

**BOARD OF EDUCATION
SPECIAL PUBLIC MEETING AGENDA**

**School District No. 43 (Coquitlam)
Virtual Meeting via Zoom**

<https://sd43-bc-ca.zoom.us/j/64100104184>

*Our mission is to ensure quality learning
opportunities for all students of all ages*

**December 21, 2021
6:00 p.m.**

ACKNOWLEDGEMENT OF TERRITORY

Trustee Woods

Today we acknowledge the Traditional Territory and honour the Ancestors and all relations who walked this land long before we were gathered here today. We would like to acknowledge, with gratitude, this beautiful place where we live, work, play and learn – the Coast Salish Nations. All My Relations.

A. ACCEPTANCE OF AGENDA

B. UNFINISHED BUSINESS

- a) Anmore Green Estates Statutory Right of Way Bylaw (Pages 2-12) Chris Nicolls
(45 minutes)

C. QUESTION PERIOD

- a) Trustees
b) Gallery

Members of the gallery (public) who want to ask a question, regarding an agenda item, should email information@sd43.bc.ca and include their name, affiliation (if applicable) and question. Questions will be read aloud by a member of SD43 staff for consideration.

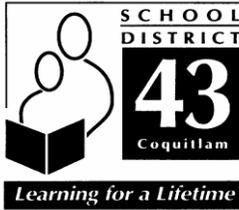
D. ADJOURNMENT

ANNOUNCEMENT

Next Public Board Meeting: January 18, 2022 – 7:00 p.m.

Location: Virtual Meeting via ZOOM

Contacts regarding agenda items: Michael Thomas, Chair – 604-939-9201
Chris Nicolls, Secretary-Treasurer/CFO – 604-939-9201
Jennifer Toderas, Executive Assistant – 604-939-9201



SCHOOL DISTRICT NO. 43 (COQUITLAM)

Office of the Secretary-Treasurer

MEMORANDUM

TO: Board of Education

FROM: Chris Nicolls, Secretary-Treasurer/CFO

DATE: December 21, 2021

SUBJECT: Anmore Green Estates Septic Field Sewer Connection Bylaw

COPIED TO: P. Gartland, Superintendent/CEO

Recommended Action: That the Board of Education pass a motion to hold all three readings and have all three readings, final passage, and adoption of the Anmore Green Estates Sewer Connection Statutory Right of Way Bylaw.

Background and History

The most recent issue with Anmore Green Estates ('AGE') septic field dates back to early 2017 when the Ministry of Environment ('ENV') issued a warning letter to AGE regarding several out of compliance findings which resulted in a Pollution Abatement Order being issued to AGE in November 2017. This Order has remained substantively in place requiring AGE to undertake monitoring and corrective action until the October 18, 2021, abatement order which removed this obligation from AGE and placed the obligation on SD43. There is no indication as to when the Order would be rescinded or cancelled and potentially creating an ongoing liability on SD43.

In 2017, AGE wrote a letter to the Greater Vancouver Sewerage & Drainage District (GVS&DD), the City of Port Moody, Village of Anmore ('Village') and SD43 indicating that they would pay 100% of costs incurred by each of the three parties to allow AGE to connect to the sewer system. As per the Order, AGE was to install a fence for student health and safety purposes. AGE failed to act timely, causing SD43 to install the fencing and signage. Subsequently, SD43 engaged legal counsel to recover its costs.

During 2018 and 2019, extensive communication occurred amongst the parties – AGE, the Village, ENV, SD43, and Port Moody. SD43 provided civil drawings, while the Village worked to determine the practicalities, costs, methods, etc. in addressing the septic field and corrective action options. The burden of costs was articulated to be that of AGE. In November 2018 the Pollution Abatement Order was updated.

On two occasions (November 2018 and March 2019) SD43 wrote to the ENV requesting their involvement to facilitate meetings between the parties as AGE was not responding to either SD43 or the Village's communications. It was not until December 2019 that the Ministry of Municipal Affairs appointed facilitator was able to engage with the parties.

In the only conversation directly with ENV and SD43 staff, SD43 recommended the connection option that does NOT cross SD43 lands, as it would not disrupt existing agreements, would be less complicated with reduced legal undertakings and address time sensitivities. (Eagle Mountain School is in Anmore with a sewer connection to Port Moody and the GVS&DD). The Ministry of Environment rejected this option as too costly, without necessarily understanding the intricate nature of the legal undertakings.

During the period May to June 2020, SD43 and AGE exchanged several 'Letter's of Intent' in an effort to form the basis on which an agreement could be developed. Lacking consensus, the Facilitator created a 'Statement of Principles'. All parties, with the exception of AGE, sign onto the Statement by June 2020.

May 2020 - AGE communicated to the Ministries of Environment, Education, and Municipal Affairs, and SD43 that based upon their research SD43 is responsible for the septic leakage and therefore liable for all costs. In that same letter they indicate they are removing the protective fencing barrier immediately. The Ministry of Environment subsequently replaced the fence at the Ministry's expense.

Significant progress was accomplished during 2020 as follows:

- The Village of Anmore Council approved updates to the Official Community Plan allowing for connections to the Greater Vancouver Sewerage & Drainage District and passed Anmore Green Estates and School District 43 Local Area Service Establishment Bylaw No. 616-2020 (adopted February 2020).
- The City of Port Moody and Village of Anmore approved the sewer servicing agreement (May 2020).
- The Province of British Columbia issues an Order in Council that the Village of Anmore is a member of the Greater Vancouver Sewerage & Drainage District (effective June 2020).
- Greater Vancouver Sewerage & Drainage District passed and adopted (i) the Greater Vancouver Sewerage and Drainage District Sewerage and Drainage Areas Boundaries Amending Bylaw No. 338, 2020; and (ii) the Greater Vancouver Sewerage and Drainage District Bylaw No. 332, 2019, as amended (adopted July 2020).
- School District 43 wrote a letter dated September 10, 2020, stating the Board has agreed to the Facilitator's August 27, 2020 Amended Statement of Principles.

July 2020 - SD43 requested from AGE, construction design documents and drafts of the required agreements as a follow up to the Letter of Intent. No response was received until almost a year later.

August 2020 – AGE advised that the Strata members had reviewed the Facilitator’s Amended Statement of Principles and the outcome was a nullification of the developed draft Letter of Intent, that AGE would not approve support of the Facilitator’s recommendations and further questioned the statutory right of way (SROW) payment to SD43, as SD43 had taken no responsibility for the knowledge of and cause of the septic leakage.

September 2020 – SD43 agrees to accept the payment for the Statutory Right of Way (‘SROW’) provision from AGE over a 5-year period in response to their concern regarding the ability to raise the full amount at one time. This follows a reduction of SROW fees by SD43 by almost 50% from the independent appraised value.

January 2021 - the Ministry of Environment issued a warning letter, dated January 4, 2021, to AGE advising that they were not in compliance with their sewer discharge permit as they had not filed a plan and schedule as to how they would fulfill their obligations to connect to sewer by April 5, 2021, as required in an earlier ENV letter to AGE. Subsequently ENV issued an administrative penalty to AGE in their failure to maintain the fencing, as required in response to their May 8, 2020, warning letter. In addition, it was noted that AGE had failed to maintain the monthly required monitoring (and testing) and further had failed to submit sampling data to the Ministry within the required period. (It has been subsequently determined that AGE’s last posted submission to ENV was January 3, 2020).

Early 2021 – Working with the Facilitator, SD43 provided comprehensive input into the development of the three draft agreements. These agreements remain substantively and materially unchanged since this time. AGE did not engage and did not review or sign off on the agreements until most recently.

April 2021 - SD43 followed up on the request to AGE for detail design and legal survey completion, related documents, and project timeline, all critical elements for the completion of the agreements. At that time SD43 learned that AGE had secured the necessary funding, the Strata had voted to proceed, services of legal counsel had been secured, and a requested made to ENV, for an extension to the sewer installation deadline installation of April 5, 2021.

May 2021 – Access to school lands to complete pre-construction assessments and work (necessary to complete the agreements) was requested on May 5, with the necessary documents (scope of work, insurance, Worksafe coverage confirmation, criminal record checks), provided by AGE on August 4, and SD43 reviewing and providing approval on August 5. AGE arranged for the pre-work to begin on August 30.

September 2021 - the draft Arborist and Geotech report were received, with a review and comments from SD43 and Port Moody within 48 hours. In addition, SD43 clears the obstacles to sewer construction work occurring while students are in school at the request of AGE and other parties and a critical time path is shared with all parties.

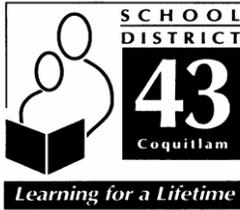
The Board included time on its September 14, October 5, and October 26 public agenda to discuss and consider the required bylaw passage. Each time AGE was unable to have the required work necessary to sign off on the agreements completed. It was on November 10 that AGE provided their comments and substantive changes to the agreements. On October 26, the Board indicated that it would hold a special public meeting to pass the bylaw once AGE has signed the agreements. Unfortunately, agreement issues continue to remain outstanding and was further complicated by AGE’s concern pertaining to project costs and funding availability.

In an effort to expedite the process it is recommended that the Board move forward with the statutory right of way that would be subject to final agreement to execute and deliver the Agreement, the Statutory Rights-of-Way and all such amendments thereto as the Secretary-Treasurer may, in his discretion, consider advisable, and all related and ancillary documents required to complete the granting of the Statutory Rights-of-Way. This could assist in AGE moving forward to tendering in January 2022.

The project schedule timeline construction stages as prepared by the AGE project manager is detailed below. It is important to note that these estimates are based on standard project that is not affected by for work window/timing restrictions that may be applied to this project. The tender package preparation line assumes all SD43 project requirements have already been provided and does not include time for SD43’s review and/or subsequent edits. It also does not include time associated with securing necessary permits from the City of Port Moody or the Village of Anmore.

| Stage | Timing (assuming normal project) |
|---|-------------------------------------|
| Tender Package preparation* | 3 weeks |
| Contractor tendering (will consider sole sourcing if possible) | 3 weeks |
| Contractor prep and lead time | 2 weeks |
| Active Construction | 3 weeks |
| Substantial completion (Record drawings, Post Construction Sign off, final inspection (City and Binnie) | 4 weeks |
| Total | 12-15 weeks |
| Maintenance Period | 1 year |

*SD43 staff have already engaged with AGE’s project management team to address tender package elements relevant to SD43.



SCHOOL DISTRICT NO. 43 (COQUITLAM)

Office of the Secretary-Treasurer

MEMORANDUM

TO: Board of Education

FROM: Chris Nicolls, Secretary-Treasurer/CFO

DATE: December 21, 2021

SUBJECT: **Anmore Green Estates Sewer Connection – Agreement Issues**

COPIED TO: P. Gartland, Superintendent

Recommended Action: The following is provided for information.

Background:

Captured below are the essential elements of an email from Anmore Green Estates legal representative to SD43's legal representative received on December 16, 2021 and SD43's response delivered on December 17, 2021. The AGE points are similar in nature to those made to the Ministry of Environment and other parties.

Hello [REDACTED]

AGE:

I have reviewed the draft appended to your email with my client. The following changes made to the agreement are not acceptable to the Strata Corporation:

- Sections 3, 4 and 34 – The Strata Corporation is not prepared to pay significant amounts to SD43 and not receive the SRWs in exchange. That the grant of the SRWs is tied to the Strata Corporation's decision to proceed or not with the sewer line work, and the timing of same, based on the tender results and the Strata Corporation's ability to fund same is unreasonable and is also a significant change in SD 43's position regarding the grant of the SRWs as set out in its own draft of this agreement sent to me on Nov 23.

SD43 Response:

You question the reasonableness of the School Board's position and suggest that it is a significant change.

1. The SRW's cannot be granted until the condition is removed because they authorize work that is to be done by the Strata Corporation subject to the terms of the License. If the Strata Corporation does not remove its condition, then the License is at an end, and the School Board cannot control how the work is done. We do not think it unreasonable to require the Strata Corporation to commit to completing the work before the SRW's are granted. I am instructed that the School Board would be prepared to make its entitlement to the \$140,000 payment conditional on the SRW's being granted. However, the smaller payment should not be refundable, as an incentive to the Strata Corporation to stop delaying and complete the work, which should have been done last summer. The delay and additional costs being incurred by everyone are due to the lack of urgency by the Strata Corporation. It took 7 months (September 2020 to March 2021) for it to approve funding after rejecting the Facilitator's proposal – which all the other parties had accepted in principle. If the bids are over budget, then the Strata Corporation should act quickly to obtain the approval it needs to proceed. Simply not doing the work or delaying it indefinitely should not be an option. The Ministry of Environment ordered the Strata Corporation to address the pollution it is causing years ago and the Strata Corporation has had many years to secure the funding it needs. It should also be noted that the School Board was proposing to take the SRW payment over 5 years, and in an amount representing a discount from the appraised value by nearly 50%, which were concessions offered to get the Strata Corporation moving.

2. The School Board's position is in response to a significant change in the proposed arrangements that was introduced by the Strata Corporation, when it requested a condition that could allow it to delay or avoid completing the work. Our email message of November 23rd said we were providing preliminary comments on the condition and may require further changes to the License.

AGE:

- Sections 9 and 10 – The removal of the ability of the Strata Corporation to extend the time for completion of the works with the consent of the SD43, particularly when coupled with the August 31, 2022 completion date. All earlier drafts of this agreement have contemplated the Strata Corporation's ability to extend.

SD43 Response:

Previous drafts referred to potential extensions but only with the consent of the School Board. The situation has changed. The Ministry of Environment has issued an [Pollution Prevention] Order and compliance is costing the School Board in excess of \$5,000 per month, so the School Board is not willing to agree to further extensions of time unless absolutely necessary. The Strata Corporation wanting the right to potentially postpone tendering for a year if the project is over budget is not reasonable in the circumstances. The August 31, 2022 date was agreed to by all parties at one of the project meetings, so until the Strata Corporation unilaterally tried to change that date, it had been agreed to. The Ministry of Environment originally required the Strata Corporation to complete the works by April 5, 2021 and when that deadline passed, it was extended to August 31, 2021. Now we are looking at 2022.

AGE:

- Section 11 – Limiting the performance of the work to the summer months of 2022. This is a new restriction. I am advised that the representatives of the Strata Corporation and SD43 have for many months discussed and negotiated the terms under which the work could be undertaken during the school year, and that to the Strata Corporation's knowledge no items remain outstanding in that regard.

SD43 Response:

This is not a new requirement. Discussions have always included a requirement for the School Board to approve scheduling, and we have made it clear numerous times that if work is to be conducted while school is in session, then additional safety measures would be required, including student supervision at the Strata Corporation's cost. The Strata Corporation has refused to pay those costs. Accordingly, the work must be done when school is out and there is no risk of a delay resulting in work having to continue while school is back in session.

AGE:

- Section 13 – The requirement that the full tender package be sent to and accepted by SD43, the City and the Village before the agreement is signed is a new requirement in the agreement. I am advised that the Strata Corporation has never agreed during the project meetings or in other correspondence to make the full tender package available for review and acceptance by SD43 and the municipalities. I note as well that neither the City nor the Village have asked for this to be added in as a requirement of the City agreement. Further, I am advised that including this requirement at this late date would both delay the signing of the agreement and make a January 2022 tender of the project very unlikely given how long it has taken to reach agreement on other documents.

SD43 Response:

Again, this is not a new requirement. It has been raised repeatedly in meetings and previous drafts. Your most recent draft of the License deleted the reference to "issued for construction plans and specifications" and the following Note to Draft: "To be confirmed as to which iteration of the plans and specifications to be appended to the Agreements and any further iteration(s) be submitted for review and acceptance:" We have repeatedly advised you that the plans and specifications for the work have not been approved by the School Board. If the tender package is complete, it can be reviewed and attached before the School Board approves the License, which could still be this month. When we delivered our version of the License to you, we stated that if the tender package is not complete yet, then we can provide in the License for it to be approved once it is complete, with the School Board acting reasonably.

AGE:

- Section 25 – The deletion of the provisions confirming that the amounts being paid to SD43 pursuant to sections 23 and 24 of the agreement are the only amounts being paid by the Strata Corporation and its owners to SD43 in respect of this project. I am advised that the Strata Corporation's representatives have advised SD43 representatives in a

number of project related meetings that no further amounts would be paid to SD43 in respect of this project.

SD43 Response:

The compensation amounts are for the granting of the License and the SRW's. They do not even begin to compensate the School Board for all the costs it has incurred as a result of the Strata Corporation polluting School Board property. The School Board has not agreed to release any potential claims against the Strata Corporation, which continue to increase. The Strata Corporation's best strategy for reducing its potential exposure to liability is to act reasonably and complete the work promptly in accordance with the form of License we proposed, without any further delays. The School Board has no interest in engaging in unnecessary litigation, but it has a fiduciary duty to manage its resources responsibly, including to recover costs it should not have been forced to incur.

AGE:

- Section 34 – The timeline for the condition precedent and the removal of the ability of the Strata Corporation is not acceptable. While it is acknowledged that tenders are typically kept open for a period of 60 days, if the tender results are not acceptable to the Strata Corporation's owners, the Strata Corporation will be considering options to complete the project, including re-tendering at a later date and/or securing other sources of funding.

SD43 Response:

As mentioned above, the Strata Corporation has had years to raise funds or find "other sources of funding". When will the Strata Corporation take responsibility for the handling of its own sewage and stop looking for someone else to pay?

AGE:

- The Strata Corporation is prepared to execute the form of agreement enclosed with my email of Dec 7, with the proposed amendments to the 2nd last Whereas clause and s. 20(b).

SD43 Response:

That form of agreement is unacceptable to the School Board. If the School Board's terms are unacceptable to the Strata Corporation, then the Strata Corporation should consider the alternate sewer connection route, eastward to East Road across the Strata Corporation's own property. The School Board strongly recommended that option in December 2019 but remains willing to proceed with the connection through the School Board properties on the terms proposed by the School Board.

In the meantime, as a further demonstration of good faith, the School Board intends to proceed with a public board meeting on December 21, 2021 to consider a bylaw to approve the proposed SRW's, subject to settlement of the License and satisfaction of the conditions in the License.

**THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 43 (COQUITLAM)
ANMORE GREEN ESTATES SEWER SRW BYLAW 2021**

WHEREAS a board of education may dispose of land or improvements owned or administered by the board under the authority of Section 96(3) of the School Act, subject to the Orders of the Minister of Education (the “**Minister**”);

AND WHEREAS the Minister issued Order M193/08 effective April 3, 2008 requiring fee simple sales and leases of land or improvements for a term of ten years or more to be specifically approved by the Minister, unless the transferee is an independent school or another school board;

AND WHEREAS Section 65(5) of the *School Act* requires a board of education to exercise a power with respect to the acquisition or disposal of property only by bylaw, and the granting of a statutory right-of-way is a disposal of an interest in land;

AND WHEREAS:

- (i) The Board of Education of School District No. 43 (Coquitlam) (the “**Board**”) is negotiating a license agreement (the “**Agreement**”) with The Owners, Strata Plan LMS3080 (the “**Anmore Green Estates**”) under which the Board would grant to each of the City of Port Moody (the “**City**”) and the Village of Anmore (the “**Village**”) a statutory right-of-way (together, the “**Statutory Rights-of-Way**”) for sewer works to be located on lands owned by the Board (the “**Property**”) as shown in Schedule A attached hereto;
- (ii) the Property consists of the Heritage Woods Secondary School site (the “**Heritage Woods Site**”) and the Eagle Mountain Middle School site (the “**Eagle Mountain Site**”);
- (iii) the Heritage Woods Site is facility number 04343110;
- (iv) the address of the Heritage Woods Site is 1300 David Avenue, Port Moody, British Columbia, V3H 5K6, and the legal description of the Heritage Woods Site is:

Parcel Identifier: 025-214-560 Lot 1 District Lot 350 Group 1 New Westminster District Plan LMP 52368;
- (v) the Eagle Mountain Site is facility number 04343127;
- (vi) the address of the Eagle Mountain Site is 110 Dogwood Drive, Anmore, British Columbia, V3H 5G1, and the legal description of the Eagle Mountain Site is:

Parcel Identifier: 024-381-993 Lot 4 Section 16 Township 39 New Westminster District Plan LMP40733;
- (vii) the Board is satisfied that it would be in the best interests of the Board to grant the Statutory Rights-of-Way, and that the areas to be encumbered by the Statutory Rights-of-Way will not be required by the Board for future educational purposes.

NOW THEREFORE be it enacted as a Bylaw of the Board that upon settlement and execution of the Agreement and removal of all conditions in the Agreement, the Board grant the Statutory Rights-of-Way in favour of the City and the Village.

BE IT FURTHER enacted that the Secretary-Treasurer be and is hereby authorized, on behalf of the Board, to execute and deliver the Agreement, the Statutory Rights-of-Way and all such amendments thereto as the Secretary-Treasurer may, in his discretion, consider advisable, and all related and ancillary documents required to complete the granting of the Statutory Rights-of-Way.

This Bylaw may be cited as "School District No. 43 (Coquitlam) Anmore Green Estates Sewer SRW Bylaw 2021".

Read a first time this ____ day of _____ 2021.

Read a second time this ____ day of _____ 2021.

Upon unanimous agreement of the Trustees of the Board in attendance, this Bylaw was read a third time on _____ 2021, and finally passed and adopted this ____ day of _____ 2021.

Chairperson of the Board

Corporate Seal

Secretary-Treasurer

I HEREBY CERTIFY this to be a true original of School District No. 43 (Coquitlam) Anmore Green Estates Sewer SRW Bylaw 2021, adopted by the Board the ____ day of _____ 2021.

Secretary-Treasurer

