

February 23, 2016

To: Mayor and Council of the City of Vancouver

Re: First Shaughnessy Heritage Conservation Area Official Development Plan (FS HCA ODP) adopted by by-law number 11349, September 29th, 2015 and associated by-laws.

The FS HCA ODP is invalid *ultra vires* City Council and/or illegal for a host of reasons as described in the petition now before the Supreme Court of British Columbia. However, foremost among the reasons are: 1) that the owners and the public have been led to believe that the heritage merit of each of the subject properties had been extensively documented prior to the passage of the FS HCA ODP on September 29, 2015 when in fact no such evaluations were or have been performed: 2) that City Council eschewed its responsibility under the Vancouver Charter to perform the proper heritage merit assessments for each and every subject property thus creating an arbitrary and unfair distinction based purely upon a date and nothing more.

The Luxton Report claimed:

“An exhaustive research process involving each parcel of land has led to a conclusive list of properties recommended for inclusion in the HCA Schedule.....”

The public was led to believe that this indeed was the case and that Council was basing its heritage merit judgment upon the findings of Luxton’s report whereas in fact, a “yellow memo” dated September 14, 2015 from Mr. Iain Dixon, Assistant Director of Legal Services, to Mayor and Council states:

“Staff would like to clarify that the pre-1940 date was established by

City Council, not Luxton, when Council adopted the First Shaughnessy Official Development Plan and Design Guidelines in 1982. The 1940 date is based on the fact that the majority of development in the area occurred from 1907 when the area was established by the CPR up until the start of World War II. *Buildings built prior to 1940 reflect the high social and economic status of property owners in First Shaughnessy at the time.* (emphasis added). After the start of World War II, the quality and style of buildings being constructed in the area changed dramatically, as they did throughout the city.....Luxton was not asked to review the current architectural merit or historic integrity of each of the 353 sites.”

Hence a Council’s heritage merit judgment call is based upon nothing more than a subjective opinion that homes built prior to 1940 have heritage merit purely as a consequence of the “high social and economic status of property owners in First Shaughnessy at the time.”

“In September 1986, Vancouver City Council adopted the Vancouver Heritage Inventory, which was subsequently adopted as the Vancouver Heritage Register in December 1994”. The most recent status update is listed online as November, 2015. The Vancouver Heritage Register is:

“a listing of buildings and structures, streetscapes, landscape resources (parks and landscapes, trees, monuments, public works) and archaeological sites which have architectural or historical heritage value.”

.... to be included on the Heritage Register, a site “*must be identified as having heritage value and/or heritage character. Heritage value means historical, cultural, aesthetic, scientific or educational worth.*” (emphasis added).

“Buildings on the Heritage Register are sometimes referred to as “designated”. However, the Heritage Register and heritage designation are entirely separate classifications. *The Heritage Register is a listing of all*

resources having heritage value, while heritage designation is a legal means of heritage protection that is noted on title." (emphasis added). All means all - comprehensive inclusion - and it logically follows that if a property is not listed on the Vancouver Heritage Register, it is not considered to possess heritage value and cannot therefore, become a designated. Our home, s.22(1) Personal and Confidential is not listed on the Vancouver Heritage Register.

Then there is the 1994 First Shaughnessy Heritage Inventory (1994 FSHI) relied upon by Luxton and whose relationship to the Vancouver Heritage Registry is what? It is our understanding that the 1994 FSHI was compiled for the purpose of reviewing the potential heritage merit of a property in FS at the time any building permit was sought in relation to such a property and was never intended to be an inventory of properties which have in any way been determined to have heritage character or heritage value. It was compiled with no heritage assessments whatsoever.

In its Court filings this month to the Petition proceedings, the City has stated that it would be too costly and time consuming for it to review the heritage merits of the listed properties and that the "designation" of the listed properties "has been done presumptively". Hence there has never been any heritage merit evaluation of the listed properties other than the "high social and economic status of property owners in First Shaughnessy at the time as stated above and the City has finally acknowledged this. This highly material information was not disclosed to the public or the owners in any forum or documentation preceding the passage of the HCA By-Laws by Council.

Section 594 of the Vancouver Charter states that: Before a heritage designation by-law is adopted: "The Council must have prepared a report regarding the property to be designated that includes information respecting the following matters: (a) the heritage value or heritage character of the property;"...

And even if Council wishes to claim that the provisions of s. 594 do not apply because the by-laws pertain to a Heritage Conservation Area, s. 596A of the Vancouver Charter states: “

- (2) If an official development plan designates a heritage conservation area,
 - (a) the official development plan must
 - (i) describe the special features or characteristics that justify the designation....

This sufficiency/justification requirement is clearly not met by the City's pre-1940 “high social and economic status of property owners in First Shaughnessy at the time” being the sole basis of its heritage merit presumption.

The above together with a number of other arguments put forth in the petition before the court support the position that City Council has not acted in good faith in this matter and hence the HCA ODP by-laws are invalid for that reason. Additionally, it calls into question the validity of the use of s. 577 to deny compensation for heritage designation.

Irrespective of the pre-1940 First Shaughnessy home owners, it should be of grave concern to all property owners that the City, even if it had fulfilled the heritage merit justification requirements which were its legal obligation, seems to be able to circumvent the compensation requirements for heritage property designation and expropriate people's property rights by simply invoking the Heritage Conservation Area provisions of the Vancouver Charter. Clearly the distinction between a property and an area needs to be better defined and this dangerous loophole closed - if not and if the FSD HCA ODP by-laws are not overturned by the Court, it will be but the thin edge of the wedge. As things presently stand, why would the City ever choose to designate an individual property heritage and risk having to pay compensation when designating the area where the property resides an HCA negates the risk?

Regarding the economic impact on the value of the pre-1940 homes, that remains to be determined by the market. However, the Coriolis Report concluded: “The obligation to retain pre-1940 houses would put downward pressure on the value of properties that would otherwise

(under existing regulations) be candidates for demolition, if the market does not value the off-setting benefits included in the proposed new regulations for projects that retain a pre-1940 house. This downward pressure is due to the cost premium for renovation compared to new construction and due to the fact that a segment of the market prefers to buy or build a new house rather than renovate an older one." Coriolis "estimated a worst case 5%-10% decline in value but clearly acknowledged that their estimates were nothing more than a guess.

Since the adoption of these by-laws, there have been very few sales of pre-1940 homes in FS and this in and of itself might well be foretelling of upcoming market dynamics but in at least two instances of sales of un-renovated post-by-law pre-1940 FS homes, the sale prices were 13% and 18% below their assessed value.

My real estate agents tell me that people who have millions in cash to buy residential properties in Vancouver are not interested in renovating and are not interested in the densification "offsets" offered by the city. And even if these were not the preferences of off-shore cash buyers, it stands to reason that the majority of real estate investors, given the choice between engaging their capital in a pre-1940 encumbered property and one not so burdened are going to choose the latter. Perhaps developers might be interested in attempting to capitalize on the densification off-sets but those will only make sense if the resultant dwellings can be sold to non-offshore buyers at a profit for the developers which means the property would have to be acquired for a bargain price - likely far below the present assessed values. And if that does destroy the character of First Shaughnessy I don't know what will but perhaps that is the City's real intention.

The assessed value of the vast majority of the affected properties is in the land, the buildings are often next to worthless, and yet if these by-laws stand, the owners will be forced to bear the costs, as determined by the City, of maintaining these mausoleums with little or no prospect of a return on investment.

There are many other provisions in these by-laws that are prejudicially costly, discriminatory and invasive. The entire process was and is flawed and entirely lacks due consideration of the affected parties with whom there has been no consultation, only notification. There has been no sense of natural justice and yet considerable high-handed bad faith.

And as for the heritage protagonists, whilst they surely believe that their goals and intentions are laudable, it is extraordinary to me that such persons with nothing at stake and no skin in the game, believe it is their prerogative to weigh in, on equal footing, upon the property rights of the real stakeholders whose rights are being compromised.

In summary these by-laws are based on false premises and false representations and are therefore invalid. Attempting to amend an invalid by-law doesn't render it any less invalid. I will await the ruling of the court.

Christopher R. Shackleton

February 23, 2016

Dear Mayor Gregor Robertson and Council,

I am writing to voice my concerns and advise you that I am whole heartedly against the First Shaughnessy Heritage Conservation Area Official Development Plan, the related By-laws and their proposed amendments (hereinafter HCA By-laws).

I am a First Shaughnessy property owner, and I grew up in the area over the past three decades. I adore the area and I have fond memories of riding my bike and walking down the tree lined streets.

That said, the HCA By-laws and their proposed amendments should be struck down. The City of Vancouver already has a system in place for Heritage designation, which classifies and protects structures that are deemed to be of significant architectural merit. By arbitrarily applying "Heritage" status to 317 personal homes without any compensation, the City has negatively affected property values in the First Shaughnessy area, and in turn negatively affected 317 families.

By blanketing the entire First Shaughnessy district with "Heritage" status the City of Vancouver is also placing an enormous burden on each homeowner to prove that their home is in fact not worthy of this "Heritage" status. This type of burden would be comparable to changing the presumption of innocence, which provides the foundation for our legal system, to a system of guilty first.

As such, this blanket "Heritage" classification has become a burden that is punitive -- both in the long term due to the restrictions which will affect how properties can be improved and maintained, as well as being immediately financially punitive in today's re-sale market. The valuations seen in the current real estate market clearly show the negative effect of even the potential that pre-1940 homes in First Shaughnessy will be classified as "Heritage."

It would not be a stretch to assume that over a two year period, the City's proposed application of Heritage status has negatively affected the market value of these 317 homes to the tune of at least \$1 million dollars each, for an aggregate damage of at least \$317 million dollars, but likely this figure could be much higher.

Heritage status is something that is considered to be a public benefit -- yet all of the associated costs of the HCA By-laws are being passed directly onto the shoulders of a select few private homeowners. Homes evolve and many homes in the area need to be updated. The way we live today is very different from how families lived in the early 1900s. Building standards and materials have also improved. It seems rather unjust to force property owners in this area to be forced to maintain homes with crumbling foundations, asbestos and rotten wood.

It is short-sighted for the City to blindly follow The Luxton Report, as it will reduce City revenues through property taxes collected, as well as exposing the City to the significant liability of potential compensation claims.

I kindly ask that you heavily weigh the voice of the homeowners that are directly affected by this overly onerous and punitive plan.

By voting against the HCA By-law on February 23, 2016 Mayor and Council can save the City considerable time and taxpayer money, as there is also ongoing litigation.

Sincerely,

s.22(1) Personal and Confidential

/ Natalie Winkler

Isfeld, Lori

From: Correspondence Group, City Clerk's Office
Sent: Tuesday, February 23, 2016 6:40 PM
To: Public Hearing
Subject: FW: Heritage Conservation Act bylaws (letter of opposition)

From: Emily Trak s.22(1) Personal and Confidential
Sent: Tuesday, February 23, 2016 5:43 PM
To: Correspondence Group, City Clerk's Office
Subject: Heritage Conservation Act bylaws (letter of opposition)

Dear Mayor and Council,

My family and I have lived in our First Shaughnessy Pre-1940 home at s.22(1) Personal and Confidential for 23 years. We are vehemently opposed to the HCA official development plan, bylaws and their amendments.

We do not believe our home has heritage value simply because it was built before the arbitrarily chosen year of 1940, and believe that many of the 300+ pre-1940 homes on the list also bear little or no heritage value.

It is incredible that the city has decided that all pre-1940 homes in First Shaughnessy are suddenly deserving of heritage status without performing and heritage merit reviews on the affected homes.

By placing severe restrictions on renovations and demolitions of homes that we own and have paid taxes on for decades, the city of Vancouver is participating in theft of the rights and freedoms of property owners.

Please respect the rights of pre-1940 property owners and repeal the HCA bylaw.

Sincerely,

Emily Trak
s.22(1) Personal and Confidential

Isfeld, Lori

From: Correspondence Group, City Clerk's Office
Sent: Tuesday, February 23, 2016 8:19 PM
To: Public Hearing
Subject: FW: Letter of Opposition (HCA bylaws and amendments)

From: Susan Lau s.22(1) Personal and Confidential
Sent: Tuesday, February 23, 2016 8:08 PM
To: Correspondence Group, City Clerk's Office
Subject: Letter of Opposition (HCA bylaws and amendments)

Dear Mayor Robertson and Councillors,

I am a long-time resident of a First Shaughnessy pre-1940 home, and am opposed to the HCA bylaws because I believe that in their original form, they are not valid for several reasons.

One of these reasons is that the city failed to perform heritage merit reviews on the affected 317 homes before it hastily designated all homes built before pre-1940 to have heritage status, despite having 15 months to do so. How can the city even know that each of these houses possesses heritage value without having assessed each one individually? If the city wants to have a heritage conservation area, it should do it the correct and fair way by assessing all houses for heritage value, including ones that were built after 1940, because it is a certainty that there are post-1940 homes which have far more character and potential heritage value than many pre-1940 homes.

The amendments to the bylaw have not addressed the fact that there is still no compensation for home owners who will suffer losses due to the HCA bylaws. The value of our home will undoubtedly be reduced due to the severe limitations on our ability to renovate and demolish that were imposed on us last September. Affected home owners do not benefit from the bylaws and deserve compensation from the city.

Mayor and Council, I ask that you repeal the HCA bylaws, which are a violation on the rights of private property owners and should have never been passed. After attending all 3 public hearings, I get the strong impression that the city places more weight on the comments and opinions of outsiders who support the the HCA bylaws and don't even own property in First Shaughnessy, than people who actually live here and who will be greatly affected by these unfair bylaws, which were passed with literally no warning or consultation with home owners.

A deeply concerned owner of a pre-1940 home,

Susan Lau

s.22(1) Personal and Confidential