 20:34:11 -0700

**From:** "Ernie Crist" <ernie\_crist@dnv.org>

**To:** "FONVCA (E-mail)" <fonvca@fonvca.org>

-----Original Message-----

From: Ernie Crist

Sent: August 4, 2004 8:27 PM

To: 'John Hunter'; Don Bell2; Alan Nixon; 'Councillor Maureen McKeon Holmes'; Richard Walton; Janice Harris; Lisa Muri

Cc: Agnes Hilsen; James Ridge; 'Allan Orr'; 'Bill Tracey DNV'; 'Brian Platts DNV'; 'Cathy Adams DNV'; 'Corrie Kost DNV'; 'Elizabeth James CAGE'; 'Eric Anderson 1'; 'Maureen Bragg'; 'Pat Higgs DNV'; 'Peter Thompson DNV'; 'Ron Haack CBFAC'

Subject: RE: Lynn Valley Library Referendum Questions and Legality of the \$ 6 MM

Dear Mr. Hunter;

I thank you for your detailed list of concerns not to speak of your professionalism. While I do not agree that the circumstances are the same as they were in regards to Canlan, I do agree with you that

- 1) The commercial building should not be operated by the Municipality.
- 2) The Library is not and/or should not merely be a replacement of the existing Library but should be an Arts Facility and Community Center which, under the present plans, is not the case. My efforts to that effect have so far been totally ignored, including by the Lynn Valley Community Association as well as Staff and Council.
- 3) I also agree that this issue requires a careful scrutiny by our legal advisers.
- 4) I further agree that the issue needs to be thoroughly explained to the public.
- 5) I have always argued that the Library Board should hire its own project manager. I do so based on my own extensive experience and my own business training. While I was on the Library Board we built 2 Libraries - they were both on budget and on time whereas the District has never ever built anything even resembling such a success. Indeed, I cannot overlook the most recent example of the building at the entrance of Lynn Canyon Park. It's cost of close to \$ 1,5 million is unjustifiable to say the very least. The fact that it is not in keeping with its forest and alpine environment is something I wish not even to discuss. Anyone even remotely familiar with "building in harmony with the environment" will have serious difficulties understanding the (modern glass) architecture. In fairness however, all this was before our present CAO was in charge.
- 6) The reason why the Commercial building and the Library under the present plan are treated as one project and which I have supported is to enable the District to repay to the Heritage Fund both principle and interest for the money borrowed to meet the requirements of the District policy. I believe some of your concerns regarding the legality surrounding this issue stem from a scenario which would arise if the Library and the commercial building were treated as two separate projects, that is if the commercial building were to be financed, built and operated separately from the Library by a private company. Since the Library cannot by itself repay the Heritage Fund, it would be in violation of District Policy. In such a case I would have to agree with your objections. On the other hand there is no conflict, in my opinion, if the two are treated as a unit with the commercial building being leased with the proceeds used to repay the Heritage Fund. This

obviously needs to be verified.

I ardently believe that this project it is the key to the Lynn Valley Core promised to the public albeit a far cry from the "Pedestrian Oriented Town Center". On the other hand I have absolutely no desire to merely replace the present Library with a building which, in essence, is no more than a new version of the present Library - a place where people drop off and pick up books - a totally outdated concept which would give the people of the Lynn Valley and the larger community neither what they deserve nor what they were promised - a monument to the future as opposed to the past - obsolete before construction has even commenced.

Thank you again for your well thought out comments.

Yours truly,

Ernie Crist

-----Original Message-----

From: John Hunter [<mailto:hunterjohn@telus.net>]

Sent: August 4, 2004 4:40 PM

To: Don Bell2; Alan Nixon; 'Councillor Maureen McKeon Holmes'; Richard Walton; Ernie Crist; Janice Harris; Lisa Muri

Cc: Agnes Hilsen; James Ridge; 'Allan Orr'; 'Bill Tracey DNV'; 'Brian Platts DNV'; 'Cathy Adams DNV'; 'Corrie Kost DNV'; 'Elizabeth James CAGE'; 'Eric Anderson 1'; 'Maureen Bragg'; 'Pat Higgs DNV'; 'Peter Thompson DNV'; 'Ron Haack CBFAC'

Subject: FW: Lynn Valley Library Referendum Questions and Legality of the \$ 6 MM

Agnes please provide a copy to Ms. Harris

Dear Council

A councillor asked for this info re the "\$6 MM issue" and I thought it best to provide it to all council.

James Ridge has also been provided a copy.

I believe an attempt to avoid elector assent on the Lynn Valley Project will be met by a legal challenge on the basis of the illegal (my view) transfer of the \$6MM of 1996 referendum monies, and/or a challenge on using the Heritage Fund to avoid a debt issue to avoid elector assent (that is the optics). A lawyer is being consulted.

My aim is proper process; let us not repeat Canlan where we tried to skip elector assent. The merits or lack thereof of the project are a second issue.

I personally believe the commercial section of the project is an economic turkey by any normal standard, and high risk of cost overrun

like the DNV Hall (60% over) and Northlands (85% over). Sure, there were special reasons to overrun these projects - there always are.

Messages (as of May 2004)

No written business plan

No single source accountability (Planning take no responsibility for library sizing, etc - lack of due diligence)

No risk assessment (Public statements from Mr. Zerr to SCA: "there is no risk")

Secret estimate books, CBFAC refused access

1998 basis for library sizing out of date (population estimates too high, usage patterns)

Capital and operating costs understated (fixed now?)

Possible illegal transfer of \$6MM of 1996 Referendum money

DNV track record on "commercial" projects and one-off deals

This project has "potential disaster" written all over it, in my view.

Optically it appears this project has been structured to avoid elector assent on the biggest project DNV has ever done (transfer of \$6MM, using Heritage Fund instead of debt). The message then would be "we know better than the electorate". Do we really believe, if this IS a good project, we can't sell it to the electorate? Do we believe in democracy?

See also your election promises re referenda at the bottom of this e-mail.

regards

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for J. Hunter & Associates Ltd.

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The 1996 referendum ballot itself of course contains no details of the projects (except the project name and cost, which for LV Library was given as \$6MM for the "Lynn Valley Main Library"), unless this info package was attached to it - staff would have to tell us that. They provided me the ballot and package.

The information package on the 8 projects, which was circulated to the

public and/or in newspapers, contains the following questions and answers regarding the "Lynn Valley Main Library". Items in quotes are lifted word for word from the document.

"How much is needed: \$ 6 MM" (now more than double)

"What will it cost to operate: No additional funding". (seems no longer true, the library folks budgeted an incremental \$100,000/yr they tell us, CBFAC estimate several times that). However, is there a loophole? It does not say "no additional cost"; it says "no additional funding". Was this an attempt to say that funds would be cut here and moved there - i.e. shut down some other library?

It further gives the size as "approximately 25,000 square feet". (current proposal is 48,700.

There is also a description of the need, what will be in the new library, and how the project will be handled. There is no mention of the town center idea. In fact, in 1996, I do not think it was on the table.

Is this a different project than approved in the 1996 referendum? I think so. Not just the cost and size, but the entire concept of a library and commercial section comprising a town center project. But the legal issue is - is it a different project from the perspective of the LGA?

See LGA section below. I wonder how they define "purpose"? Certainly certain facts and the overall scheme given to the electorate in 1996 are no longer true. Work for the lawyers, I guess.

I'll skip over the question as to whether Council, under its own code of ethics, should they be diverting this \$6 MM to a markedly different project than the one approved by referendum in 1996.

On the legal issue, one really has to look at the bylaw too I guess, judging by what is below in the LGA. In fact it is strange - the Sep. 3/96 staff report tabled at the Sep 9 council meeting re the borrowing bylaw does not even mention the LVP; it was added on a motion by Crist, seconded Munroe, and the total referendum amount bumped from 20 to \$26 MM. There is no description of the project in the bylaw material that I can find. The only definition of the project in the public view that I have seems to be in the referendum question information package. Is there other material that went to the public?? I think a court would look at the referendum question as the best evidence of intent and choke on it.

Of the \$6 MM that was to build a library; I gather from staff that some

\$5 MM of it has already been spent to buy the land for the library and the commercial part.

Hence the question - is the use of the \$6 MM that was intended for a \$6 MM library legal to buy the land for a \$33 MM library and commercial part, if that properly represents what has been done? Note the LGA gives very little flexibility to move that money around absent assent of the electors - see below.

Councillors should be sure - we are back to the Canlan problem again, where councillors can be personally liable for monies illegally spent, in certain circumstances.

I think that ethically, this shift of monies absent elector consent is very questionable.

From the LGA (red emphasis added by JCH)

Purposes for which  
money may be used

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>  
Jan 01/00

337.

(1)

Subject to this section, money borrowed by a municipality under any Act must not be used for a purpose other than that specified in the bylaw or agreement authorizing the borrowing.

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(2)

A council may, by bylaw adopted with the assent of the electors, use all or part of money borrowed for a specific purpose and not repayable in the current year for any other lawful purpose of the municipality.

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(3)

If some of the money borrowed for a specified purpose remains unused after payment of the costs related to that purpose, a council may, by bylaw, provide for the use of the unused money for one or more of the following:

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(a)

to retire debentures issued for the purpose;

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(b)

to purchase and cancel debentures issued for the purpose;

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(c)

for expenditures of a nature similar to the purpose in the bylaw authorizing the money to be borrowed;

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(d)

for a reserve fund for matters in paragraph (a), (b) or (c), in which case Part 13 applies.

1999-37-81.

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href="[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html##](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html##)">

Liabilities for use of money  
contrary to Act

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html##](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html##)>  
Jan 01/00

338.

(1)

A council member who votes for a bylaw or resolution authorizing the expenditure, investment or other use of money contrary to this Act is personally liable to the municipality for the amount.

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html##](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html##)>

(2)

As an exception, subsection (1) does not apply if the council member relied on information provided by a municipal officer or employee and the officer or employee was guilty of dishonesty, gross negligence or malicious or wilful misconduct in relation to the provision of the information.

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html##](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html##)>

(3)

In addition to any other penalty to which the person may be liable, a council member who is liable to the municipality under subsection (1) is disqualified from holding municipal office for 5 years from the date of the vote.

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(4)

Money due a municipality under this section may be recovered for the municipality by

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(a)

the municipality,

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(b)

an elector or taxpayer of the municipality, or

<[http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150\\_983.html](http://www.civicinfo.bc.ca/LocalGovernmentAct/data/qsdoc150_983.html)##>

(c)

a person who holds a security under a borrowing made by the municipality.

1999-37-81.

ELECTION PROMISES (ANSWERS TO FONVCA)



Under what circumstances should major capital projects go to referendum?

Don Bell:

Where funding commitments required would exceed the authorizations allowed in the Local Government Act or Community Charter.

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Ernie Crist:

Referendums should be held on all major capital projects.

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Janice Harris:

Where there is a perceived groundswell of support or opposition, i.e.: the Winter Olympic bid.

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Maureen McKeon Holmes:

Major capital projects should go to referendum with a price tag attached.

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Lisa Muri:

1 million dollars and over

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Alan Nixon:

I personally feel there is undue emphasis on the "capital" side of the District budget. Many "operational" expenses have far larger "lifetime" budgetary impact than many "capital" projects without ever being subjected to the focussed scrutiny of the electorate. During the regular election cycle, referenda should be utilized to seek the public's guidance on, or endorsement of medium to long-term strategies for infrastructure and amenity maintenance and development. These could take the form of referenda-approved percentages of annual budgets to be spent in the achievement of the broadly-stated objectives.


Over time, circumstances can change that render specific project-based, "dollar-based" referendum mandates out-of-date. Given the existing, lengthy planning cycle, we must constantly guard against spending money on projects that may no longer be necessary or responsive to the community's needs.

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Richard Walton:

While I am not a fan of referenda (they have decimated public services in California where my wife is from), I believe they have a place for decisions having long-term economic and quality of life effects on citizens... I would suggest that any Council (3 year term) have a limit of what capital decisions they can commit to without going to referendum...a quota system that ensures no "fast ferries" are left as legacies to future citizens.

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