



MEDIA STATEMENT

CRIMINAL JUSTICE BRANCH

June 25, 2010

10-13

Decision of Special Prosecutor Announced

Victoria - The Criminal Justice Branch of the Ministry of Attorney General today announced that independent Special Prosecutor Robin McFee, Q.C. has approved charges against Grant Sanborn following an investigation into allegations of improper conduct on the part of former officials with the City of Chilliwack. Mr. McFee has not approved charges against Member of the Legislative Assembly and former mayor of Chilliwack, John Les.

An Information charging Mr. Sanborn with three counts of breach of trust by a public officer, contrary to section 122 of the Criminal Code, was sworn today in Provincial Court in Chilliwack. The first appearance on the file is scheduled for July 27, 2010 in Chilliwack.

A copy of the sworn Information and a summary of the reasons for the decision of the Special Prosecutor are attached. Mr. McFee concluded that the available evidence supports a finding that in allowing a subdivision of properties located near the intersection of Rosebank Place and Camp River Road to proceed, Mr. Sanborn failed to fulfil his public duty as an Approving Officer. A prosecution should therefore proceed against him arising from his role in the approval of the Rosebank subdivision.

Mr. McFee also concluded that in granting subdivision approval for a development known as the Trails at Longthorn Creek Mr. Sanborn failed to fulfil his public duty as an Approving Officer and acted with an intention to use his office for a purpose other than the public good. Mr. McFee concluded that a prosecution should therefore proceed against Mr. Sanborn as a result of his approval of the Trails at Longthorn Creek subdivision.

Mr. McFee concluded that the available evidence does not meet the threshold of a substantial likelihood that Mr. Les would be convicted of the offence of breach of trust by a public officer and concluded that a prosecution should not be initiated against Mr. Les.

Media Contact: Neil MacKenzie
Communications Counsel
Criminal Justice Branch
(250) 387-5169

Robin McFee, Q.C.
Special Prosecutor
(604) 687-7700

Criminal Justice Branch HQ
Ministry of Attorney General

Mailing Address:
PO Box 9276 Stn Prov Govt
Victoria, BC V8W 9J7

Office Location:
9th Floor, 1001 Douglas Street
Victoria, BC V8W 9J7
Telephone: (250) 387-3840
Fax: (250) 387-0090

INFORMATION/DÉNONCIATION

Court Identifier: 3521 - P - R - A
Court File Number: 57915
Type Reference:
Info. Seq. Number: 1
Agency File Number: RCMC:06-1057
DNA: <input checked="" type="checkbox"/>
K File: <input type="checkbox"/>
SOR: <input type="checkbox"/>

CANADA:
PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

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"BY INDICTMENT"

This is the information of / Les présentes constituent la dénonciation de Andrew Kocberzik, a Court Liaison Officer (the "informant" / le "dénonciateur") of / de Surrey, British Columbia.

The informant says that the informant has reasonable and probable grounds to believe and does believe that / Le dénonciateur déclare qu'il a des motifs raisonnables et probables et croit effectivement que

Count 1

Grant SANBORN, between the 1st day of August, 1997 and 31st day of December, 1997, at or near the District of Chilliwack, in the Province of British Columbia being an official, did commit a breach of trust in connection with his duties of his office, of Approving Officer for the District of Chilliwack by approving the subdivision and consolidation of 47835 Camp River Road and 10740 Rosebank Place, and approving the subdivision by boundary adjustment of 47835 Camp River Road, 10710 Kitchen Road and 10740 Rosebank Place (also collectively known as the "Rosebank Subdivision") for a purpose other than the public good contrary to Section 122 of the Criminal Code.

Count 2

Grant SANBORN, between August 1, 1997 and December 31, 1997 at or near the District of Chilliwack, in the Province of British Columbia, being an official, did commit a breach of trust in connection with his duties as Director of Development for the District of Chilliwack by failing to inform, and willfully withholding from, the members of the municipal Council of the District of Chilliwack and the public material information respecting an application for rezoning of those lands located at 47835 Camp River Road and 10740 Rosebank Place, for a purpose other than the public good, contrary to Section 122 of the Criminal Code.

INFORMATION/DÉNONCIATION

Court Identifier: 3521 - P - R - A
Court File Number: 57915
Type Reference:
Info. Seq. Number: 1
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"BY INDICTMENT"

Count 3

Grant SANBORN, between August 1, 1994 and February 28, 1999 at or near the District of Chilliwack, in the Province of British Columbia, being an official, did commit a breach of trust in connection with the duties of his office of Approving Officer for the District of Chilliwack by approving the subdivision known as the Trails at Longhorn Creek for a purpose other than the public good, contrary to Section 122 of the Criminal Code.


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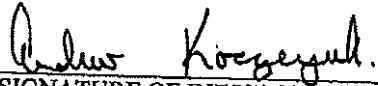
June, 2010.

AT / À Chilliwack,

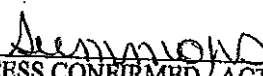
BRITISH COLUMBIA / COLOMBIE-BRITANNIQUE




 A JUSTICE OF THE PEACE IN AND FOR THE
 PROVINCE OF BRITISH COLUMBIA
 JUGE DE PAIX DANS ET POUR LA PROVINCE DE
 LA COLOMBIE-BRITANNIQUE



 (SIGNATURE OF INFORMANT)
 (SIGNATURE DU DÉNONCIATEUR)



 PROCESS CONFIRMED / ACTE DE PROCEDURE
 CONFIRMÉ



 A JUSTICE OF THE PEACE IN AND FOR THE
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SUMMARY

1. In April 2006 the R.C.M.P received a complaint alleging a pattern of improper practices involving the City of Chilliwack and local developers. It was alleged that the improper practices had developed and were most active during the tenure of John Les as Mayor of Chilliwack. Mr. Les was the Mayor of Chilliwack from 1987 through to November of 1999.
2. As the investigation progressed, given that Mr. Les was the Minister of Public Safety and Solicitor General, the RCMP contacted the Assistant Deputy Attorney General and requested the appointment of a Special Prosecutor. Robin McFee, Q.C. was appointed as the Special Prosecutor on June 29, 2007.
3. The investigators' initial review of the complainant's allegations established that the allegations were not one complaint, but rather a series of transactions that were advanced as examples of improper municipal practices within the City of Chilliwack during Mr. Les' tenure as Mayor.
4. The investigators' assessment of the initial complaints caused them to focus their investigation on whether Mr. Les and/or other officials of the City of Chilliwack in the performance of their public duties, committed a breach of trust contrary to Section 122 of the *Criminal Code*.
5. In the course of the investigation the investigators were made aware of a number of additional transactions in which Chilliwack municipal officials allegedly acted contrary to the public interest. As a consequence, the scope of the investigation expanded substantially on a number of occasions.
6. In December 2008, when the investigators were in the final stages of their investigation of these matters, the RCMP was contacted by the Agricultural Land Commission (the "ALC"). The ALC advised the investigators that it had conducted a review of the decisions made by Chilliwack's Approving Officers with respect to applications for boundary adjustment subdivisions involving agricultural lands during the timeframe of 1991 to 2002. The ALC advised that it had determined that a very significant number of the decisions made by

Chilliwack Approving Officers in this timeframe were inconsistent with the requirements of the *Agricultural Land Commission Act* (the "*ALCA*"). The ALC determined that, not only were these subdivision approvals contrary to the spirit of the *ALCA* and its Regulations, but in most cases these decisions had impacted ALC land by either alienating farmland from potential farm use, or through the introduction of non-farm residents into agricultural areas.

7. The investigators determined that it was necessary to investigate the circumstances of these many inconsistent decisions identified by the ALC. As a result, the scope of the investigation once again expanded significantly.

8. As the investigation proceeded through its various stages, the investigators periodically provided the Special Prosecutor with reports, updates and portions of the product of their investigative efforts in an ongoing process. The product of the RCMP's considerable investigative effort was voluminous and encompassed several volumes of evidence, documents and transcripts of numerous investigative interviews. Given the ultimate scope of the investigation the charge assessment process was lengthy and involved. The Special Prosecutor examined more than 80 transactions. Each of these transactions was individually evaluated and subjected to a comprehensive analysis.

9. The available evidence respecting the multitude of questioned actions and decisions made by Chilliwack public officials in this timeframe supports the conclusion that a number of these decisions constitute mistakes and/or errors in judgment. A number of the questioned decisions of Chilliwack's officials were contrary to the City of Chilliwack's Official Community Plan, zoning bylaw and/or servicing bylaw, and/or contrary to provincial statutes including the *ALCA* and the *Land Title Act*. The result of many of these decisions was the alienation of agricultural lands for non-farm purposes, including residential purposes.

10. There are two transactions where the available evidence gives rise to a substantial likelihood that the public official would be convicted of the criminal offence of breach of trust by a public officer.

11. The evidence presented by the investigators disclosed that during Mr. Les' tenure as Mayor, a "pro-development/can do" culture was fostered within the City of Chilliwack's

Development and Planning Department. The evidence indicates that Mayor Les and most members of Council embraced this pro-development philosophy such that staff were encouraged, both directly and subtly, to adhere to what was described as an attitude of innovation and creativity within the City of Chilliwack's Development and Planning Department, particularly with respect to the processing of applications for development.

12. This pro-development philosophy of Mayor Les, Chilliwack's Council and Chilliwack's Senior Administrators in the material timeframe, as manifested by the encouragement to staff to find creative solutions to facilitate development, resulted in a number of recommendations and approvals made by Chilliwack officials that did not adhere to Chilliwack's own planning and growth objectives as set out in Chilliwack's Official Community Plan, did not comply with Chilliwack's municipal bylaws and/or did not comply with provincial statutes or regulations, including the *ALCA*.

13. The members of Chilliwack's Planning and Development Department were encouraged to consider government regulations and municipal bylaws as guidelines only, with the goal of finding creative ways to "make development opportunities happen".

14. Central to several of the questioned transactions is the role of the Approving Officer when approving applications for subdivision, particularly involving agricultural lands. The provisions of the *Land Title Act* require that a subdivision plan must not be registered unless it has been first approved by the Approving Officer. The *Land Title Act* further stipulates that Council of the municipality appoint an individual as the Approving Officer for land located in the municipality. The Approving Officer is usually an employee of the municipality.

15. Although the Approving Officer is appointed by local government, the Approving Officer has a responsibility to independently administer regulatory statutes and requirements. The Approving Officer is thus a statutory official with a separate and independent jurisdiction from local government. It is the duty of the Approving Officer to ensure that applications for subdivision comply with provincial statutes, regulations and local government bylaws regulating subdivision, zoning and servicing.

16. The prevalence of agricultural land in the City of Chilliwack resulted in Chilliwack's Approving Officers making a number of decisions respecting the proposed subdivision of, or development of, agricultural lands. Subject to enumerated exceptions, the *ALCA* stipulates that a person must not subdivide agricultural land unless permitted by the Act, the Regulation, or an order of the Agricultural Land Commission. The Regulation to the *ALCA* grants Municipal Approving Officers the authority to approve a subdivision of agricultural lands, provided the proposed subdivision meets certain enumerated criteria, including where the subdivision involves a boundary adjustment that, in the opinion of the Approving Officer, the boundary adjustment will allow for the more efficient use of agricultural land, or the better utilization of farm buildings for farm purposes.

17. One of the transactions brought to the RCMP's attention by the complainant was the subdivision of property in the vicinity of Rosebank Place and Camp River Road in the City of Chilliwack (the "Rosebank subdivision"). The complainant alleged that Mr. Les, during his tenure as Mayor, exercised undue and inappropriate influence over the Approving Officer, Mr. Grant Sanborn, to secure approval for this subdivision which, in part, encompassed agricultural lands.

18. The RCMP investigated the processes that resulted in the creation of the Rosebank subdivision. The RCMP ascertained that in August of 1997, during his tenure as Mayor, Mr. Les entered into contracts of purchase and sale for three adjoining properties near the intersection of Rosebank Place and Camp River Road. One of these transactions involved the purchase and sale of 6.3 acres of an existing 11.2 acre farm. This farm was included within the Agricultural Land Reserve and therefore subject to the provisions of the *ALCA*.

19. Mr. Les played a central role in the Rosebank subdivision. He was the developer and main proponent behind the development. Mr. Les, through a numbered company, initiated and was instrumental in the design and implementation of a development plan to achieve subdivision of these properties into six lots via a sophisticated multi-step rezoning and two-phase subdivision process that required boundary adjustments.

20. Mr. Les' development plan, as structured, did not require any application to be made to the Agricultural Land Commission, nor any input from the Agricultural Land Commission.

Rather the approval of the subdivision vested with Mr. Grant Sanborn, the municipally-appointed Approving Officer.

21. When interviewed by the investigators, Mr. Les acknowledged that the goal of the Rosebank subdivision/development plan was to create “nice residential properties in the agricultural zone”. The creation of residential properties in the agricultural zone was contrary to Chilliwack’s Official Community Plan and was also contrary to the intent of the *ALCA* and Regulations. As such, it can be reasonably said that the Rosebank subdivision should not have been permitted to proceed.

22. The Special Prosecutor concluded that the available evidence supports the conclusion that Mr. Sanborn gave Mr. Les preferential treatment in the rezoning and subdivision of these lands; however, there is a paucity of evidence that Mr. Les took direct steps to actively encourage Mr. Sanborn, and/or other members of Chilliwack’s Planning and Development Department, to look favourably on the Rosebank subdivision.

23. Nor does the available evidence support a finding that Mr. Les utilized his public office as Mayor to advance his personal interest with respect to the Rosebank subdivision. Rather, on each occasion that an aspect of the Rosebank rezoning and/or subdivision process came before Chilliwack Council; Mr. Les advised Council that he had a potential conflict and recused himself from the meeting. Having declared his conflicts, Mr. Les played no role in Chilliwack Council’s approval of the various aspects of the Rosebank development plan.

24. The evidence does, however, support a conclusion that the preferential treatment that Mr. Les received was a consequence of Mr. Sanborn’s failure to fulfill his independent gatekeeper role as an Approving Officer. Notwithstanding the pro-development atmosphere fostered at the City of Chilliwack, there is no evidence that Mr. Les, or any other member of the City of Chilliwack’s administration, offered Mr. Sanborn any hope of advantage as an inducement to approve the Rosebank subdivision, or fear for his employment continuity if he did not.

25. The Special Prosecutor concluded that the available evidence supports the conclusion that the Rosebank subdivision was allowed to proceed because Mr. Sanborn failed to fulfill his public duty as an Approving Officer and that a prosecution should proceed against Mr. Sanborn

pursuant to the provisions of Section 122 of the *Criminal Code* arising from his role in the approval of the subdivision.

26. In addition, the Special Prosecutor concluded that the alleged conduct of Mr. Sanborn in connection with the Rosebank subdivision constituted a breach of his duty in his capacity as a Director of Development for the District of Chilliwack and should be the subject of a separate breach of trust charge under Section 122.

27. The Special Prosecutor further concluded that the available evidence supports a prosecution proceeding against Mr. Sanborn under Section 122 of the *Criminal Code* with respect to his approval of another subdivision – the Trails at Longthorn Creek, a development on the shores of the Chilliwack River.

28. Mr. Sanborn was the Approving Officer for the Trails at Longthorn subdivision application. The Trails at Longthorn Creek is a bare land strata lot subdivision on property located on the Chilliwack River. When the developer made application seeking subdivision of the lands that ultimately comprised the development, the *Land Title Act* governed subdivision of land that may be subject to flooding. Under the *Act* the Minister of Environment, Land and Parks may, for the purpose of minimizing potential damage that could be caused by flooding, establish conditions respecting the approval of subdivisions and designated floodplain areas, including a condition that an owner enter into restrictive covenants regarding setbacks and the minimum floor elevation level of any habitable dwelling to be constructed on the site.

29. Mr. Sanborn was allegedly aware that certain Ministry of the Environment, Water Management Branch conditions were required for subdivision approval. Despite this knowledge, it is alleged that Mr. Sanborn granted approval for the subdivision without requiring compliance with the conditions.

30. The Special Prosecutor has again concluded that the available evidence supports a finding that Mr. Sanborn acted with an intention to use his public office for a purpose other than the public good. The Special Prosecutor concluded that Mr. Sanborn's conduct in failing to fulfill his public duty as an Approving Officer when approving the Trails at Longthorn Creek

subdivision gives rise to a substantial likelihood of conviction under Section 122 of the *Criminal Code* and further determined that a prosecution is required in the public interest.

31. The *Criminal Code* offence of breach of trust by a public officer requires that the Crown prove, beyond a reasonable doubt, a number of elements, including that the accused was acting in connection with the duties of his office. The available evidence led the Special Prosecutor to the conclusion that this element is not satisfied with respect to Mr. Les. Mr. Les had little, if any direct involvement in the Trails at Longhorn Creek subdivision. With respect to the Rosebank rezoning/subdivision process the evidence establishes that on each occasion that an aspect of it came before Chilliwack Council Mr. Les advised Council that he had a potential conflict and withdrew from the meeting and the subsequent vote. Further, there is an absence of any evidence that Mr. Les directly exerted, or attempted to exert, any influence over his fellow Councilors to grant approval of the applications brought before Chilliwack's Council. Moreover, there is an absence of evidence that Mr. Les directly influenced, or attempted to influence, Mr. Sanborn in any material way to approve the Rosebank subdivisions. The Special Prosecutor, therefore, concluded that the available evidence does not meet the threshold of a substantial likelihood that Mr. Les would be convicted of the offence of breach of trust by a public officer and concluded that a prosecution should not be initiated against Mr. Les.