

Original filed May 21, 2014

No. S143862
Vancouver Registry

In the Supreme Court of British Columbia

Between

F.C.R.A. FALSE CREEK RESIDENTS ASSOCIATION

Petitioner

and

THE CITY OF VANCOUVER

Respondent

Re: BC Place/Expo District Sub-area 9 - Creekside Park

Amended PETITION TO THE COURT

By consent of Respondent,
City of Vancouver per counsel

ON NOTICE TO:

The City of Vancouver
c/o Office of the City Clerk
453 West 12th Avenue
Vancouver, BC V5Y 1V4

and to:

Attorney General of British Columbia
c/o Ministry of Justice
Legal Services Branch
1st Floor, 1001 Douglas Street
Victoria, BC V8W 9J7

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2C5
(2)	The ADDRESS FOR SERVICE of the petitioner is: c/o Stewart, Aulinger & Co. 1200 - 805 West Broadway Vancouver, BC V5Z 1K1 Fax number address for service (if any) of the petitioner: 604-874-5551 E-mail address for service (if any) of the petitioner: N/A
(3)	The name and office address of the petitioner's lawyer is: Robert A. Kasting (address in (2) above)

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. ~~A declaration that BC Place/Expo District Bylaw No. 5744 and the Official Development Plan for False Creek North preclude the use of sub-area 9 of the BC Place/Expo District for commercial uses, specifically for commercial sales of residential developments, for a commercial parking operation, and for commercial land rentals.~~
2. ~~Alternatively, a declaration that the current commercial uses of sub-area 9 of the BC Place/Expo District fail to meet the criteria set out in the Vancouver Charter for the relaxation of provisions of Bylaw 5744 or the Official Development Plan for False Creek North.~~
3. ~~An order in the nature of prohibition to prevent the City of Vancouver from issuing a permit over sub-area 9 of the BC Place/Expo District which contravenes Bylaw No. 5744 and the Official Development Plan, including any temporary~~

~~development permit for a sales centre, or any permit for a commercial parking operation or commercial land rentals.~~

1. An order in the nature of certiorari to quash the decision of the City of Vancouver made on or about July 24, 2014 and August 8, 2014 to grant the extension of the temporary development permit dated May 30, 2006 until July 31, 2017 to allow the continuation of a "Presentation Centre" and associated surface parking on sub-area 9 of the BC Place/Expo District in contravention of Bylaw 5744 and the Official Development Plan.
2. A declaration that any use of sub-area 9 must be in conformity with the zoning of sub-area 9, specifically as "park and recreational uses and customarily ancillary uses".
3. Costs.

Part 2: FACTUAL BASIS

1. The Petitioner, F.C.R.A. False Creek Residents Association (the "Petitioner") is a non-profit society incorporated under the *Society Act*, RSBC 1996, c. 433, with a head office at 1405 – 1128 Quebec Street, Vancouver, British Columbia. The purpose of the society is to promote the interests of residents who live in the neighbourhoods adjacent to False Creek in Vancouver, BC by inter alia, ensuring that government decision makers are aware of the needs and concerns of residents.
2. The Respondent City of Vancouver is continued under the *Vancouver Charter*, RSBC 1953, c. 55. Its powers and authority are derived from the *Vancouver Charter*.
3. On February 21, 1984, the Council of the City of Vancouver passed Bylaw No. 5744, which provided for the zoning of the area in the City of Vancouver on the North side of False Creek and known as the BC Place/Expo District. This bylaw created several sub-areas and provided for the uses permitted within those areas.
4. Specifically, s. 2.2 of Bylaw 5744 stated that:

“sub-area 9 will be limited to park and recreational uses and customarily ancillary uses”

5. In 1990, the City of Vancouver adopted Bylaw 6650, which was the Official Development Plan (the “ODP”) of False Creek North, which is the geographical area of the City of Vancouver within which sub-area 9 is located. The ODP states, inter alia, that:

- a. No actions may be taken contrary to the ODP. In particular, all the instruments which implement the ODP must conform to the ODP (Section 1.3)
- b. Sub-area 9 consists of a large park (Section 6.12)

6. No amendments to either Bylaw 5744 or the ODP have varied or changed the zoning of sub-area 9.

7. The owner of sub-area 9 is Concord Pacific Group Inc. It pays no property taxes for sub-area 9, the Property Assessment Appeal Board (the “PAAB”) having decided on August 9, 2013, that the land has a value of \$1.00. The PAAB concluded that sub-area 9 generates \$602,310 per year in revenue annually.

Sales centre

8. In May 2006, the owner was granted a 3 year time limited development permit to move and place two buildings onto sub-area 9 to serve as a “presentation” centre and which are being used as a sales centre. The development permit also allowed the owner to place 60 associated surface parking spaces and one loading space. The three year term commenced in 2006 and has been continually renewed since then. The temporary permit was last extended on November 16, 2011 until May 16, 2014.

9. On July 24, 2014 and August 11, 2014, an extension of the temporary permit, which had expired on May 16, 2014, was issued by the City of Vancouver, allowing the sales centre to continue to operate as a commercial sales centre on sub-area 9 until July

17, 2017. A partial restriction placed on the operation of the commercial sales centre was made which was consistent with the request of the Petitioner in its Petition filed May 21, 2014.

10. The sales centre currently markets and sells the residential condominium developments of the land owner.

Commercial Parking Operation

11. Sub-area 9 currently, in addition to the commercial presentation centre, has a commercial parking operation which is not associated with the sales centre. It does not appear to operate with any development permit. Conditions placed on the development permit on July 24, 2014 have now restricted the commercial parking operation from further operation in Sub-area 9.

Other commercial land rentals

12. Sub-area 9 has been used as a commercial site rental business for many years, with a variety of vehicles and structures such as trailers from motion picture productions, commercial promotions and overflow boat parking during the annual boat show at BC Place. Conditions placed on the development permit on July 24, 2014 have now restricted the commercial land rentals from further operation in Sub-area 9 without an approval for Special Events.

Part 3: LEGAL BASIS

1. This petition is brought pursuant to the *Judicial Review Procedures Act*, RSBC 1996, c. 241, s. 2(2).
2. The Petitioner has standing to bring this application: *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45

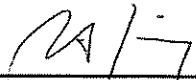
3. The *Vancouver Charter* RSBC 1953, c. 55, provides the authority for the Council of the City of Vancouver to make bylaws, including zoning bylaws.
4. Based on the authority provided by the *Charter*, Council adopted Bylaw 5744 and the ODP. Both of these bylaws limit the use of sub-area 9 to “park and recreational uses and customarily ancillary uses”.
5. S. 565A (e) of the *Charter* authorizes the Council of the City of Vancouver to make by-laws providing for the relaxation of provisions of a zoning bylaw under certain conditions, enumerated in s. 565A (e) (i) - (v). None of these conditions apply to the circumstances of sub-area 9 to allow for relaxation of zoning.
6. Additionally, although relaxation of a zoning bylaw is permitted by the *Charter*, a change of use requires a bylaw amendment.
7. None of the sales centre, the commercial parking operation, or the commercial land rentals are permitted by Bylaw 5744, the ODP or any legal relaxation of these bylaws.
8. Any steps by the City of Vancouver to relax the bylaw by:
 - a. providing a new temporary permit for the use of a commercial presentation centre; or
 - b. providing a development permit for the use of the commercial parking operation; or
 - c. providing a development permit for the use of commercial land rentalsare illegal.
9. The standard of review for an order in the nature of certiorari in this case is correctness.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Fern Jeffries made May 20, 2014;
2. Affidavit #2 of Fern Jeffries made August 20, 2014.

The petitioner estimates that the hearing of the petition will take 2 hours.

Date: 20 May 2014



Signature of Robert A. Kasting
 petitioner lawyer for petitioner
F.C.R.A. False Creek Residents Association

<p>To be completed by the court only:</p> <p>Order made</p> <p><input type="checkbox"/> in the terms requested in paragraphs _____ of Part 1 of this petition</p> <p><input type="checkbox"/> with the following variations and additional terms:</p> <p>Date: _____</p> <p style="text-align: right;">nature of <input type="checkbox"/> Judge <input type="checkbox"/> Master</p>
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