



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

**APPLICATION RESPONSE**

Application response of Petitioner F.C.R.A. FALSE CREEK RESIDENTS ASSOCIATION (the "application respondent") filed July 24, 2014.

THIS IS A RESPONSE TO the notice of application of One West Holdings Ltd. ("Concord")

**Part 1: ORDERS CONSENTED TO**

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

1. The applicant be granted intervenor status in this application for judicial review.

**Part 2: ORDERS OPPOSED**

The application respondent opposes the granting of the orders set out in paragraph 1 of part 1 of the notice of application, except as set out above.

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

The application respondent takes no position on the granting of the orders set out in paragraphs NONE of part 1 of the notice of application.

**Part 4: FACTUAL BASIS**

1. The petition is filed pursuant to the provisions of the *Judicial Review Procedures Act*, challenging the legal authority of the City of Vancouver to, among other things, grant a development permit for the placement of a “temporary” sales centre on land zoned as park land.
2. The development permit to allow this temporary sales centre to be placed on park-zoned land was originally made in 2006. The permit, after several extensions, expired on May 14, 2014 and this petition was filed on May 21, 2014 requesting an order of prohibition to prevent the renewal of this permit.
3. It is asserted by the Petitioner that the use of the park-zoned land for commercial purposes such as residential condominium sales, commercial parking, and commercial land rentals is not a legal use of the land, and that any change in the use of the land would require a change in the zoning bylaw of the city, not a relaxation of the zoning.
4. On July 24, 2014, the City of Vancouver renewed the development permit, allowing for the continuation of the use of the park-zoned land for residential condominium sales, although the City has restricted the sale of non-Vancouver properties from being marketed from the sales centre. It has also directed that the use of the park-zoned land for commercial parking be terminated. This decision was made on behalf of the Director of Planning without an adversarial proceeding and the Petitioner was only advised of this decision by letter dated August 11, 2014.
5. Given the decision to issue the development permit prior to the hearing of the Petitioner, the issue for the court is now restricted to whether the City of Vancouver has the statutory authority to grant a renewal of the development permit to allow the condominium sales centre to be located on the park-zoned land. This issue arguably requires a contextual and historical understanding in further detail than provided in the Petition, but does not require the full participation of the applicant land owner as a full party to the litigation.

## Part 5: LEGAL BASIS

1. Although it is acknowledged that Concord has an interest in the proceedings, there is no *lis* between the Petitioner and Concord. No relief is being sought by the Petitioner against Concord.
2. The issue to be decided by the court in the hearing of the Petition is whether the City of Vancouver has the statutory authority to “relax” the zoning of parkland to permit a commercial condominium sales centre. Although this is an issue to which Concord can bring context and history, the issue is one of public law and interpretation of the *Vancouver Charter* and the application of city bylaws. The City of Vancouver is able to defend its own position. Any arguments which Concord can make on this issue can be equally made by the City of Vancouver.
3. Concord expresses the concern that it will likely to bring procedural applications prior to the hearing of the petition (see Notice of Application, para 6). This raises the spectre of Concord hijacking the proceedings, expanding the legal and evidentiary issues, and, as they have explicitly stated, bringing an application to cross examine on affidavit material. This type of an insertion into a judicial review defeats the purpose of judicial review, which is intended to be a summary proceeding.
4. Concord also raises the wish to have an option to appeal an unfavourable ruling. If the ruling is in error, as the relief sought is only against the City, it is only proper that the City decide whether this court erred.
5. The interests of Concord can be addressed in the hearing of the petition by their addition to the proceedings as an intervenor. A direct interest in the litigation is the primary basis for intervention in judicial proceedings: see *Friedmann v. MacGavie*, 2012 BCCA 109, Para 12-19 and *Carter v Canada (Attorney General)*, 2012 BCCA 502, para 11-15. There is no need for Concord’s involvement as a Respondent in order to have their interests identified and considered, to the extent that these interests are relevant to the issue before the court.
6. Additionally, the Court of Appeal has recently reiterated that a person should only be a respondent in a judicial review where relief is claimed against that person or if that

person is a party to an adversarial proceeding which gives rise to judicial review:  
*British Columbia (Attorney General) v. Davies*, 2009 BCCA 337, para 27-28.

7. No relief is claimed against Concord and the proceeding which gave rise to the judicial review was not an adversarial one.

Part 6: MATERIAL TO BE RELIED ON

1. Petition filed May 21, 2014
2. Affidavit #2 of Fern Jeffries made August 26, 2014.

Dated: August 26, 2014



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Signature of Robert A. Kasting,  
lawyer for Application Respondent  
FCRA False Creek Residents Association

No. S143862  
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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

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Application Response

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604 879-0291 FAX 604 874-5551

Attn: Robert A. Kasting



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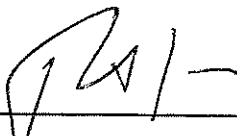
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