

Summary of Legal Claims

CANY's amended legal Petition, prepared by Nathalie Baker of the law firm of Baker and Baker and filed on July 3, 2014, sets forth the facts of the case:

- In 2011 the developer proposed a land swap with the City. The developer proposed to build a new social housing building at 1099 Richards to replace the Jubilee House and, in exchange, the City would give the developer its property at 508 Helmcken and rezone it to permit a 36-storey mixed-use residential building of a size that exceeded current zoning.
- There is evidence before the Court that the City and the developer had signed a Land Exchange Contract before the rezoning application was presented for Council approval at a public hearing. This signed Land Exchange Contract unlawfully fettered Council's decision-making capacity at the public hearing.
- In order for the public to make meaningful representations to Council, the City is required to disclose all relevant documents. The City did not disclose the signed Land Exchange Contract and other important documents—a clear breach of procedural fairness.
- The projects at 1099 Richards and 508 Helmcken were inextricably linked by the Land Exchange Contract, and by the City's claim that the social housing at 1099 Richards somehow justified vastly exceeding the density and size bylaw limits for 508 Helmcken set forth in the Downtown Official Development Plan (DODP). One could not proceed without the other. Despite this interdependence, the City moved the two projects through the approval process separately, denying the public and Council from considering the combined impact of the two developments. Citizens were not allowed to discuss 1099 at the 508 hearings, and not allowed to discuss 508 at the 1099 hearings—another breach of procedural fairness.
- On July 23, 2013 the City voted to rezone 508 Helmcken. A condition of the rezoning bylaw was that the developer first complete the construction of the social housing building at 1099 Richards. Council voted in favour of the rezoning despite overwhelming public opposition.
- The Development Permit Board (DPB) voted to allow a development permit for 1099 Richards, based on City staff's repeated assurances that Council had expressly approved an increase in density for that site as part of its rezoning of 508 Helmcken.
- Following the hearing, City staff admitted that Council had never approved the increased density for 1099 Richards.
- The law requires "prior Council approval" of any density increase, and any increases approved must be issued only for developments offering "low cost housing." The development at 1099 Richards contains only 87 social housing units, the same number as in the Jubilee House building it replaces, and contains no low-cost housing. The development at 508 Helmcken is 100% for profit, with no low cost or social housing.
- The City then held a new hearing on Feb 19, 2014 to approve what they then called their "conditional" approval of the permit for 1099 Richards. But this retroactive approval still did not fulfil the legal requirement for "prior Council approval."
- To cover up its errors, in early 2014 the City slipped proposed amendments into a set of DODP bylaw changes relating to the West End Community Plan—an entirely different neighbourhood. The hidden

amendments to Section 3.13 of the DODP deleted the requirement that Council give prior approval, and changed the requirement that zoning exceptions be only for low-cost housing to instead allow exceptions for “low-cost housing or social housing.”

- This bylaw amendment relating to the New Yaletown neighbourhood was not mentioned in the City’s recommendations to Council for the West End Community Plan or in its staff Report. The changes were instead tucked into an exhibit at the end of the almost 90-page West End Report. The relevance of these amendments to the New Yaletown neighbourhood or to 508 Helmcken was never mentioned as part of the proceedings approving the changes to the DODP bylaws—another violation of procedural fairness.
- Even after these secret changes to the DODP bylaws, the rezoning of 508 Helmcken still remained conditional upon the completion of the building at 1099 Richards. On March 11, 2014, Council voted to approve the rezoning of 508 Helmcken, even though the developer had not even started construction at 1099 Richards, let alone completed construction as required by law.
- Having exhausted all attempts at discussion and consultation with the City to amend or reduce the size and density of the developments, the Community Association of New Yaletown filed its legal challenge in BC Supreme Court.

Legal Contact

Nathalie Baker, Baker & Baker

nbaker@bakerbaker.ca

604-891-0208