



No. S228191  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, C. 241

BETWEEN:

KITSILANO COALITION FOR CHILDREN  
& FAMILY SAFETY SOCIETY

PETITIONER

AND:

CITY OF VANCOUVER

RESPONDENT

**RESPONSE TO PETITION**

**Filed by:** City of Vancouver (the "Petition Respondent")

THIS IS A RESPONSE TO the Petition filed 12/Oct/2022.

**Part 1: ORDERS CONSENTED TO**

The Petition Respondent consents to the granting of the order set out in none of the paragraphs in Part 1 of the Petition.

**Part 2: ORDERS OPPOSED**

The Petition Respondent opposes the granting of the orders set out in **paragraphs 1 through 7** of Part 1 of the Petition.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The Petition Respondent take no position on the granting of the orders set out in **none** of the paragraphs in Part 1 of the Petition.

**Part 4: FACTUAL BASIS**

1. On June 28, 29,30 and July 14, 25 and 26, 2022 the City of Vancouver (the "City") held a public hearing to consider an application to rezone the property at 2086-2098 West 7<sup>th</sup> Avenue (the "Public Hearing").
2. A full transcript of the Public Hearing is attached to Affidavit #1 of Miho Iizuka-Mitchell.
3. In August 2020 the City, BC Housing and the Canada Mortgage and Housing Corporation entered into a memorandum of understanding (the "MOU"). The MOU is attached to the Affidavit #2 of Rebecca Cleary as Exhibit "A".
4. The City's Council has not enacted a by-law to rezone the property at 2086-2098 West 7<sup>th</sup> Avenue (the "Property").

**Part 5: LEGAL BASIS**

**PROCEDURAL FAIRNESS**

**Disclosure of relevant documents**

1. Pursuant to section 566 of the *Vancouver Charter*, S.B.C. 1953, c. 55 Council must hold a public hearing considering any proposed amendments to a zoning by-law before that amendment can be enacted.
2. The Public Hearing was held pursuant to the requirements of the *Vancouver Charter* to consider amendments to the *Zoning and Development By-law* that would rezone the Property.
3. The draft by-law amending the *Zoning and Development By-law* is attached to the Referral Report as Appendix "A". The Referral Report is attached to the Affidavit of Melissa Dionne at Exhibit "E".

4. The draft by-law deals with the following issues: Uses, Conditions of Use, Floor Area and Density, Building Height, Horizontal Angle of Daylight and Acoustics (the "Draft By-law").
5. The proposed amendments to the *Zoning and Development By-law* are the subject of recommendation "A" in the Referral Report. This recommendation was adopted by Council, with amendments, at the conclusion of the Public Hearing. Those amendments alter the conditions of approval but not the substance of the amendments to the *Zoning and Development By-law*.
6. Although the MOU is referenced in the Referral Report and was discussed at the Public Hearing, the substance of the MOU is irrelevant to the decision by Council to approve the proposed amendments to the *Zoning and Development By-law*.
7. The MOU is a funding and operational agreement and does not specifically speak to any of the zoning issues dealt with in the Draft By-law.
8. The MOU cannot be a document that Council relied upon in arriving at their decision to approve the Draft By-law because the MOU does not speak to any of the zoning issues which the Draft By-law considers.
9. As a result, and pursuant to the decision in *Community Association of New Yaletown v. Vancouver (City)*, 2015 BCCA 227, there was no requirement for the City to provide the MOU to the public for consideration at the Public Hearing.

#### **The public's right to comment**

10. A full reading of the transcript of the public hearing demonstrates that the public had ample opportunity to make fulsome submissions regarding the proposed development. The Public Hearing was held over 6 days and Council heard over 200 speakers.
11. Due to the nature of the issues being discussed, there were some instances where Mayor Kennedy Stewart, acting as the Chair, warned speakers about the nature of the language that they were using, but there is no instance where the Mayor's decisions prevented a speaker from making a substantive point.
12. There was no substantive denial of the public's right to comment at any time during the Public Hearing.

## **REASONABLENESS OF COUNCIL DECISION**

### **Restrictions on members of Council**

13. The Petitioner suggests that members of Council were restricted in their ability to participate in the Public Hearing. In support of this assertion the Petitioner states that rulings made by Mayor Kennedy Stewart, as the Chair, restricted the ability of Council to participate in the Public Hearing.
14. The Petitioners have no standing to assert that members of Council were restricted in their participation in the Public Hearing. Under the City of Vancouver Procedure By-law the conduct of meetings is governed, in part, by the most recent edition of Robert's Rules of Order. Further, pursuant to section 166 of the *Vancouver Charter* a ruling of the presiding officer at a meeting of Council can be superseded by a 2/3 vote of Council.
15. Pursuant to the Procedure By-law and the *Vancouver Charter* it is open to the members of Council to challenge any decisions of the Chair. At no point in the Public Hearing did any member of Council challenge the Chair to assert that their participation in the Public Hearing was being restricted.
16. It is not open to a member of the public to assert that the procedural fairness rights of a member of Council have been infringed, particularly if the member of Council has not exhausted their own ability to address the alleged violation of their procedural fairness rights.

### **Irrelevant Considerations and Fettering of Discretion**

17. There is no evidence that Council considered any irrelevant matters when arriving at their decision to approve the rezoning in principle.
18. There is no evidence that Council's discretion was fettered by the MOU. The MOU specifically states that it is "not legally binding and does not create any legal obligations unless and until agreements are entered into by the parties." It clearly does not fetter Council in any way.

## **Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Miho Iizuka-Mitchell made 08/Dec/2022;
2. Affidavit #1 of Melissa Dionne made 11/Oct/2022;

3. Affidavit #2 of Rebecca Cleary made 12/Oct/2022;
4. *Procedure By-law No. 12577*;
5. *Zoning and Development By-law No. 3575*;
6. *Vancouver Charter*, S.B.C. 1953, c. 55; and
7. Such other and further material as counsel may advise and this Honourable Court may permit.

The Petition Respondent estimates that the hearing of this Petition will take 2 days.

Date: 09/Dec/2022

  
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Signature of Counsel for Petition Respondent

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