

EXPLANATION

**Noise Control By-law amending by-law
re 1655 - 1675 West 3rd Avenue**

This amendment, approved by Council on July 11, 2006, adds 1655 - 1675 West 3rd Avenue to the Noise Control By-law.

Director of Legal Services
November 27, 2007

1655 - 1675 West 3rd Avenue

BY-LAW NO. _____



**A By-law to amend
Noise Control By-law No. 6555**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. To Schedule A of By-law No. 6555, at the end, Council adds:
"458 9543 1655 - 1675 West 3rd Avenue".
2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2007

Mayor

City Clerk

EXPLANATION**Authorization to enter into a
Heritage Revitalization Agreement
with the owner of 399 Smithe Street**

After the public hearing on July 24, 2007, Council resolved to enter into a by-law to authorize an agreement with the owner of the property at 399 Smithe Street pursuant to Section 592 of the Vancouver Charter. The Director of Planning has advised that there are no prior-to conditions, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
November 27, 2007

399 Smithe Street

BY-LAW NO. _____



**A By-law to authorize Council entering into a
Heritage Revitalization Agreement
with the Owner of Heritage Property**

PREAMBLE

Council has authority under the *Vancouver Charter* to enter into a heritage revitalization agreement with the owner of heritage property including terms and conditions to which Council and the owner may agree.

Certain property that will bear the civic address of 399 Smithe Street, and that has the following legal descriptions:

PID: 015-458-792

Lot 14

PID: 015-458-806

Lot 15

PID: 015-458-814

Lot 16

PID: 015-458-822

Lot 17

PID: 004-422-473

Lot 18

PID: 004-431-243

Lot 19

All of: Block 66, District Lot 541, Plan 210

and

PID: 002-555-727

Lot C

Block 66, District Lot 541, Plan 13921

includes a heritage building.

Council is of the opinion that the building has sufficient heritage value to justify its conservation, and Council and the owner of the property have agreed to facilitate such conservation by agreeing to the terms and conditions set out in the attached heritage revitalization agreement.

NOW THEREFORE THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

- 1. Council authorizes the City to enter into a heritage revitalization agreement with the owner in substantially the form and substance of the heritage revitalization agreement attached to this By-law, and also authorizes the Director of Legal Services to execute the agreement on behalf of the City and to deliver it to the owner on such terms and conditions as the Director of Legal Services deems fit.

- 2. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2007

Mayor

City Clerk

LAND TITLE ACT

FORM C

(Section 233)

Province of British Columbia

GENERAL INSTRUMENT - PART 1

(This area for Land Title Office Use)

Page 1 of 22 pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Jim Blair
City of Vancouver Law Department
453 West 12th Avenue
Vancouver, B.C., V5Y 1V4
Phone 873-7514 (/) Client No. 10647

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID) (LEGAL DESCRIPTION)

SEE SCHEDULE

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

- (a) Filed Standard Charge Terms [] D.F. No.
(b) Express Charge Terms [XX] Annexed as Part 2
(c) Release [] There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S):*

AMACON DEVELOPMENT (HOMER) CORP. (Incorporation No. BC0750224) (as to all Section 219 covenants, the equitable charge and the statutory right of way identified in 3(a), (c), (e), (h) and (j))

WENTWORTH PROPERTIES INC. (Incorporation No. BC0674450) (as to Section 219 Covenant identified in 3(e))

THE BANK OF NOVA SCOTIA (as to priority)

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER
453 West 12th Avenue
Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____ (Solicitor)	07			AMACON DEVELOPMENT (HOMER) CORP., by its authorized signatory _____ Marcello De Cotiis
_____ (Solicitor)	07			CITY OF VANCOUVER by its authorized signatory: _____ Frances J. Connell/Graham P. Johnsen

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

**LAND TITLE ACT
FORM D
EXECUTIONS CONTINUED**

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____ (Solicitor)(as to both signatures)	07			WENTWORTH PROPERTIES INC., by its authorized signatory
				_____ Signature and Printed Name
				_____ Signature and Printed Name
_____ (Solicitor)(as to both signatures)	07			THE BANK OF NOVA SCOTIA, by its authorized signatory
				_____ Signature and Printed Name
				_____ Signature and Printed Name

OFFICER CERTIFICATION:

Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

**LAND TITLE ACT
FORM E
SCHEDULE**

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)	(LEGAL DESCRIPTION)
015-458-792	Lot 14 Block 66 District Lot 541 Plan 210,
015-458-806	Lot 15 Block 66 District Lot 541 Plan 210
015-458-814	Lot 16 Block 66 District Lot 541 Plan 210
015-458-822	Lot 17 Block 66 District Lot 541 Plan 210
004-422-473	Lot 18 Block 66 District Lot 541 Plan 210
004-431-243	Lot 19 Block 66 District Lot 541 Plan 210, and
002-555-727	Lot C Block 66 District Lot 541 Plan 13921 (collectively, the "Development Site")
007-992-882	Lot B Block 66 District Lot 541 Plan 13921 ("Lot B")

LAND TITLE ACT
FORM E
SCHEDULE

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST:*

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
(a) Section 219 Covenant over the Development Site	Pages 10 - 12, Article 2	Transferee
(b) Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA136148 (extension of BA275248) and Assignment of Rents BA136149 (extension of BA275249)	Page 21	Transferee
(c) Section 219 Covenant over the Development Site	Pages 12 - 13, Article 3	Transferee
(d) Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA136148 (extension of BA275248) and Assignment of Rents BA136149 (extension of BA275249)	Page 21	Transferee
(e) Section 219 Covenant over the Development Site and Lot B	Pages 14 - 16, Article 5	Transferee
(f) Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA136148 (extension of BA275248) and Assignment of Rents BA136149 (extension of BA275249)	Page 21	Transferee
(g) Priority Agreement granting the above Section 219 Covenant priority over Mortgage BA275240 and Assignment of Rents BA275241	Page 22	Transferee
(h) Statutory Right of Way over the Development Site	Page 16, Article 6	Transferee
(i) Priority Agreement granting the above Statutory Right of Way priority over Mortgage BA136148 (extension of BA275248) and Assignment of Rents BA136149 (extension of BA275249)	Page 21	Transferee
(j) Equitable Charge over the Development Site	Page 17, Article 7	Transferee
(k) Priority Agreement granting the above Equitable Charge priority over Mortgage BA136148 (extension of BA275248) and Assignment of Rents BA136149 (extension of BA275249)	Page 21	Transferee

TERMS OF INSTRUMENT - PART 2**Heritage Revitalization Agreement and Single Site Covenant
- 337 (399) Smithe Street****WHEREAS:**

- A. The Owner (as herein defined) is the registered owner of the following lands and premises:
- PID: 015-458-792, Lot 14, Block 66 District Lot 541 Plan 210,
PID: 015-458-806, Lot 15, Block 66 District Lot 541 Plan 210,
PID: 015-458-814, Lot 16, Block 66 District Lot 541 Plan 210,
PID: 015-458-822, Lot 17, Block 66 District Lot 541 Plan 210,
PID: 004-422-473, Lot 18, Block 66 District Lot 541 Plan 210,
PID: 004-431-243, Lot 19, Block 66 District Lot 541 Plan 210, and
PID: 002-555-727, Lot C Block 66 District Lot 541 Plan 13921
(collectively, the “**Development Site**”)
- B. Wentworth Properties Inc. (Inc. No. BC0674450) (“**Wentworth**”) is the registered owner of the following lands and premises:
- PID: 007-992-882, Block 66 District Lot 541 Plan 13921
(“**Lot B**”)
- C. The Development Site and Lot B are adjacent parcels of land and the respective owners, the Owner and Wentworth, are affiliated companies;
- D. Situate on the Development Site is a building known as the “**Homer Building**”, with a civic address of 337 Smithe Street, and a secondary building (the “**Secondary Building**”) with a civic address of 335 Smithe Street, which together with the Homer Building is known as the “**Homer Apartments**”;
- E. The seven lots comprising the Development Site will be consolidated into a single lot before commencement of the redevelopment of the Development Site that is contemplated by the Development Permit (defined below);
- F. The Homer Apartments contain 24 single room accommodation units (each an “**SRA**”);
- G. The Owner has applied:
- (i) to construct a high-rise residential/commercial development adjacent to the Homer Building on the Development Site;

- (ii) to have the Lands (defined below) treated as a single undivided site for the purposes of calculating floor space ratio applicable to all developments on the Development Site and Lot B, and Wentworth has agreed;
- (iii) for a grant of Additional Density (defined below) for use on the Development Site;
- (iv) to demolish the Secondary Building; and
- (v) to replace the 24 SRAs in the Homer Apartments with 15 self-contained market residential rental units in the Homer Building;

H. The City has agreed to the foregoing subject to a number of conditions, including without limitation, that:

- (i) the Lands may be treated as a single undivided site for the purposes of calculating the floor space ratio applicable to all developments on the Development Site and Lot B, subject to a single-site covenant being registered against the Lands;
- (ii) the Owner pay an SRA demolition fee;
- (iii) the Owner enter into a no stratification/rental only covenant in respect of the Homer Building;
- (iv) the Homer Building be designated as a legally protected heritage building; and
- (v) the Homer Building be timely restored, and thereafter maintained, at the cost and expense of the Owner.

I. The Homer Building is listed in Category B on the Vancouver Heritage Register;

J. Pursuant to development permit application DE410541 (which development permit application together with all development permits issued pursuant thereto and all amendments, modifications or replacements thereof are collectively called the “**Development Permit**”) the Owner proposes, inter alia, to rehabilitate, restore and preserve the Homer Building;

K. Pursuant to Section 592 of the *Vancouver Charter*, a heritage revitalization agreement may, among other things, vary or supplement provisions of a subdivision by-law, a zoning by-law, a development permit and a heritage alteration permit, and may include such other terms and conditions as the City’s Council and the owner of the heritage property may agree; and

L Pursuant to Section 219 of the *Land Title Act* the City may register restrictive covenants against title to the Lands concerning, *inter alia*, the use of the Lands and buildings on or to be erected on the Lands, as contemplated by Sections 2, 3 and 5 of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the sum of Ten Dollars (\$10.00) now paid by the City to each of the Owner and Wentworth, and for other good and valuable consideration passing from the City to the Owner and Wentworth (the receipt and sufficiency of which the Owner and Wentworth hereby each acknowledges) and, where applicable, pursuant to Section 592 of the *Vancouver Charter*, the parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 The terms defined in this Section 1.1 shall, unless otherwise specifically provided for in this Agreement, have the following meanings:

- (a) **“Additional Density”** means the additional development rights of 80,405 square feet of Floor Space that, subject to the terms and conditions of this Agreement, have been or will be assigned by the City to, and may be built out on, the Development Site.
- (b) **“Agreement”** means this instrument and agreement, all land title instruments attached to this agreement and all schedules, if any, to this instrument and agreement;
- (c) **“City”** means the municipal corporation continued pursuant to the *Vancouver Charter*, and **“City of Vancouver”** means the geographic location;
- (d) **“Consultant”** means the Owner’s heritage consultant who shall be a registered architect or professional engineer in good standing and who shall have substantial experience in heritage rehabilitation work;
- (e) **“Development Permit”** has the meaning set out in Recital J of this Agreement;
- (f) **“Development Site”** is defined in Recital A of this Agreement;
- (g) **“Downtown O.D.P.”** means Downtown Official Development Plan By-law No. 4912;
- (h) **“Effective Date”** means the date that this Agreement is executed by the City;
- (i) **“Existing or Permitted Tenancies”** means the existing tenancy arrangements with the persons described in Schedule “A” hereto;
- (j) **“Floor Space”** means the buildable (or built) area of a development calculated, if the Zoning and Development By-laws contain a method of measurement of floor space, in accordance with such method, taking into account any inclusions required and exclusions allowed under the Zoning and Development By-laws;

- (k) **“Heritage Building”** means and includes:
- (i) the Homer Building, all elements thereof and all permitted replacements thereof;
 - (ii) any other building or structure located on the Lands and identified as comprising part of the Heritage Building in the Development Permit or in the applicable heritage designation or in a heritage revitalization by-law, if any;
 - (iii) any interior feature or fixture identified in the Development Permit or in the applicable heritage designation or in a heritage revitalization by-law, if any;
 - (iv) any landscaping feature identified in the Development Permit or in the applicable heritage designation or in a heritage revitalization by-law, if any; and
 - (v) any other feature or fixture identified in the Development Permit or in the heritage designation or heritage revitalization by-law;
- (l) **“Homer Apartments”** has the meaning set out in Recital D of this Agreement;
- (m) **“Homer Building”** has the meaning set out in Recital D of this Agreement;
- (n) **“Land Title Act”** means the *Land Title Act*, R.S.B.C. 1996, c.250, as amended from time to time and any and all replacements thereof or any statute enacted in substitution thereof and all regulations applicable thereto and any amendments, replacements and substitutions thereof;
- (o) **“Lands”** means Lot B and the Development Site collectively;
- (p) **“Lot B”** has the meaning set out in Recital B of this Agreement;
- (q) **“Owner”** means the registered owner of the Development Site as of the Effective Date and all of its respective assigns, successors and successors in title to the Development Site and, if the Development Site is subdivided by way of a strata plan, then **“Owner”** includes, without limitation, a strata corporation thereby created;
- (r) **“Rehabilitation”** or **“Rehabilitate”** means the rehabilitation and restoration of the Heritage Building in accordance with this Agreement and in accordance with the Development Permit;

- (s) “SRA” has the meaning set out in Recital E of this Agreement;
- (t) “Vancouver Building By-law” means the City of Vancouver Building By-law No. 9419, and includes its successor building by-law to the extent the same is or may be applicable;
- (u) “Vancouver Charter” means the *Vancouver Charter* S.B.C. 1953, c.55, as amended or replaced from time to time;
- (v) “Wentworth” has the meaning set out in Recital B of this Agreement, and includes all of its respective assigns, successors and successors in title to Lot B and if Lot B is subdivided by way of a strata plan, then “Wentworth” includes, without limitation, a strata corporation thereby created; and
- (w) “Zoning and Development By-laws” means those of the by-laws of the City which from time to time regulate the use and development of land in the City of Vancouver, including with respect to allowable density and floor space ratios, and are applicable to the Lands and to every part into which it may be subdivided, including without limitation Zoning and Development By-law No. 3575 as amended from time to time, including without limitation, by Downtown District By-law No. 4911, and as supplemented by the Downtown O.D.P.

ARTICLE 2 REHABILITATION AND USE OF THE HERITAGE BUILDING

2.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City, as covenants and agreements running with, charging and binding the Development Site, that:

- (a) the Owner shall, at its sole expense, Rehabilitate the Heritage Building in accordance with the Development Permit to the satisfaction of the City, which shall include the following, without limitation:
 - (i) Exterior/Structure:
 - 2nd-3rd floor levels: repair and conserve the external upper wall elevations including their character-defining elements: bay windows with their wood double hung sashes, brick masonry wall finishes, cementitious plaster friezes and cornice;
 - Ground floor level: replicate the corner entrance to the ground floor retail unit and replicate retail windows consistent with the general design, fenestration pattern and proportions of windows of early 20th century retail units;
 - Replicate brick masonry support piers at ground level between retail store windows;

- Seismically upgrade the building to meet the requirements of the Vancouver Building By-law;
 - Paint exterior wood and plaster finishes consistent with their original paint colours based on paint tests; and
 - Replicate two domes originally constructed over the projecting corner bay windows, which are now missing.
- (ii) Interior:
- Circulation areas: to conserve the hallway and stairwell with their detailing and elements including wood stair, stained glass windows and roof-light above the stair; and
 - Original interior character-defining elements of the dwelling interiors are to be conserved and reused to the greatest degree possible, including doors, wood trim and mouldings.
- (b) all heritage aspects of Rehabilitation shall be supervised by the Consultant;
- (c) at all times during the Rehabilitation, the Owner shall, to the satisfaction of the City, secure the Heritage Building from vandalism and occupation by squatters;
- (d) during the Rehabilitation, and in perpetuity thereafter, the Owner shall, to the satisfaction of the City, keep the Heritage Building insured to its full replacement value against all perils, including, without limitation, damage or destruction by earthquake;
- (e) on completion of the Rehabilitation, the Owner shall cause the Consultant to submit to the City a signed statement (in form and contents satisfactory to the City) confirming that the Rehabilitation has been fully completed;
- (f) until the Rehabilitation is completed to the satisfaction of the City:
- (i) neither the Owner nor any other person whatsoever shall suffer, cause or permit the use or occupation of the Heritage Building or any part thereof except for Existing or Permitted Tenancies;
 - (ii) neither the Owner nor any other person whatsoever shall apply for an occupancy permit for the Heritage Building or for any other building or improvements constructed on the Development Site (or any part thereof) or take any action, to compel the issuance of an occupancy permit for the Heritage Building or for any other building or improvements constructed on the Development Site (or any part thereof);

- (iii) the City shall be under no obligation to issue an occupancy permit for the Heritage Building or for any building constructed on the Development Site (or any part thereof) notwithstanding that all other conditions and City by-law requirements in respect thereof may have been fulfilled; and
- (iv) the person that is the registered Owner on the Effective Date shall not transfer all or any of its legal ownership in the Development Site without the prior written consent of the City; and
- (g) the Heritage Building shall only be used for residential rental accommodation, subject to Section 2.1(f)(i) above, and shall not at any time be subdivided by the filing of a strata plan.

ARTICLE 3 CONTINUING HERITAGE PRESERVATION AND PROTECTION

3.1 Pursuant to Section 219 of the *Land Title Act*, the Owner covenants and agrees with the City, as a covenants and agreements running with, charging and binding the Development Site, that:

- (a) the Owner shall preserve, protect, maintain and keep in good order the Heritage Building as would a reasonable and prudent owner;
- (b) the Owner shall not, except as may be permitted by this Agreement, the Development Permit or a heritage alteration permit issued by the City, alter the exterior, make structural changes, or renovate or reconfigure the Heritage Building (or any part thereof);
- (c) if the Heritage Building is damaged, the Owner shall, at the Owner's sole expense, repair the Heritage Building if to do so is lawful and economic. In determining if it is economic to repair the Heritage Building, the Owner and the City will consider only land economic factors including the cost of repair, the cost of the replacement building contemplated below and the fact that heritage incentives (including the Additional Density) have been granted herein. If the Owner and the City cannot agree on whether it is economic to repair the Heritage Building, such question shall be determined by arbitration pursuant to Section 3.1(d) below. If the Owner and the City agree or if an arbitrator(s) determines that it is uneconomic to repair the Heritage Building, the Owner shall not be obligated to repair the Heritage Building but will be restricted to building on the Lands a building of similar form, massing, quality of materials, detailing and height as the original Heritage Building, and the City shall, at the Owner's expense, execute and deliver an amendment, and to the extent applicable a partial discharge, of this Agreement to reflect such change in circumstances;

- (d) all disputes arising from Section 3.1(c) above shall be determined by arbitration in the manner set-out in this Section 3.1(d). Within thirty (30) days following written notice of the dispute by either party to the other, such dispute shall be referred to a single arbitrator to be chosen by the Owner and the City; provided that if the Owner and the City do not agree as to the choice of a single arbitrator, then by three (3) arbitrators, one (1) of whom shall be chosen by the Owner, one (1) of whom shall be chosen by the City and the third by the two (2) so chosen, and the third arbitrator so chosen shall be the chairman. Decisions will be made by the majority of the arbitrators. If within fifteen (15) days or such extended time as the parties may agree upon, a party who has been notified of a dispute fails to appoint an arbitrator or the two (2) arbitrators appointed by the parties do not agree upon a third arbitrator, then the party or parties not in default may apply to the British Columbia International Commercial Arbitration Centre or, if it or a successor thereto does not exist at such time, to a Judge of the Supreme Court of British Columbia for the appointment of an arbitrator to represent the party or parties in default or a third arbitrator or both of such arbitrators. The costs of the reference and award shall be in the discretion of the arbitrators who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof and may award costs to be paid as between solicitor and client. Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act* (British Columbia), as amended or re-enacted from time to time, shall apply;
- (e) the Owner agrees that the new by-laws and by-law variations effected by, and the other terms and conditions of, this Agreement are full and fair compensation for the obligations and restrictions placed upon the Owner by this Agreement and the Owner waives and renounces all claims for further or other compensation by reason of this Agreement;
- (f) the Owner acknowledges and understands that the new by-laws and by-law variations impacting the Development Site and the Lands that will be effected by the City as a result of this Agreement will include a heritage designation by-law, which will identify the Homer Building as a "Protected Heritage Property" and impose consequent restrictions on the future redevelopment of the Development Site; and
- (g) the City may, at its cost, affix a commemorative plaque to the Heritage Building and the Owner shall refrain from obscuring, defacing or removing same.

**ARTICLE 4
ADDITIONAL DENSITY AND VARIATION OF ZONING BY-LAW**

4.1 As compensation to assist the Owner in defraying the cost of the Rehabilitation, the City hereby varies provisions of the Downtown O.D.P. in respect of the Lands (nothing in this Agreement varies such By-law as it applies to any other property) by adding and assigning a heritage density bonus of 80,405 sq. ft (being the **Additional Density**) to the Lands as additional residential building Floor Space, to be used on the Development Site in accordance with the Development Permit, and as a consequence:

- (a) by varying Section 3(1)C of the Downtown O.D.P., which currently allows for a total floor space ratio for the Lands of 5.0, to read, in respect of the Lands:

“the total density for all permitted uses shall not exceed a floor space ratio of 7.23;” and

- (b) by varying Section 3(5) of the Downtown O.D.P. , which currently allows for a total “residential” floor space ratio for the Lands of 3.0, to read, in respect of the Lands:

“Despite subsections 1 and 4, the density of live-work use, or residential use and live-work use combined, must not exceed a floor space ratio of 5.23.”

4.2 Section 10.1 of the Zoning and Development By-law No. 3575 is hereby varied to allow more than one principal building on the Development Site.

**ARTICLE 5
SINGLE SITE COVENANT**

5.1 Pursuant to Section 219 of the *Land Title Act*, the Owner and Wentworth covenant and agree with the City, as covenants and agreements running with, charging and binding the Development Site and Lot B, respectively, that:

- (a) The Development Site and Lot B shall not be built on or used except in accordance with this covenant and Agreement;
- (b) neither the Development Site or Lot B nor any subdivided part of either thereof shall constitute a separate site for the purposes of the application of Zoning and Development By-laws and, at the option of the City, the Vancouver Building By-law, and the Development Site and Lot B and every subdivided part of either thereof together shall constitute a single site for such purposes. Without limiting the generality of the foregoing, the Owner, Wentworth and the City acknowledge and agree as follows:

- (i) subject to Section 5.2 of this Agreement, the Owner and Wentworth agree that the Development Site and Lot B, respectively, shall not be built on so as to create new buildings or to modify existing buildings, except in accordance with the Development Permit and this Agreement, or any other development permit the City may subsequently grant;
- (ii) the Owner and Wentworth shall not construct any new building or modify any existing building on the Development Site or Lot B, respectively, unless the amount of Floor Space for any such building is determined pursuant to the following criteria and allowed pursuant to the City's permit process:
 - (A) The Development Site and Lot B shall be considered as one unsubdivided development site; and
 - (B) the amount of Floor Space for any building on the Development Site or Lot B, or all buildings on the Development Site and Lot B combined, shall not exceed the maximum amount of Floor Space then permitted by the Zoning and Development By-laws or otherwise by the City pursuant to the Vancouver Charter or otherwise (including as a result of this Agreement and the by-law variations contemplated or effected by this Agreement), on the Development Site and Lot B when considered as one unsubdivided development site;
- (c) The Development Site and Lot B shall be used only in compliance with the:
 - (i) Zoning and Development By-laws;
 - (ii) Vancouver Building By-law; and
 - (iii) Development Permit and any subsequent development permit issued in respect of the Development Site or Lot B or any subdivided part of either thereof, subject to this Agreement; and
- (d) in considering any future applications for building permits pursuant to the Vancouver Building By-law and relating to then existing buildings located on the Development Site or Lot B the City may, in the discretion of the City, consider such applications as if the existing and/or the new buildings located on the Development Site and Lot B were a single building on a single parcel of land.

5.2 Section 5.1 shall apply mutatis mutandis to the renovation, reconstruction or repair of existing or new buildings on the Development Site and Lot B or a subdivided portion of either thereof, provided that, but subject to the *Vancouver Charter*, Section 5.1 shall not apply to:

- (a) any renovation of any existing or new building on the Development Site or Lot B or an subdivided portion of either thereof which does not involve the creation of additional Floor Space; or
- (b) repair or reconstruction of any damage to or partial destruction of any existing or new building on the Development Site or Lot B or an subdivided portion of either thereof which does not involve the creation of more Floor Space than existed immediately prior to such damage or destruction;

provided, however, that this Agreement shall not be construed as granting approval for any such renovation, repair or reconstruction and the parties hereto agree that no renovation, repair or reconstruction shall be undertaken without first obtaining all necessary approvals and permits therefor.

ARTICLE 6 STATUTORY RIGHT OF WAY

6.1 Pursuant to Section 218 of the *Land Title Act*, the Owner hereby grants to the City a statutory right of way to enter and be upon the Development Site to undertake and diligently prosecute to conclusion the Rehabilitation, and to preserve, protect, maintain, repair and/or replace the Heritage Building, if the City should at any time choose to do so; provided, however, that nothing herein obligates the City to conduct the Rehabilitation, or any part thereof, or to preserve, protect, maintain, repair and/or replace the Heritage Building.

6.2 In the event that the City enters upon the Development Site to conduct all, or any part, of the Rehabilitation, or any other work contemplated by Section 6.1 above:

- (a) there shall be no express or implied warranties as to the quality of the Rehabilitation, or any other work contemplated by Section 6.1 above, or the suitability of the materials for the purposes for which they are put; and
- (b) the Owner shall pay to the City the costs incurred by the City in undertaking and diligently prosecuting to conclusion the Rehabilitation, and any other work contemplated by Section 6.1 above, plus twenty percent (20%) of such costs as fair compensation for the City's administrative costs.

The statutory right of way set out in this Article 6 is necessary for the operation and maintenance of the City's undertaking.

**ARTICLE 7
EQUITABLE CHARGE**

7.1 The Owner grants to the City an equitable charge over the Development Site, which charge will run with, charge and bind the Development Site, for the payment of all sums (including all interest thereon) which may at any time be payable by the Owner to the City under the terms of this Agreement or otherwise at law and the provisions of this Article 7 shall survive any termination of this Agreement and continue to apply. This equitable charge may be enforced by the appointment of a receiver for the sale of the Development Site.

**ARTICLE 8
RELEASE AND INDEMNITY**

8.1 The Owner and Wentworth each hereby (i) releases the City and its officials, councillors, employees, contractors, agents and licensees, from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, damages, consequential damages, fines, penalties, costs and legal costs on a solicitor own client basis which either the Owner or Wentworth, respectively, or their respective officers, directors, employees, contractors, agents or licencees may suffer or incur; and (ii) indemnifies and saves harmless the City and its officials, councillors, employees, contractors, agents and licensees, from and against all liabilities, actions, statutory or other proceedings, judgements, investigations, claims, losses, loss of profit, damages, consequential damages, fines, penalties, costs and legal costs on a solicitor own client basis which the City or its officials, councillors, employees, contractors, agents or licencees may suffer or incur, in each case arising out of or in any way connected with:

- (a) the inability of the Owner to use, in whole or in part, any of the Additional Density that may be used pursuant to this Agreement, whether such inability arises from the decision of the City's Development Permit Board, City Council, a court of competent jurisdiction or otherwise;
- (b) the City conducting all or any portion of the Rehabilitation or any other work contemplated by this Agreement;
- (c) the City withholding any permits (including, without limitation, an occupancy permit) under this Agreement (even if the Owner or Wentworth, as the case may be, has otherwise complied with all permit requirements); or
- (d) this Agreement;
- (e) any release of this Agreement or the loss of any of the rights granted hereunder;
- (f) the non-compliance, if any, of the Development Site, Lot B, the Heritage Building or any part of any thereof with any City by-law;

- (g) issuance of any development permit in respect of the Development Site or Lot B;
and
- (h) any failure or insistence by the City, because of or related to consideration of the Lands as one unsubdivided development site, to enforce any City by-law applicable to the Lands to the fullest extent or at all.

The release and indemnity set out in this Article 8 is an integral part of each of the instruments that constitute this Agreement. The release and indemnity set out in this Article 8 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 9 GENERAL

9.1 If the registered owner of the Lands shall be more than one party such parties shall be jointly and severally liable to the City for the performance and observance of the Owner's obligations in this Agreement.

9.2 The Owner and Wentworth shall, after execution of this Agreement, do or cause to be done, at their respective cost and expense, all things and acts necessary to ensure that this Agreement is registered against title to the Development Site and Lot B with priority over all other financial encumbrances except financial encumbrances in favour of the City.

9.3 In any action to enforce this Agreement the City shall be entitled to court costs on a solicitor and own client basis. In addition to any other rights the City may have pursuant to this Agreement or at law or in equity, the City may enforce this Agreement by mandatory and prohibitory injunctions.

9.4 If the Land Title Office refuses to register this Agreement, the Owner and Wentworth agree to modify or re-execute this Agreement so as to permit registration.

9.5 This Agreement shall enure to the benefit of and be binding upon each of the Owner and Wentworth and their respective successors and trustees and this Agreement shall charge and run with the Development Site and Lot B and shall enure to the benefit of and be binding upon, respectively, each of the Owner's and Wentworth's successors in title and their respective trustees and successors and all parties claiming through such owners.

9.6 Without limiting the generality of Section 9.5 above, if the Lands, or any portion thereof, are subdivided by way of a strata plan and the Heritage Building or any part thereof is located within the strata plan (subject always to Section 2.1(h) above):

- (a) this Agreement shall charge each strata lot and shall be noted on the common property sheet of the strata corporation;

- (b) the strata corporation or strata corporations so created shall be responsible for the performance and observance of the Owner's covenants and obligations herein at the expense of the strata lot owner; and
- (c) the liability of each strata lot owner for the performance and observance of the Owner's covenants and obligations in this Agreement shall be in proportion to the unit entitlement of his, her or its strata lot as established by the strata plan and shall be treated as a common expense and all strata lot owners shall contribute to such costs in proportion to their unit entitlement.

If the Heritage Building is subdivided out of the Lands by way of an air space parcel or conventional building subdivision, provided always that an occupancy permit has first been issued for the Heritage Building and the Rehabilitation has been completed to the satisfaction of the City, the City will, within a reasonable time of being requested to do so by the Owner and at the Owner's expense, release and discharge this Agreement, other than in respect of the restrictive covenant in Article 5 and the priority agreement related thereto, from title to that portion of the subdivided Lands in which no part of the Heritage Building is located.

9.7 Nothing contained or implied in this Agreement will derogate from the obligations of the Owner under any other agreement with the City or, if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of the City under all public and private statutes, by-laws, orders and regulations, which may be, if the City so elects, as fully and effectively exercised in relation to the Lands as if this Agreement had not been executed and delivered by the Owner and the City.

9.8 Words herein importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females or corporations as well as males, and the converse whenever the context requires.

9.9 The sections in this Article 9 form an integral part of each of the instruments that constitute this Agreement.

IN WITNESS WHEREOF the parties have executed this Agreement on Form C which is a part hereof.

SCHEDULE "A"

Description of Existing or Permitted Tenancies:

1. The commercial and residential tenancies existing on the date of registration of this Agreement will continue until such time as the Rehabilitation work reasonably requires their removal from the Heritage Building.
2. The Owner will use a portion of the Heritage Building as a construction site office during its redevelopment of the Development Site and the Rehabilitation of the Heritage Building.

PRIORITY AGREEMENT

THE BANK OF NOVA SCOTIA (the "Chargeholder")

Holder of Mortgage BA136148 (extension of BA275248) and Assignment of Rents BA136149 (extension of BA275249) (collectively the "Charges") charging the following lands and premises:

PID	Legal Description
015-458-792	Lot 14 Block 66 District Lot 541 Plan 210, Lot 15 Block 66 District Lot 541 Plan 210 Lot 16 Block 66 District Lot 541 Plan 210 Lot 17 Block 66 District Lot 541 Plan 210 Lot 18 Block 66 District Lot 541 Plan 210 Lot 19 Block 66 District Lot 541 Plan 210, and Lot C Block 66 District Lot 541 Plan 13921
015-458-806	
015-458-814	
015-458-822	
004-422-473	
004-431-243	
002-555-727	

(the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charges, hereby approves, joins in and consents to the granting of the Section 219 Covenants, Statutory Right of Way and Equitable Charge (collectively, the "Encumbrances") attached, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon the Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrances had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

IN WITNESS WHEREOF the Chargeholder has executed this priority agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

PRIORITY AGREEMENT

THE BANK OF NOVA SCOTIA (the "Chargeholder")
Holder of Mortgage BA275240 and Assignment of Rents BA275241
(collectively the "Charges")
charging Lot B Block 66 District Lot 541 Plan 13921 (the "Lands")

For Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charges, hereby approves, joins in and consents to the granting of the Section 219 Covenant identified at Section 3(e) of the Form E attached and Article 5 of the Terms of Instrument (Part 2) and Agreement attached (the "Encumbrance"), and consents and agrees that the Encumbrance shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be an encumbrance upon the Lands in priority to the Charges in the same manner and to the same effect as if the Encumbrance had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charges and the advance of any monies thereunder.

IN WITNESS WHEREOF the Chargeholder has executed this priority agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

END OF DOCUMENT

EXPLANATION**Heritage Designation By-law
re 399 Smithe Street**

After the public hearing on July 24, 2007, Council approved a recommendation to designate a building at 399 Smithe Street as protected heritage property. Enactment of the attached by-law will achieve the designation.

Director of Legal Services
November 27, 2007

399 Smithe Street



BY-LAW NO. _____

**A By-law to designate certain real property
as protected heritage property**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council considers that the real property described as:

Structure and exterior
envelope of the
improvements and
exterior building
materials (The Homer)

399 Smithe Street,
Vancouver, BC

PID: 015-458-792
Lot 14
PID: 015-458-806
Lot 15
PID: 015-458-814
Lot 16
PID: 015-458-822
Lot 17
PID: 004-422-473
Lot 18
PID: 004-431-243
Lot 19
All of: Block 66, District
Lot 541, Plan 210
and
PID: 002-555-727
Lot C
Block 66, District Lot
541, Plan 13921

has heritage value or heritage character, and that its designation as protected heritage property is necessary or desirable for its conservation.

2. Council designates the real property described in section 1 of this By-law as protected heritage property under Section 593 of the *Vancouver Charter*.

3. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this day of , 2007

Mayor

City Clerk

EXPLANATION**A By-law to amend the Zoning and Development By-law
re 6111 - 6161 Oak Street and 1007 West 46th Avenue**

After the public hearing on June 14, 2007, Council resolved to amend the Zoning and Development By-law to create a CD-1 zone for the captioned property. The Director of Planning has advised that all prior-to conditions have been met, and enactment of the attached by-law will implement Council's resolution.

Director of Legal Services
November 27, 2007

6111 - 6161 Oak Street
1007 West 46th Avenue



BY-LAW NO. _____

**A By-law to amend
Zoning and Development By-law No. 3575
to rezone an area to CD-1**

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

Zoning District Plan amendment

1. This By-law amends the Zoning District Plan attached as Schedule D to By-law No. 3575, and amends or substitutes the boundaries and districts shown on it, according to the amendments, substitutions, explanatory legends, notations, and references shown on the plan marginally numbered Z-593 (b) attached as Schedule A to this By-law, and incorporates Schedule A into Schedule D to By-law No. 3575.

Uses

2.1 The description of the area shown within the heavy black outline on Schedule A is CD-1 (459).

2.2 Subject to approval by Council of the form of development, to all conditions, guidelines and policies adopted by Council, and to the conditions set out in this By-law or in a development permit, the only uses permitted within CD-1 (459) and the only uses for which the Director of Planning or Development Permit Board will issue development permits are:

- (a) Dwelling Uses, limited to Multiple Dwelling; and
- (b) Accessory Uses customarily ancillary to any of the uses listed in this section 2.2.

Density

3.1 The number of dwelling units on the site must not exceed 30.

3.2 The floor space ratio for all permitted uses must not exceed 1.0.

3.3 Computation of floor space ratio must include:

- (a) all floors having a minimum ceiling height of 1.2 m, including earthen floor, above and below ground level, measured to the extreme outer limits of the building; and

- (b) stairways, fire escapes, elevator shafts, and other features which the Director of Planning considers similar, measured by their gross cross-sectional areas and included in the measurements for each floor at which they are located.

3.4 Computation of floor space ratio must exclude:

- (a) open residential balconies or sun decks and any other appurtenances which, in the opinion of the Director of Planning, are similar to the foregoing, except that the total area of all exclusions must not exceed 8% of the permitted residential floor area;
- (b) patios and roof gardens if the Director of Planning first approves the design of sunroofs and walls;
- (c) where floors are used for off-street parking and loading, the taking on or discharging of passengers, bicycle storage, heating and mechanical equipment, or uses which in the opinion of the Director of Planning are similar to the foregoing, those floors or portions thereof so used, which are at or below base surface, except that the exclusion for a parking space must not exceed 7.3 m in length;
- (d) amenity areas, including day care facilities, recreation facilities, and meeting rooms, except that the exclusion must not exceed, in aggregate, 10% of the permitted floor area;
- (e) areas of undeveloped floors located:
 - (i) above the highest storey or half-storey and to which there is no permanent means of access other than a hatch, or
 - (ii) adjacent to a storey or half-storey with a ceiling height of less than 1.2 m;
- (f) all residential storage space above or below base surface, except that if the residential storage spaces above base surface exceeds 3.7 m² for a dwelling unit there will be no exclusion for any of the residential storage space above base surface for that unit; and
- (g) where a Building Envelope Professional as defined in the Building By-law has recommended exterior walls greater than 152 mm in thickness, the area of the walls exceeding 152 mm, but to a maximum exclusion of 152 mm thickness, except that this clause is not to apply to walls that existed before March 14, 2000.

Building height

- 4. The building height must not exceed 10.7 m measured from base surface.

Setbacks

- 5. The setbacks must be at least:
 - (a) 4.00 m from each of the north and south side yard property lines;
 - (b) 4.00 m from the west rear yard property line; and
 - (c) 4.20 m from the east front yard property line.

Parking and bicycle spaces

- 6. Any development or use of the site requires the provision and maintenance, in accordance with the requirements of, and relaxations and exemptions in, the Parking By-law, of off-street parking spaces and bicycle spaces, all as defined under the Parking By-law, except that:
 - (a) there must be at least 0.5 parking space for every dwelling unit that has less than 50 m² of gross floor area, and, for every dwelling unit that has 50 m² or more of gross floor area, at least 0.6 space for every dwelling unit plus one space for each 200 m² of gross floor area, except that there need be no more than 1.5 spaces for every dwelling unit; and
 - (b) for sites smaller than 500 m² or having a maximum 1.0 floor space ratio, the minimum is to be the lesser of the requirement set out in subsection (a) or one space for every dwelling unit.

Acoustics

7. All development permit applications require evidence in the form of a report and recommendations prepared by a person trained in acoustics and current techniques of noise measurement, demonstrating that the noise levels in those portions of dwelling units listed below do not exceed the noise level set opposite such portions. For the purposes of this section, the noise level is the A-weighted 24-hour equivalent (Leq) sound level and is defined simply as noise level in decibels.

Portions of dwelling units	Noise levels (Decibels)
Bedrooms	35
Living, dining, recreation rooms	40
kitchen, bathrooms, hallways	45

Severability

8. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.

Force and effect

9. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2007

Mayor

City Clerk



Z-593 (b)

RZ - 6111-6161 Oak Street & 1007 West 46th Avenue

map: 1 of 1

scale: NTS



City of Vancouver

date: May 2007

EXPLANATION**Subdivision By-law No. 5208 amending by-law
re 6111 - 6161 Oak Street and 1007 West 46th Avenue**

Enactment of the attached by-law will delete 6111 - 6161 Oak Street and 1007 West 46th Avenue from the maps forming part of Schedule A of the Subdivision By-law, and implement Council's resolution of June 14, 2007 dealing with the rezoning of the property, and is consequential to the rezoning of the property.

Director of Legal Services
November 27, 2007

6111 - 6161 Oak Street
1007 West 46th Avenue



BY-LAW NO. _____

A By-law to amend Subdivision By-law No. 5208

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. Council amends Schedule A to the Subdivision By-law in accordance with the plan labelled Schedule A and attached to and forming part of this By-law by deleting therefrom the properties shown in black outline on Schedule A to this By-law in accordance with the explanatory legends, notations, and references incorporated therein.
2. This By-law is to come into force and take effect on the date of its enactment.

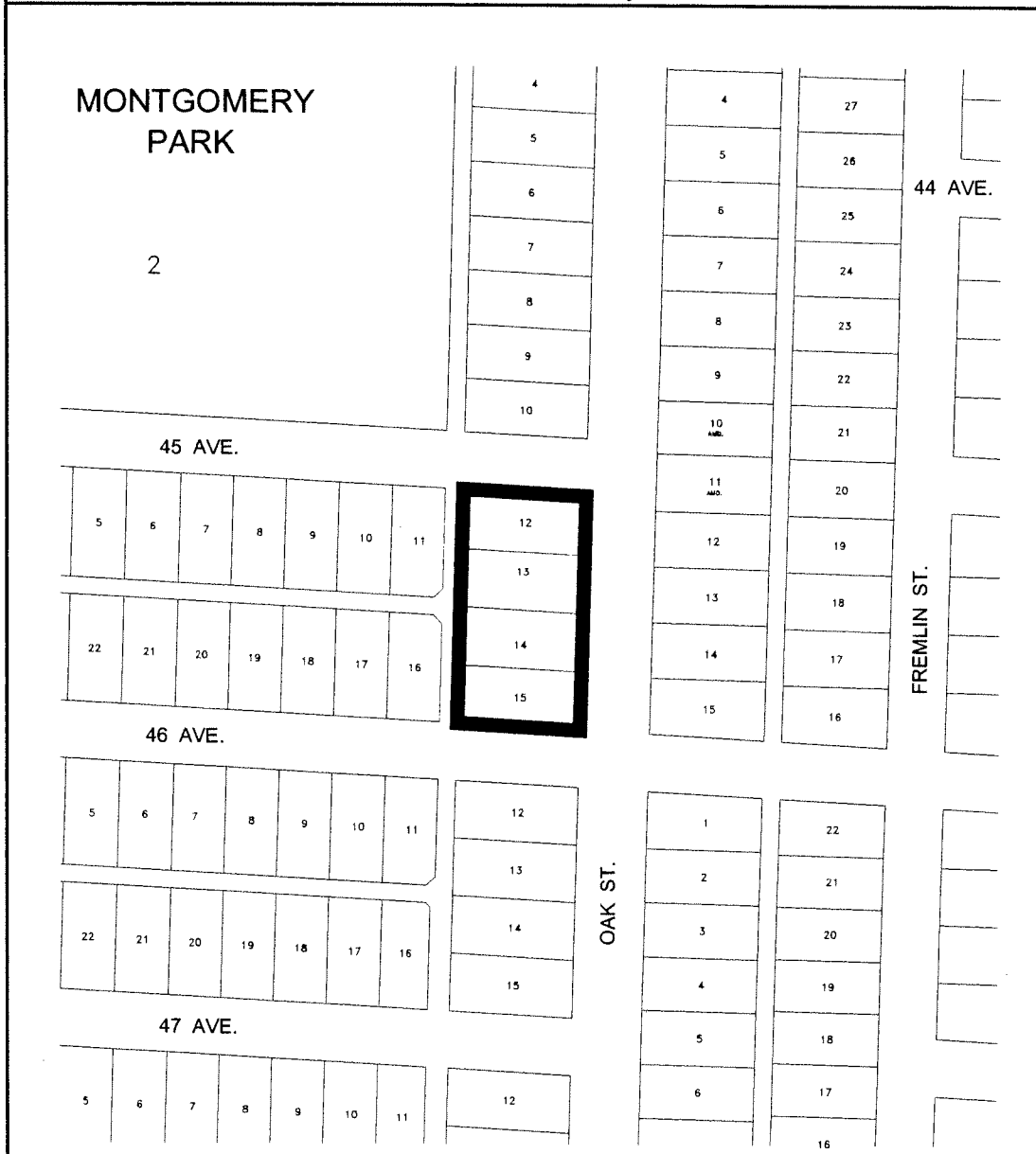
ENACTED by Council this _____ day of _____, 2007

Mayor

City Clerk

By-law No. _____ being a By-law to amend By-law No. 5208

being the Subdivision By-law



The property outlined in black () is deleted from the RS-1/RS-3/RS-3A/RS-5/RS-6 maps forming part of Schedule A of the Subdivision By-law

6111-6161 Oak Street & 1007 West 46th Avenue

map: 1 of 1

scale: NTS



City of Vancouver