



ADMINISTRATIVE REPORT

Report Date: October 2, 2012
Contact: Jim de Hoop
Contact No.: 604.873.7479
RTS No.: 09734
VanRIMS No.: 08-2000-20
Meeting Date: October 17, 2012

TO: Standing Committee on Planning, Transportation and Environment

FROM: Managing Director of Social Development and the Director of Legal Services

SUBJECT: Single Room Accommodation (SRA) Conversion Application for 403 East Hastings Street (Patricia Hotel)

RECOMMENDATION

THAT the Single Room Accommodation (SRA) Conversion Permit application for the Patricia Hotel located at 403 East Hastings (PID: 012-175-048 and PID: 012-175-056; Lot 31 and 32, Block 57, District Lot 196, VA Plan 196) be refused.

REPORT SUMMARY

This report evaluates an SRA Conversion Permit application to convert and remove the SRA-designation for the remaining 94 of 195 rooms at the Patricia Hotel without conditions of approval, including any payment into the reserve fund for the provision of accommodation to replace the SRA accommodations that would be converted and lost under this application. The owner intends to operate all 195 rooms as budget hotel accommodations.

Staff have reviewed the application in accordance with existing Council policy and conclude that the proposal is not supportable. Staff recommend refusal of the application.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Relevant Council Policies for this site include:

- Housing and Homelessness Strategy 2012-2021, adopted June 28, 2011
- Housing and Homelessness Strategy - 3 year Action Plan, adopted June 28, 2011
- Single Room Accommodation By-law no. 8733, enacted October 21, 2003 and last amended December 15, 2009;
- Downtown Eastside Housing Plan, adopted September 1, 2005.

The applicant successfully applied for an exemption for 101 of the 195 rooms in the Patricia Hotel on October 16, 2008. The applicant also applied for a conversion of the remaining 94 rooms, which are not eligible for an exemption, but the application was denied. The staff report and minutes of the Committee meeting regarding that application is attached to this report as Appendices A and B.

In May 2010, the owner of the Patricia Hotel filed a petition in BC Supreme Court seeking to have the SRA By-law declared invalid and to have the Court declare that the Patricia Hotel was not subject to the SRA By-law. This application was unsuccessful. The Court upheld the SRA By-law and ruled that the Patricia Hotel was subject to the SRA By-law. However, the Court ordered Council to reconsider the SRA conversion application that was denied on October 16, 2008. The Court found that the conversion application had not been considered fairly and ordered Council to reconsider the conversion application. Neither party appealed the decision. Council is therefore required to reconsider the Patricia Hotel's application for the conversion of 94 SRA-designated rooms. A copy of the Court's decision is attached as Appendix C.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS refusal of the foregoing. Single Room Occupancy hotels (SROs) are low-income housing stock and maintenance of this stock is a vital part of delivering the Downtown Eastside (DTES) Housing Plan. This application will not result in any contribution to the reserve fund for SRA replacement and thus will not provide an opportunity to replace these lost SROs.

REPORT

Background/Context

On October 21, 2003, Council enacted the Single Room Accommodation (SRA) By-law to regulate the conversion and demolition of SRAs in the Downtown Core. The SRA By-law designated all rooms in residential hotels, rooming houses, and other buildings in the Downtown Core as identified in the "2003 Survey of Low-Income Housing in the Downtown Core". The Survey included buildings in which rooms may have already been converted to a transient guest or other non-residential uses, noting that these hotels remain on the list as they may include rooms rented to permanent residents for all or part of the year even if their primary focus is tourists. The Patricia Hotel was listed as residential hotel in the 2003 survey with some rooms rented out to permanent residents and rooms rented out to transient guests.

Under the SRA By-law, owners wanting to convert or demolish SRA-designated rooms must apply for and obtain an SRA Conversion/Demolition Permit. Conversions include changes of use from permanent resident use to temporary guest use and the re-classification of a building or any portion of a building from Class 1-residential to any other class referred to in the Assessment Act or its regulations. Council evaluates each application on its own merits and may refuse the permit, approve the permit, or approve the permit with conditions. The SRA By-law also allows Council to require the owner to fulfill certain conditions prior to issuing a Conversion/Demolition Permit such as a levy of \$15,000/unit to deposit into a reserve fund for replacement housing.

On September 15, 2005, Council adopted the Downtown Eastside Housing Plan. The Plan addresses the future of housing in Chinatown, Downtown Eastside Oppenheimer District, Gastown, Hastings Corridor, Industrial Lands, Strathcona, Thornton Park, and Victory Square. The Plan calls for maintaining the current low-income housing for low-income people, securing and upgrading SROs, and ensuring that SROs are well managed and maintained. The Plan recognizes the benefit, in the long term, of replacing SROs with self-contained social housing, supportive housing, and smaller suites.

On October 16, 2008, Council heard an application from the owner of the Patricia Hotel to exempt 101 rooms from the SRA By-law, to convert the remaining 94 SRA-designated rooms and to remove the designated rooms and building from the SRA By-law. The application to exempt 101 rooms was approved. The application to convert the other 94 rooms was not approved. At the time, exemptions from the SRA- By-law were only permitted on the basis of use or size. Exemptions for use were based on whether permanent tenants are housed and the building is operated as a commercial hotel. With respect to size, a room qualifies for an exemption if it is 320 square feet or greater. The 94 rooms did not qualify for an exemption because they were less than 320 square feet in size and they were used to house longer staying guests. The rooms were also classified under the Assessment Act and its regulations as Class 1 - Residential. The SRA By-law specifically stated that rooms classified as Class-1 Residential were not eligible for an exemption from the SRA By-law. On December 15, 2009, Council amended the SRA By-law by removing the exemption for commercial hotels from the by-law and the classification by which BC Assessment uses to classify a property as residential is no longer a factor in determining whether the property is eligible for an exemption.

The 2008 SRA conversion application that was denied by Council and the staff report regarding that application is attached as Appendix A. The minutes of the Council hearing are attached as Appendix B.

On July 29, 2011, Council endorsed the Housing and Homelessness Strategy 2012-2021 which describes the City's overall direction on housing, including targets to meet the City's needs and how they will be achieved over the next ten years. The Strategy identifies the different kinds of housing necessary to meet the needs of citizens, as well as ways to improve and better preserve current housing stock. The goals of the Strategy are to end street homelessness and provide more affordable and suitable housing for all Vancouverites.

The Strategy identifies three strategic directions:

1. Increase the supply of affordable housing;
2. Encourage a housing mix across all neighbourhoods that enhances quality of life; and
3. Provide strong leadership and support partners to enhance housing stability.

The 3-year Action Plan 2012-2014 further identifies priority actions to achieve some of the Strategy's goals. The priority action that relate to this application is to protect, update and enhance existing SROs, supportive, social, and purpose built rental housing.

Since the enactment of the SRA By-law in 2003, Council has heard 30 SRA conversion/demolition permit application. All SRA permits were subject to conditions of approval that included contributions to the replacement housing fund for lost SRA accommodations; heritage revitalization agreements and heritage designations to protect the

heritage SRO building; housing agreements to secure units for rental and to control rent levels; and conveyance of renovated units to the City.

In the Downtown Eastside/Oppenheimer District (DEOD) where the Patricia Hotel is located, Council has approved conversion/demolition permits for four buildings, these are listed below:

- 137 East Hastings Street (On-Site) - Approved in April 2006, On-Site is a partnership between the Vancouver Coastal Health Authority and the Portland Hotel Society to convert the vacant 18 SRO rooms into a 30 unit Community Care Facility. The building remains SRA designated.
- 71 East Hastings Street (BC Collateral) - Approved in February 2008, the proposal would see the conversion of the existing 16 SRA rooms into 19 self-contained units of which 18 would remain SRA designated due to the size of the rooms. Council also approved a housing agreement, heritage designation and a heritage revitalization agreement.
- 120 Jackson Avenue (International Inn) - Approved in March 2011, the SRA conversion/demolition permit allowed for the full renovation of 18 SRA-designated rooms, 4 rooms were demolished to enable the construction of 12 self-contained units of social housing. A housing agreement was also approved to secure rents at the shelter component of welfare (currently set at \$375/month).
- 606 Powell Street (Drake Hotel) - Approved in June 2011, the SRA demolition permit will make way for the development of a 146 unit non-market supportive housing project, one of the 14 partnership projects between BC Housing and the City of Vancouver.

Strategic Analysis

The Patricia Hotel, located at 403 East Hastings Street, is a 6-storey building with 195 units located in the area zoned DEOD on the northeast corner of Hastings Street and Dunlevy Avenue, see Figure 1. Built in 1912, this building is not recorded on the heritage registry. The owner purchased the building in 1983 and has since operated the building as a budget tourist hotel with the SRA-designated rooms made available to guests for longer termed stays. There is an existing pub, Pat's Pub and BrewHouse, on the ground floor that holds 245 liquor seats, a microbrewery was added in 2006.



Figure 1: 403 East Hastings, Patricia Hotel

In this current application, the owner is applying for an SRA Conversion/Demolition Permit (see Appendices D and E) to convert the remaining 94 SRA-designated units from permanent residential use to tourist accommodation use and the owner has not agreed to any conditions of approval. As required by the SRA By-law, all 94 rooms must currently be used for long-term monthly stays, these rooms are not available for stays shorter than 30-days. The BC Assessment Authority has classified these 94 rooms as residential rooms because they are allocated for long-term stays. The remaining 101 rooms in the Patricia Hotel are subject to the higher commercial tax rate, because they are available for short-term or daily stays.

The conversion application considered by Council in 2008 is different from the conversion application currently before Council. The applicant has revised their application to address the current status of the property.

The SRA By-law defines “conversion” or “convert” as follows:

- “(a) a change in the form of occupancy, intended form of occupancy, or customary form of occupancy of a designated room from living accommodation for a permanent resident to living accommodation for a transient guest or to another purpose,
- (b) a change in the term or nature of the tenancy to which a permanent resident has the right in respect of a designated room,
- (c) a change in the frequency of the rent payments a permanent resident must make in respect of a designated room,
- (d) an occupancy or use, or the suffering or allowing of an occupancy or use, of a vacant designated room for a purpose other than living accommodation for a permanent resident,
- (e) a repair or alteration to a designated room or any improvement or fixture in it or a replacement of any such improvement or fixture, except for repairs or alterations that are minor in nature and have no material effect on the enjoyment by permanent residents of their living accommodation,
- (f) a re-classification of a building or any portion of a building from Class 1 - residential to any other class referred to in the *Assessment Act* or its regulations, or
- (g) a loss of exemption in respect of a designated room from an obligation to pay or remit hotel room tax under the *Hotel Room Tax Act* or its regulations ...

The owners agent has indicated their intention to operate the Patricia Hotel wholly as a budget hotel. They intend to alter the classification of the rooms from Class -1 residential to another classification and to change the form of occupancy of the 94 rooms from living accommodation for permanent residents to living accommodation for transient guests. A change in room classification and a change in the form of occupancy are conversions [type (a) and type (f)] as defined by the SRA By-law and requires Council approval via a conversion permit application. The applicant has not proposed to address the loss of the SRA-designated rooms and the applicant has not committed to the conversion fee of \$15,000 per room that is contemplated in the SRA By-law.

As outlined in the Vancouver Charter, Council is required to consider a number of factors in deciding whether or not to grant an SRA conversion or demolition permit. These factors include:

- accommodation that will be available to the tenants affected by the conversion or demolition;
 - supply of low cost accommodation in the Downtown Core;
 - condition of the building;
 - replacement of single room accommodation in the City; and
 - recent history of the land and building, and the use and occupancy of the building.
- a. **Accommodation for affected tenants:** The applicant has declined to provide more recent rent roll information but based on data provided by the applicant from their 2008 conversion application and more recent correspondence, the hotel mainly houses transient guests with some guests of long-term stays greater than 30 days. Longer staying guests are mainly comprised of out of town construction workers and employees during the recent Vancouver 2010 Winter Olympic Games, these guests do not appear to be permanent guests as most have provided permanent addresses upon check-in. If this application is approved, the 94 rooms would be converted to short-term tourist use, they will no longer be available to permanent guests for long-term stays and the rooms would be removed from the SRA By-law registry.
- b. **Supply of low cost accommodation in the Downtown Core:** The total low-income housing stock for singles in the Downtown Core includes private owned SROs and social housing units (owned and operated by government and/or non-profit organizations). The low-income stock remained relatively stable between January 2003 (11,384 units), when the SRA By-law was enacted, and December 2011 (11,869 units). In 2011, 24% of the SRO stock was renting at or below the shelter component of welfare (currently set at \$375 per month), compared with 36% at the time of the 2009 survey. All sub-areas of the Downtown Core have seen a decrease in the number of units renting at or below shelter rates, indicating a loss of low-income accommodations.

The following table is extracted from the 2011 Survey of Low-Income Housing in the Downtown Core on the private SRO stock. This survey provides a snapshot of the low-income housing stock. In the table below, units identified as “open” were available and renting as permanent residential accommodation as of December 31, 2011. Units identified as “closed” are those units not available for residential rental at the time of the survey but could be reopened to house permanent residents.

Sub-Area	SRO Units (private market)		
	2011 Stock		
	Open	Closed	Total
Downtown Eastside	3,976	524	4,500
Downtown South	501	79	580
Rest of Downtown Core	81	0	81
TOTAL	4,558	603	5,161

The applicant has indicated to the City that the 94 SRA-designated units at the Patricia Hotel are not currently being rented to permanent residents and thus they have been classified as “closed”. If this SRA conversion permit application is approved, these units would be removed from the “Closed” column and there would be a corresponding decrease of 94 units in the overall stock of SRO units in the City.

- c. **Condition of the Building:** Patricia Hotel is in good physical condition and is well maintained for a hotel that was built in the early 1900's. A microbrewery with three microbrewery tanks was added to the existing ground floor hotel pub in 2006.
- d. **Replacement of SRA in the City:** There would be no replacement of the lost SRA units on-site. The 94 SRA-designated rooms that currently prohibit stays of less than 30 days will be permanently lost and the SRA-designated rooms and the hotel would be removed from the SRA By-law. The applicant would then be able to operate the entire hotel as a budget inn to guests on a short-term basis.
- e. **History of Building and Land:** The Patricia Hotel has a long history in Vancouver as having housed permanent residents until the mid-1980s when it began to be used as a budget hotel for travelers. The Patricia Hotel is also one of Vancouver's oldest music venues and was once the residence of famed jazz musician Ferdinand "Jelly Roll" Morton. Pat's Pub and BrewHouse continues to showcase local musicians and host blues and jazz shows.

The building has routinely had positive inspection reports reflecting a good record of maintenance and business management practices. The owner has been in discussion with Housing Policy staff since the Supreme Court order regarding conversion of the remaining 94 rooms. Staff have received various correspondence from the lawyer retained by the applicant to pursue the conversion.

In summary, under the BC Supreme Court order, staff have reviewed the application in accordance with existing Council policy and conclude that the proposal is not supportable. This application does not meet the goals of the DTES Housing Plan to secure the existing amount of SRO housing for low-income people; to gradually replace SROs with self-contained social housing, supportive housing and smaller suites; to secure and upgrade SROs; or to ensure the remaining SROs are well managed and maintained. Secondly, the intent of the SRA By-law is to regulate the rate of change in the SRO stock and to address the loss of the 94 SRA-designated rooms. The applicant has not proposed or agreed to any conditions of approval that would address or alleviate the lost SRA accommodations. Staff therefore recommend refusal of the application.

CONCLUSION

The BC Supreme Court has ordered that the City reconsider the Patricia Hotel's application for the conversion of 94 SRA-designated rooms. The applicant has submitted an amended application and Council must consider it. The current application would remove the SRA designation from the remaining rooms at the Patricia Hotel and remove the Hotel from the protected designation in the SRA By-law. Staff have determined that the application is not in accordance with existing Council policy and present this application for Council consideration as required by the Court order. Staff recommend refusal of the application.

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October 16, 2008 Report to Council



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: October 7, 2008
Contact: Liza Jimenez
Contact No.: 604.873.7975
RTS No.: 06804
VanRIMS No.: 08-2000-20
Meeting Date: October 16, 2008

TO: Standing Committee on Planning and Environment
FROM: Director of Social Development
SUBJECT: SRA Exemption and Conversion Applications for 403 E. Hastings - Patricia Hotel

RECOMMENDATION

- A. THAT Council authorize an exemption from the requirements of the Single Room Accommodation By-law for 101 SRA-designated rooms at 403 East Hastings Street (Patricia Hotel), see Appendix A.
- B. THAT Council approve a Conversion/Demolition Permit (see Appendix B) to convert and remove from the SRA inventory the remaining 94 units at 403 East Hastings Street conditional upon:
 - i. the payment of \$180,000, which is equivalent to both:
 - (a) the amount of foregone property taxes between 2004-2008; and
 - (b) the assessment of \$15,000 per unit which the City may impose as a condition of approving a conversion, on 12 of the 94 units sought to be converted,to be deposited into the City's reserve fund for the creation of replacement housing; and
 - ii. re-classification of the property to 100% Class 6 - Business/Other for 2008 onward.

OR

CONSIDERATION

- C. THAT Council approve a Conversion/Demolition Permit (see Appendix B) to convert and remove from the SRA inventory the remaining 94 units at 403 East Hastings Street conditional upon re-classification of the property to 100% Class 6 - Business/Other for 2008 onward.

GENERAL MANAGER'S COMMENTS

The General Manager of Community Services RECOMMENDS approval of A and B.

COUNCIL POLICY

On October 21, 2003, Council enacted the Single Room Accommodation By-law to regulate the conversion and demolition of single room accommodation. Owners of designated rooms may apply for an exemption from the By-law provided the necessary evidence is submitted and Council is satisfied that the requirements and conditions of exemption are met.

Owners wanting to convert or demolish designated SRA rooms must apply for and obtain a conversion/demolition permit. Council decides each application on its own merits and may refuse the permit, approve the permit, or approve the permit with conditions.

SUMMARY & PURPOSE

This report provides an overview of the owner's application to exempt and convert all 195 SRA-designated units at the Patricia Hotel. The applicant is seeking Council approval to remove all 195 rooms in the Patricia Hotel from the SRA By-law. Staff are recommending approval of 101 rooms for exemption (Recommendation A) and 94 rooms for conversion (Recommendation B) with the condition of \$180,000 fee to be deposited into replacement housing and the re-classification of the property, for tax assessment purposes, from residential to commercial.

As an alternative to Recommendation B, Council is presented with an option to approve the conversion permit for 94 rooms subject to the only condition of re-classification from residential to classification but without a fee (Consideration C).

This report also provides a rationale for approving a conversion subject to the remittance of a fee equal to the amount of lost tax revenue. The hotel has been operating as a budget hotel for over 20 years, however the applicant has not paid commercial taxes. The applicant does not wish to pay the conversion fee on the basis that the street disorder in the neighbourhood makes it difficult to operate a travel budget hotel, and has resulted in lower than average hotel occupancy.

BACKGROUND

Exemption

One basis for exempting SRA-designated rooms is for the owner to establish that, from the date the SRA By-law was enacted to the present, that:

- Permanent residents have not occupied or customarily occupied the rooms as living accommodation;
- The rooms are not in a building or portion of a building classified under the Assessment Act and its regulations as Class 1 - residential; and
- The rooms are in a building or portion of a building in respect of which the owner has an obligation to pay remit hotel room tax under the Hotel Room Tax Act and its regulations.

Council must grant the exemption if they are satisfied that the designated rooms meet these three exemption conditions.

Conversion

An owner of a building containing SRA-designated rooms must apply for an SRA Conversion/Demolition Permit when there is a change from a permanent resident use to temporary guest use. The SRA By-law requires Council approval for any proposed conversion or demolition of an SRA. The By-law also allows Council to require the owner to fulfill certain conditions prior to issuing a Conversion/Demolition Permit such as a levy of \$15,000/unit to deposit into reserve fund for replacement housing.

DISCUSSION

The Patricia Hotel, located at 403 East Hastings Street, is a 6-storey building with 195 units located in the area zoned Downtown Eastside/Oppenheimer District (DEOD) on the north east corner of Hastings Street and Dunlevy Avenue, see Figure 1 below. This property is not recorded on the heritage registry. There is an existing pub on the ground floor that holds 245 liquor seats. The owner purchased the building in 1983 and has operated the hotel as a budget hotel for travellers since 1986. The applicant initially sought an exemption for all 195 rooms in the Patricia Hotel from SRA designation. However, upon review of the evidence, the Patricia Hotel qualifies for only a partial exemption because it only meets all three exemption criteria for 101 of the 195 units. Under the SRA By-law an exemption application cannot be processed unless all three exemption criteria are met. Therefore, the balance of the units is presented to Council for a conversion permit because of the change in use from permanent to tourist accommodation.

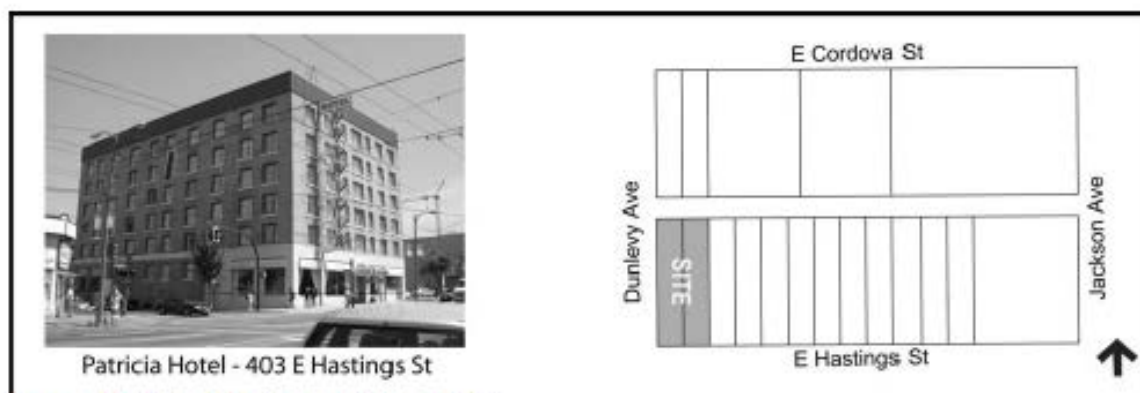


Figure 1: 403 East Hastings, Patricia Hotel

Exemption Application

There are 195 units in the Patricia that are SRA-designated; the owner is applying for an exemption for 101 units (see Appendix A). A meeting was held with the owner of the property and his lawyer, and evidence was collected to recommend a partial exemption for this hotel. There are 101 rooms in the Patricia Hotel that clearly meet all three exemption conditions. The conditions are:

- a) the classification for the hotel under the Assessment Act and its regulations is 100% Class 6 - commercial/retail;
- b) the hotel is subject to and pays hotel room tax under the Hotel Room Tax Act and its regulations; and
- c) on the By-law enactment date and since then, permanent residents, as defined in the By-law, have not occupied or customarily occupied rooms in the hotel as living accommodation.

Under the SRA By-law, one of the conditions of exemption is that the rooms must not be in a building or portion of a building classified under the Assessment Act and its regulations as Class 1 - Residential. Records with the BC Assessment Authority show that historically, just over half this building was classified as Class 6 - Business/Other (commercial). The owner has also provided evidence that he has been remitting hotel room tax. Further, the last condition is that the rooms in question be not occupied or customarily occupied by a permanent resident. Hotel guest ledgers confirm this assertion.

Conversion Application

The owner is applying for an SRA Conversion/Demolition Permit (see Appendix B) to convert the remaining 94-units, which are not eligible for exemption, to tourist use because they have been assessed as residential. It is recommended that Council approve the conversion permit because the hotel has not housed permanent guests for years, the conversion does not displace tenants and there is not a loss of rooms for permanent residents since the hotel has not operated as a residential hotel for two decades. The conversion application is based on the premise that the hotel has been operating as a commercial hotel for some time now and remitted hotel taxes accordingly. However the hotel has not been taxed as 100% commercial as it should have been. It was decided that fair and reasonable conditions of approval of the conversion permit are that a fee equal to the foregone property taxes be paid and the property be reclassified so that future property taxes would be based on 100% commercial assessment (Class 6 - Business/Other).

As outlined in the Vancouver Charter, Council is required to consider a number of factors in deciding whether or not to grant an SRA conversion or demolition permit. These factors include:

- accommodation that will be available to the tenants affected by the conversion or demolition;
- supply of low cost accommodation in the Downtown Core;
- condition of the building;
- replacement of single room accommodation in the city; and
- recent history of the land and building, and the use and occupancy of the building.

This conversion application on the basis of a change in use to tourist accommodation is a formality to legitimize the tenancy.

Accommodation for affected tenants: As of August 2008 the hotel nearly entirely houses transient guests. There are some long stays at the Patricia Hotel; however these do not appear to be permanent guests as most have provided permanent addresses upon check-in.

Supply of low cost accommodation in the Downtown Core: Since the enactment of the SRA By-law in 2003, Council has approved conversion/demolition permits for two SRA-designated building in the Downtown Eastside/Oppenheimer (DEOD) area. This includes the loss of 16 vacant units at BC Collateral (71 E. Hastings) that resulted in 19 self-contained units, approved by Council in February 2008. Further, the conversion of 18 vacant units into a 30-unit SNRF, at Insite (137 E. Hastings) was approved in April 2006.

According to the 2007 Survey of Low-Income Housing in the Downtown Core, vacancy rates have decreased since the 2005 Survey from 10% to 2% in the Downtown Core. On average, SRA rents for the Downtown Eastside were \$384 per month in 2007, an increase of 7.8% since the 2005 Survey. The Patricia Hotel has been operating on a non-monthly basis since 1986, where rates range from \$39-\$135 per night depending on the type of room and the season.

In terms of the low-income stock in the Downtown Core, between 2003 and the beginning of 2008 the total amount of low-income housing stock has virtually remained unchanged. The low income housing stock was 9,968 in 2003 and 9,927 in the beginning of 2008, a 41-unit decrease. The increase in non-market housing (364 units) is almost offset by the SRO loss (405) over the period. The City policy of one-for-one replacement of the SROs is very close to being achieved.

Looking forward from January 2008 to the end of 2010, the one-for-one policy will be more than met as there are 1,514 units of non-market projects in the approval process. These include just over 800 units in the SRO buildings in the Downtown Eastside purchased by the Province over the past year and a half. These recent purchases serve to retain and secure the existing stock from potential closures, unnecessary vacancies, and re-development, while providing safe, supported, low-income housing operated by a non-profit society.

The future additions to the low-income stock also include three of the 12 city sites (606 Powell, 590 Alexander) and projects which are currently under construction such as Woodward's (131 West Hastings) which will be adding 125 self-contained units for low-income singles to the stock. The Lux (65 East Hastings) will produce 92 self-contained units for people who are homeless or at-risk on a City-owned site. The Lux project is funded by the Provincial Homeless Initiative with BC Housing providing the capital and operating funding and Vancouver Coastal Health funding support services; it will be operated by Raincity Housing and Support Society. The Pennsylvania, at 412 Carrall, will have 43 self-contained units and will be operated by PHS Community Services Society.

Condition of the Building: Patricia Hotel is in good physical condition for a hotel that was built in the early 1900's. The hotel has recently undergone renovations to the ground floor pub to construct a micro-brewery.

Replacement of lost SRA units: There would not be replacement of these units as there are no permanent guests that need a replacement unit. The applicant will continue to operate the hotel as a budget inn to guests on a short term basis.

History of Building and Land: The Patricia Hotel has a long history in Vancouver. There have been numerous newspaper articles and other accounts that in anticipation of Expo '86, the owners of the Patricia Hotel evicted all of the long term tenants and converted the building into a budget hotel for travelers. Mr. Olaf Solheim passed away shortly after being evicted from his home for over 40 years at the Patricia Hotel.

The building has routinely had positive inspection reports reflecting a good record of maintenance and business management practices. The owner has been in discussion with the Housing Centre for a number of years regarding an exemption application. Staff have received various correspondence from lawyers retained by the applicant to pursue exemption.

Condition of Approval

When approving an SRA conversion permit Council may also apply conditions. It is recommended that a \$15,000 per room conversion/demolition fee be required. It is recommended that this fee be applied to only 12 of the 94 units, which is the equivalent amount of foregone commercial taxes (\$180,000). It was decided that this is a fair application of the fee since the hotel has been operating at half capacity for over 20 years and only for tourists.

The applicant disagrees with the condition of paying a fee. He argues that the problems in the neighbourhood qualifies the hotel to a discounted tax bill in the form of a residential classification. In support of his position the applicant commissioned a study that reports that the Patricia's occupancy rates are well below the City's average and attributes this loss to the deterioration of the neighbourhood. According to this report, prepared by Foxmor Management, the hotel achieved improvements in average room rates and occupancy until the late 1980's. The report compares the Patricia's average daily rate of \$65 to other similar hotels outside of the Downtown Eastside who have daily rates of \$119. Occupancy rates for 2006 at the Patricia Hotel were 50% less than the City's average of 71%.

In addition, Foxmor Management compares the treatment of the Patricia to other properties that are outside of the Downtown Eastside that have successfully been exempted from the SRA By-law. The report claims that "It is clear that the Patricia is being unfairly treated through the City arbitrarily identifying the hotel as an SRO property, purely on the basis of geography."

The report argues that for the past 15 years the neighbourhood has deteriorated, and this poor image has been communicated via the Internet on various travel advisory websites. The report goes on to summarize many of the comments posted on the web about the Patricia, which mostly speaks negatively about the neighbourhood and positively about the hotel itself. Within two blocks the hotel are several methadone clinics, eleven non-profit housing buildings, and pawnbrokers.

As another option to not levying the fee Council could not approve the SRA Conversion/Demolition Permit application at this time and grant only the partial exemption. This option allows nearly half of the hotel to remain available for long term tenancy, maintains the tax split between commercial and residential, and allows the applicant to apply for a conversion permit at a later date. However, the applicant did not want to pursue this option because he preferred that the entire building not be covered by the SRA By-law.

In summary, staff recommend that the best course of action at this point is to approve a conversion permit subject to a fee of \$180,000 and that in the future taxes will be based on 100% commercial classification. The SRA By-law outlines the factors of consideration for a conversion permit, and the neighbourhood is not a factor. Further, every SRA on the SRA By-law is in the DTES.

CONCLUSION

The SRA By-law is clear in its provisions of exemption criteria. The Patricia Hotel meets all three exemption criteria for 101 units in its hotel. As such, staff are prepared to support the owner's application for exemption for 101 units and recommend that the balance of the units (94 units) be considered as converted since the use has been for tourists for a number of years before and after enactment of the SRA By-law. Further, Council has for consideration that option of approving a conversion permit without conditions as a possibility in light of the applicant's argument that the deterioration of the neighbourhood has strained occupancy and made it difficult to succeed.

Canada
Province of British Columbia
In the Matter of the City of Vancouver
Single Room Accommodation By-law (the "By-law")

AFFIDAVIT

I, WAYNE NOUSEN, of 403 EAST HASTINGS ST
(Deponent) (Property)
Vancouver, British Columbia, make oath and say as follows:

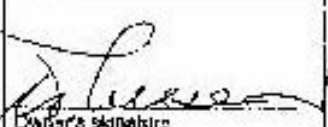
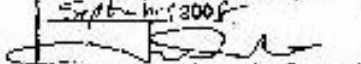
1. I am a director of 328 B.V. BC LIMITED, the registered owner of real property in Vancouver, British Columbia bearing the legal description PARCEL IDENTIFIER: 012-175-030 LOT 30 BLOCK 57 DISTRICT LOT 196 PLAN 196; PARCEL IDENTIFIER: 012-175-049 LOT 31 BLOCK 57 DISTRICT LOT 196 PLAN 196; PARCEL IDENTIFIER: 012-175-059 LOT 32 BLOCK 57 DISTRICT LOT 196 PLAN 196; and civic address 403 East Hastings Street; and as such I have personal knowledge of the matters to which I depose in this affidavit.

2. I make this affidavit in respect of each room ("room") on the property bearing the following room numbers:

Room #'s 101 ROOM
The number of rooms specified by the Assessment Authority.

3. From and after October 23, 2003 to the date of this affidavit:

- (a) no permanent resident as defined in the By-law has occupied or customarily occupied any room as living accommodation as defined in the By-law;
- (b) no room is in a building or portion of a building classified under the Assessment Act of British Columbia or its regulations as Class 1 - residential; and
- (c) each room is in a building or portion of a building in respect of which the owner has an obligation to pay or remit hotel room tax under the Hotel Room Tax Act and its regulations.

Sworn before me at Vancouver, British Columbia this <u>22</u> day of <u>September</u> , 200 <u>8</u> .	
 A Commissioner for taking Affidavits for British Columbia	

IAN G. WADDELL
BARRISTER & SOLICITOR
COMMERCIAL LAW DEPARTMENT
VANCOUVER, B.C. V6K 1K8



CITY OF VANCOUVER
COMMUNITY SERVICES
Housing Centre

**SINGLE ROOM ACCOMMODATION
CONVERSION* or DEMOLITION*
PERMIT APPLICATION**

Civic Address: 403 East Hastings St. SR No. _____
 Legal Description: Lot 20, 31, 32, Subdivision 100, Block 100, District No. 196
 Building Name: Patricia Hotel

This area must be completed by the person signing this application.

Your Name: WALTER NELSON You are the:
 01 Property Owner
 02 Agent for Property Owner

Working Address: #102 - 403 East Hastings St.
 City: Vancouver 130
 Postal Code: V6A 1P6
 Phone Number: 604-255-4301
 Company Name: 336156 BC Limited

Notes: If one applicant is NOT the property owner, a letter of consent signed by the owner must also be submitted.

Owner's Information (If owner is a corporation, provide Incorporation Certificate and names and addresses of all directors & shareholders)

Property Owner's Name: Wayne Nelson President & Director of 336156 BC Limited
 Address: #102 - 403 East Hastings St. City: Vancouver
 Postal Code: V6A 1P6 Phone Number: 220-7211

Property Owner's Name: _____
 Address: _____ City: _____
 Postal Code: _____ Phone Number: _____

Property Owner's Name: _____
 Address: _____ City: _____
 Postal Code: _____ Phone Number: _____

This application is for: (Check applicable box)

001 Convert occupancy of designated room(s)
 002 Change form or nature of (designated) designated room(s)
 003 Change frequency or time payments for designated room(s)
 004 Convert vacant designated room(s)
 005 Repair or alter designated room(s)
 006 Demolish designated room(s)
 *See definitions of "conversion" and "demolition" on reverse side of form under "Explanatory Notes"

Number of rooms in this building: 6
 Number of lots in this building: 195
 Number of one-30A units in this building: -

Describe nature of the proposed conversion or demolition:
Rooms are used for
tourist accommodation. This is and
has been for some time a tourist hotel.

Please attach application as required

City of Vancouver Single Room Accommodation Conversion or Demolition Permit Application Worksheet

THIS SECTION MUST BE COMPLETED.		OFFICE USE
As a result of any permanent residents needing to relocate as a result of this proposed conversion?		
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
If Yes, you must provide the following information:		
1.	The number of permanent residents that will be affected?	
2.	List of names of the residents needing relocation, their room nos. and length of residency	
3.	Proposed relocation strategy for existing tenants	
You must also include with this application the following required supporting documents:		
1.	An affidavit, sworn by the owner or, if the owner is a corporation, by a director of the corporation, setting out why the owner wants to convert or demolish the designated room	
2.	Records required under the Rental Guest Registration Act or Hotel Room Tax Act, such as payment records, guest ledgers, and daily room records, for the current calendar year and for the three immediately preceding calendar years, in respect of the designated room	
3.	One set of floor plans of the existing and proposed floor layout as described below*	
4.	Tentative schedule for construction (if applicable)	

* Explanatory Notes:

- Definition of "conversion" or "convert" means the following under the Single Room Accommodation By-law:
 - (a) a change in the form of occupancy, intended form of occupancy, or customary form of occupancy of a designated room from living accommodation for a permanent resident to living accommodation for a transient guest or for another purpose;
 - (b) a change in the term or nature of the tenancy to which a permanent resident has the right in respect of a designated room;
 - (c) a change in the frequency of the rent payments a permanent resident must make in respect of a designated room;
 - (d) an occupancy or use, or the suffering or allowing of an occupancy or use, of a vacant designated room for a purpose other than living accommodation for a permanent resident;
 - (e) a repair or alteration to a designated room or any improvement or fixture in it or a replacement of any such improvement or fixture, except for repairs or alterations that are minor in nature and have no material effect on the enjoyment by permanent residents of their living accommodation;
 - (f) a reclassification of a building or any portion of a building from Class 1 residential to any other class referred to in the Assessment Act and its regulations; or
 - (g) a loss of exemption in respect of a designated room from an obligation to pay or remit hotel room tax under the Hotel Room Tax Act and its regulations.*
- Definition of "demolish" or "demolition" means the following under the Single Room Accommodation By-law:
 - (a) to pull, knock, or tear down or to raise, wholly or partially, a designated room;
- Floor plans must be legible, drawn to a scale NOT less than 1/8" to 1", and must:
 - (a) include dimensions and layout of all floor levels including basement and underground parking;
 - (b) identify on each floor:
 - rooms that provide accommodation for permanent residents;
 - rooms that provide accommodation for transient guests/residents;
 - rooms that provide other non-residential accommodation uses (e.g., lounge, storage rooms, etc.);
 - (c) indicate on each floor the square footage of all rooms and common areas.

Office Use Only	

As owner or owner's agent, I have verified that the information contained within this document and associated applications and plans is correct, and describes a use, a building or a work which complies with all relevant bylaws and statutes. I acknowledge that responsibility for by-law compliance rests with the owner and the owner's employees, agents and contractors. I will indemnify and save harmless the City of Vancouver, its officials, employees and agents against all claims, liabilities and expenses of every kind, in respect of anything done or not done pursuant to this application or fact sheet or building permit, including negligence and/or the failure to observe all by-laws, acts or regulations.

Further, I acknowledge that any information and documents provided with this SRRA conversion/demolition permit application will be attached to the report to Council and is, or will, be made available to the public.

SIGNED AT VANCOUVER BC THIS 15th DAY OF Sept 2008 W. Nelson
Signature of applicant

Canada
Province of British Columbia
In the Matter of the City of Vancouver
Single Room Accommodation By-law (the "By-law")

AFFIDAVIT

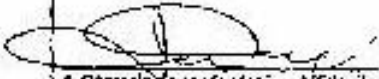
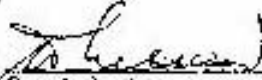
I, MILYANNE NELSON of 403 WEST HASTINGS ST.
(Print Name) (City/Town/Village)
Vancouver, British Columbia, make oath and say as follows:

1. I am a director of 338186 B.C. LIMITED, the registered owner
(Vancouver, British Columbia)
of real property in Vancouver, British Columbia bearing the legal description
PARCEL IDENTIFIER: 012-175-030 LOT 30 BLOCK 57 DISTRICT LOT 198 PLAN 198;
PARCEL IDENTIFIER: 012-175-049 LOT 31 BLOCK 57 DISTRICT LOT 199 PLAN 198;
PARCEL IDENTIFIER: 012-175-058 LOT 32 BLOCK 57 DISTRICT LOT 198 PLAN 198;
and civic address 403 West Hastings Street, and as such have personal knowledge of the
matters to which I depose in this affidavit.

2. I wish to convert or demolish the following rooms in the building on the property for
the following purpose:

Room Nos: 74 rooms

Purpose: this is to facilitate a
technical provision
that rooms can be hotel rooms
only.

Sworn before me at Vancouver, British Columbia this <u>15</u> day of <u>September</u> 200 <u>8</u>		
A Commissioner for taking Affidavits for British Columbia IAN G. WADDELL		Owner's signature

BAINBRIDGE & SOLICITOR
3209 WEST END AVENUE
VANCOUVER, BRITISH COLUMBIA

October 16, 2008 Planning and Environment Committee Meeting Minutes

Standing Committee of Council on Planning and Environment
Minutes, Thursday, October 16, 2008

3

- vii. Signing a Good Neighbour Agreement with the City prior to business license issuance; and
- viii. A Time-limited Development Permit.

CARRIED UNANIMOUSLY

3. SRA Exemption and Conversion Applications for 403 East Hastings Street - Patricia Hotel
(October 7, 2008)

Staff from the Department of Social Development reviewed the report and along with the City Manager, responded to questions.

The Committee heard from two speakers, both in favour of Recommendations A & C of the report.

MOVED by Councillor Anton
THAT the Committee recommend to Council

- A. THAT Council authorize an exemption from the requirements of the Single Room Accommodation By-law for 101 SRA-designated rooms at 403 East Hastings Street (Patricia Hotel), attached as Appendix A to Administrative Report *SRA Exemption and Conversion Applications for 403 East Hastings Street- Patricia Hotel* dated October 7, 2008.
- B. THAT Council approve a Conversion/Demolition Permit (see Appendix B of Administrative Report *Exemption and Conversion Applications for 403 East Hastings Street- Patricia Hotel* dated October 7, 2008.) to convert and remove from the SRA inventory the remaining 94 units at 403 East Hastings Street conditional upon re-classification of the property to 100% Class 6 - Business/Other for 2008 onward.

carried

AMENDMENT MOVED by Councillor Louie

THAT Clause B be replaced by the following:

“THAT Council approve a Conversion/Demolition Permit (see Appendix B) to convert and remove from the SRA inventory the remaining 94 units at 403 East Hastings Street conditional upon:

- i. the payment of \$255,000, which is equivalent to both:
 - (a) the amount of foregone property taxes between 2004-2008; and

- (b) the assessment of \$15,000 per unit which the City may impose as a condition of approving a conversion, on 17 of the 94 units sought to be converted, to be deposited into the City's reserve fund for the creation of replacement housing; and
- ii. re-classification of the property to 100% Class 6 - Business/Other for 2008 onward."

LOST (Tie Vote)

(Councillors Anton, Capri, Ladner, Lee and Mayor Sullivan opposed)

The amendment having lost, the Committee agreed to separate the vote on the components of the motion.

A CARRIED UNANIMOUSLY AND B LOST (Tie Vote) (Councillors Cadman, Chow, Deal, Louie and Stevenson opposed to B)

FINAL MOTION AS APPROVED.

THAT Council authorize an exemption from the requirements of the Single Room Accommodation By-law for 101 SRA-designated rooms at 403 East Hastings Street (Patricia Hotel), see Appendix A of Administrative Report *Exemption and Conversion Applications for 403 East Hastings Street- Patricia Hotel* dated October 7, 2008.

The Committee adjourned at 4:30 p.m.

Supreme Court Decision

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: 338186 B.C. Limited v. City of Vancouver,
2011 BCSC 336

Date: 20110321
Docket: S103783
Registry: Vancouver

Between:

338186 B.C. Limited (The Patricia Hotel)

Petitioner

And

City of Vancouver

Respondent

Before: The Honourable Madam Justice Gerow

Reasons for Judgment

Counsel for the Petitioner:

I.G. Waddell

Counsel for the Respondent:

G. Murray

Place and Date of Hearing:

Vancouver, B.C.
December 6, 2010

Place and Date of Judgment:

Vancouver, B.C.
March 21, 2011

[1] The petitioner 338186 B.C. Limited operates the Patricia Hotel located at 403 East Hastings Street, Vancouver, B.C. The Patricia Hotel caters to budget travellers and such niche markets as shipping industry crews and long haul transportation workers. In October 2003, the City of Vancouver enacted the Single Room Accommodation By-law No. 8733 (the "SRA By-law") which impacted the petitioner's ability to deal with its long stay rental rooms. The petitioner seeks an order declaring that the SRA By-law does not apply to the Patricia Hotel. Alternatively, the petitioner seeks to have the SRA By-law set aside on the basis that it is discriminatory, in bad faith, uncertain, vague, procedurally unfair, without sufficient municipal purpose and beyond the statutory powers given to the Province and the City. In its petition, the petitioner also alleges the SRA By-law infringes the petitioner's rights under the *Canadian Charter of Rights and Freedoms*. However, at the hearing the petitioner conceded that the *Charter* does not apply in this case.

[2] The City asserts that it had the statutory authority to pass the SRA By-law. The City acknowledges the SRA By-law is discriminatory but says the discrimination is done in a lawful manner. As well, the City asserts there is nothing vague or uncertain about the SRA By-law. The City seeks an order that the petition be dismissed with costs.

[3] The issues are:

- 1) Did the City have the statutory power to enact the SRA By-law?
- 2) Should the SRA By-law be quashed on the basis it is uncertain, vague or discriminatory?
- 3) What is the applicable standard of review? and
- 4) What is the appropriate remedy, i.e. is the petitioner entitled to a declaration that the SRA By-law does not apply to the Patricia Hotel?

Background

[4] The petitioner purchased the Patricia Hotel in 1983. At the time, the hotel was in need of repair. After acquisition, the hotel closed for renovations which included rewiring, replumbing, installing new bathrooms, and replacing carpets, drapes and furniture.

[5] By mid-1986, the Patricia Hotel was competing with other downtown hotels catering to the budget traveller and such niche markets as shipping industry crews and long haul transportation workers. The neighbourhood has deteriorated over the past 15 years making the operation of the hotel difficult, but the Patricia Hotel with its pub, music, historic lobby and efficient staff has continued to provide a clean and reputable product. The Patricia Hotel is included in the Ministry of Tourism Accommodation Guide, is a long-standing member of Tourism Vancouver and has earned a Canada Select star rating.

[6] In addition to offering rooms for budget travellers, the Patricia Hotel offers extended stay rooms to the public. According to the petitioner, these rooms are occupied by people in town for educational courses, medical treatment, construction workers on specific or seasonal projects, and people who have moved to Vancouver and are looking for accommodation to rent or buy.

[7] Hotels which provide long term rooms for housing for people on social assistance, who often have addiction and mental health problems, have been referred to in a number of reports as Single Room Occupancy ("SRO") hotels. In the 1990s, the federal and provincial governments reduced funding for social housing, including SRO hotels. These rooms have also been referred to as Single Room Accommodation ("SRA"). The terms SRO and SRA have been used interchangeably by the City in enacting the SRA By-law.

[8] The City became concerned at the possible loss of existing social housing by means of the conversion of hotels providing SROs or SRAs to market housing or conventional hotels.

[9] As a result, the Vancouver City Council passed the SRA By-law on October 21, 2003, to cover SRO or SRA hotels in the geographical area defined in the bylaw as Clark to Burrard and False Creek to Terminal Avenue (the "Downtown Core"). One of the goals the Council had in passing the SRA By-law was to ensure there were no evictions as a result of the 2010 Winter and Paralympic Winter Games.

[10] In a September 9, 2003 policy report from the General Manager of Community Services to Council on the regulation of single room accommodation (the "2003 Report"), SRA was defined as follows:

The typical SRA is a 100 sq. ft. in area with the bathroom down the hall, and perhaps minimal cooking facilities, e.g. a hot plate. Most are privately owned and operated. The tenants are covered by the Residential Tenancy Act. The majority of SRAs provide minimal quality of housing, and the City's policy is to replace SRA housing over time with safe and secure self-contained (sleeping, living, kitchens and bathrooms) dwelling units affordable to low-income singles.

[11] The City's Housing Centre conducts a Survey of Low-Income Housing in the Downtown Core biannually. The May 2003 Survey (the "2003 Survey") included a list of low income housing stock from earlier surveys, including both rooming houses and residential, which the City considered provided SRO rooms. The 2003 Survey distinguished two types of SRO buildings, one of which was residential hotels licensed to include a pub or lounge on the premises. SROs are defined in the 2003 Survey as follows:

A typical SRO unit consists of one room about ten by ten feet, with no private bathroom. Residents share common bathrooms, and sometimes cooking, facilities with other tenants. SRO units without cooking facilities are called sleeping units; those with cooking facilities (a fridge, stove/hot plate, and sink) but no three-piece bathroom are called housekeeping units. Some SRO buildings have self-contained units and/or units with two rooms, as well as single-room sleeping/housekeeping units.

[12] The 2003 Survey went on to note that the distinction between residential and tourist hotels is not always clear-cut:

Most tourist hotels can be distinguished on the basis of the physical quality of their rooms, their higher cost, and the letting of rooms only on a daily basis. However, the distinction between the lowest quality "budget" tourist hotels

and highest quality residential hotels sometimes involves a decision about the intended market for the rooms. The issue is complicated by seasonal changes - rooms may be let daily to tourists in the summer, reverting to weekly or monthly rentals in the winter. Hotels may also have a mix of tourist and residential rooms. While hotels that serve tourists exclusively are excluded from the survey, "mixed" hotels are included and all their rooms are counted in the inventory - unless the building has been converted to entirely tourist use since 1991 and is now going back to some monthly rentals.

[13] The 2003 Survey includes the Patricia Hotel in its list of residential hotels providing SRO units in the Downtown Core.

[14] Before Council adopted the SRA By-law, the City commissioned a study by Price Waterhouse Coopers to help the City better estimate the number of SRO units that would be lost to conversion or other uses. The PricewaterhouseCoopers' report did not include the Patricia Hotel in the list of budget or tourist hotels containing SRO housing.

[15] Although the petitioner asserts that one of the issues is that there is no distinction made between SROs and SRAs, it is clear that the terms have been used interchangeably. The *Vancouver Charter*, S.B.C. 1953, c. 55, s. 193D gives the power to the City to designate rooms what rooms are covered by the SRA By-law:

(1) "single room accommodation" means property designated as single room accommodation under subsection (3) (b).

(3) Without limiting subsection (2), a by-law under this section may do one or more of the following:

(a) apply to all or part of the city, as specified in the by-law;

(b) designate, by specific designation or description, all, part or proportions of buildings as single room accommodation for the purposes of the by-law;

[16] The SRA By-law designated the Patricia Hotel as a property subject to the bylaw.

[17] The SRA By-law provided an exemption process for rooms larger than 320 square feet and rooms used for transient guests or for other purposes, not including living accommodation for permanent residents. To qualify for the

exemption, a hotel had to provide confirmation it did not provide rooms for permanent residents, it did not have any rooms classified as residential by the B.C. Assessment Authority, and that the rooms were subject to hotel tax.

[18] The SRA By-law also provided for a conversion. A hotel could apply to City Council to convert a SRA room to a non-SRA room at the cost of \$5,000 per room. In 2007, the SRA By-law was amended to increase this fee to \$15,000 per room.

[19] The downtown Ramada Inns, the Comfort Inn and Howard Johnson, which were on the list attached to the 2003 report, were given exemptions.

[20] The petitioner applied for an exemption and a conversion for the Patricia Hotel in September 2008.

[21] At that time, the Director of Social Development provided a report dated October 7, 2008, recommending the exemption of 101 rooms and the conversion of 94 rooms in the Patricia Hotel, stating in part:

The owner is applying for an SRA Conversion/Demolition Permit...to convert the remaining 94-units, which are not eligible for exemption, to tourist use because they have been assessed as residential. It is recommended that Council approve the conversion permit because the hotel has not housed permanent guests for years, the conversion does not displace tenants and there is not a loss of rooms for permanent residents since the hotel has not operated as a residential hotel for two decades. The conversion application is based on the premise that the hotel has been operating as a commercial hotel for some time now and remitted hotel taxes accordingly. However the hotel has not been taxed as 100% commercial as it should have been. It was decided that fair and reasonable conditions of approval of the conversion permit are that a fee equal to the foregone property taxes be paid and the property be reclassified so that future property taxes would be based on 100% commercial assessment.

[22] Council granted the exemption of 101 rooms but denied the application for the conversion of 94 rooms.

Petitioner's position

[23] The petitioner seeks a declaration that as a matter of interpretation, the SRA By-law does not apply to the Patricia Hotel. The petitioner concedes that s. 193D(2)

of the *Vancouver Charter*, S.B.C. 1953, c. 55 gives the City power to “regulate the conversion and demolition of single room accommodation.” However, the petitioner asserts that when the SRA By-law was drafted and passed, it was not intended to regulate a property like the Patricia Hotel.

[24] The purpose of the SRA By-law was to stop conversion of social housing stock. If a room was to be removed from that stock a fee was to be paid to fund replacement housing in order to deter conversions.

[25] The Patricia Hotel was not social housing when the SRA By-law was enacted. Rather, it was a hotel with some extended stay rooms like some other hotels in the geographic area impacted. By the City’s own admission, the Patricia Hotel has been a budget hotel for over 20 years. It does not have long term ‘permanent’ residents on pensions or social assistance as is typical of an SRO hotel.

[26] The petitioner asserts that the City is requiring the Patricia Hotel to do something it is not really required to do, i.e. to convert. A conversion is defined as either a change in use or a demolition. By that definition, the Patricia Hotel converted long before the SRA By-law.

[27] The original list of possible SRO hotels compiled by the City was completely arbitrary, and the Patricia Hotel should not have been included on it.

[28] By designating the Patricia Hotel as subject to the SRA By-law and then rejecting the Patricia Hotel’s request for an exemption, the City put itself in the absurd position of asking the Patricia Hotel to apply to “convert” 94 of its hotel rooms at a cost of up to \$15,000 when the Patricia Hotel is not requesting a change in use or a demolition.

[29] In the alternative, the petitioner is seeking a declaration that the City exceeded its legal authority in enacting the SRA By-law by adding a condition for exemption requiring that a building not be designated in whole or in part residential by the B.C. Assessment Authority.

[30] At the time it was enacted, s. 3.2 of the SRA By-law provided that a hotel would be exempted if three conditions were met. They were:

- 1) permanent residents had not occupied or customarily occupied the rooms as living accommodation;
- 2) the rooms are not in a building or portion of a building classified under the *Assessment Act*, R.S.B.C. 1996, c. 20 as Class I - residential; and
- 3) the owner has an obligation to remit hotel tax under the *Hotel Room Tax Act*, R.S.B.C. 1996, c. 207 for the rooms it rents.

[31] The petitioner submits that the Province never intended to give the City power to legislate condition 2. The fact that the B.C. Assessment Authority assessed the Patricia Hotel as split residential/commercial may be relevant for taxation matters, but it does not, in and of itself, make the Patricia Hotel a single room accommodation hotel. The Patricia Hotel is a tourist hotel with some extended stay rooms, like other hotels in the City. The B.C. Assessment Authority is a provincial body with different criteria for assessment.

[32] In the further alternative, the petitioner argues the SRA By-law is *ultra vires* because it is discriminatory, there is not sufficient "municipal purpose," it is uncertain and vague and there has been a lack of procedural fairness and bad faith on the part of the City.

City's position

[33] The City takes the position that s. 193D of the *Vancouver Charter* authorizes the Council to adopt the SRA By-law. Section 2.1 of the SRA By-law states the bylaw governs the Downtown Core. According to the 2003 Report, the area was chosen for two basic reasons: first, the City had an inventory of housing in the area; and second, the majority of the City's single room accommodation stock was in the area.

[34] The SRA By-law designated the Patricia Hotel as a property subject to the bylaw. The Patricia Hotel applied for a conversion and exemption in 2008. At the time Council considered the exemption, designated single room accommodation was entitled to an exemption if the conditions set out in s. 3.2 of the SRA By-law were met. Since then, the basis for exemption has been narrowed.

[35] At the time the petitioner applied for an exemption and a conversion, Council determined that 101 of 195 rooms in the Patricia Hotel were entitled to the exemption. The other 94 rooms did not qualify for the exemption because they were being taxed as residential, not commercial, and were ordinarily occupied by 'permanent' residents, not transient guests. The City submits that, therefore, Council acted reasonably in not permitting the conversion.

[36] The City also argues that while the SRA By-law discriminates, it does so in a lawful manner, and it is not vague or uncertain.

Analysis

Did the City have the statutory power to enact the SRA By-law?

[37] For the following reasons I conclude that correctness is the appropriate standard of review in determining whether enacting the SRA By-law was *ultra vires* the City's powers.

[38] Municipalities may exercise only those powers that are expressly conferred upon them by statute, those powers that are necessarily and fairly inferred by statute, and those powers that are essential to effecting the purposes of the municipality: *R. v. Sharma*, [1993] 1 S.C.R. 650.

[39] It is clear from the case law that in determining whether the City had the statutory authority or jurisdiction to pass the bylaw, i.e. whether the bylaw is *ultra vires*, the standard of review is correctness: *London (City) v. RSJ Holdings Inc.*, [2007] 2 S.C.R. 588 at para. 37; *Western Forest Products Inc. v. Capital Regional District*, 2009 BCCA 356 at paras. 41-47; *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342 at paras. 29-33.

[40] In *Rascal Trucking*, the Supreme Court of Canada noted at paras. 18 and 20 that the authorities support a broad and purposive approach on the interpretation of municipal statutes, taking into consideration the scheme of the act as a whole with a view to ascertaining the legislature's true intent.

[41] Section 262 of the *Local Government Act*, R.S.B.C. 1996, c. 323 provides that the court may set aside a bylaw for illegality.

Did the City have the statutory authority to enact the SRA By-law?

[42] For the following reasons, I conclude that the City had the authority to enact the SRA By-law, including the reference to the *Assessment Act*.

[43] The relevant legislation is s. 193D of the *Vancouver Charter* which provides:

(1) In this section:

"conversion" means conversion as defined under subsection (3) (d);

"delegate" means a delegate under subsection (3) (k);

"demolition" means demolition as defined under subsection (3) (d);

"permit" means a permit required under subsection (3) (e);

"low cost accommodation" means accommodation that is generally affordable to persons who reside in single room accommodation;

"single room accommodation" means property designated as single room accommodation under subsection (3) (b).

(2) The Council may, by by-law, regulate the conversion and demolition of single room accommodation.

(3) Without limiting subsection (2), a by-law under this section may do one or more of the following:

(a) apply to all or part of the city, as specified in the by-law;

(b) designate, by specific designation or description, all, part or proportions of buildings as single room accommodation for the purposes of the by-law;

...

(d) define for the purposes of the by-law

(i) what change in the form of occupancy of single room accommodation or other changes constitutes conversion, and

(ii) what constitutes demolition of single room accommodation;

(e) prohibit a person from undertaking the conversion or demolition of single room accommodation without first having obtained a permit under this section approving that conversion or demolition;

(f) provide that a permit may be limited in time;

(g) establish application fees for permits, which may be different for different values, types and extent of conversion or demolition;

(h) establish amounts that may be required under subsection (5) (d), which may be different for types or extent of conversion or demolition;

(i) establish conditions for the purposes of subsection (5) (g);

...

(m) establish exemptions from the by-law for classes of buildings and classes of persons.

...

(5) The Council or delegate may specify one or more of the following as conditions of a permit or of approving a permit:

(a) that alternate accommodation, not designated under subsection (3) (b) as single room accommodation at the time of the permit application, be provided in the same area at a similar rent;

(b) that comparable or better accommodation, either in accommodation required under paragraph (a) or in other accommodation at a similar rent in the same area, be made available to the tenants being displaced by the conversion or demolition;

(c) that the applicant enter into a housing agreement under section 565.2;

(d) that an amount specified under subsection (3) (h) be paid to the city for deposit into a reserve fund for the provision of accommodation to replace the accommodation that is to be converted or demolished under the permit;

(e) that the conversion or demolition be in accordance with the sequence and timing specified in the permit;

(f) that the applicant provide a specified amount of security, in a form satisfactory to the Council or delegate, to guarantee the performance of the other conditions of the permit;

(g) other conditions specified by by-law under subsection (3) (i);

(h) other conditions that the Council or delegate considers will encourage the supply of low cost accommodation.

(6) In determining whether to approve a permit, the Council or delegate must consider all of the following:

- (a) the accommodation that will be available to the tenants affected by the conversion or demolition;
- (b) the supply of low cost accommodation in the part of the city to which the by-law applies and in other parts of the city;
- (c) the condition of the building that is the subject of the permit;
- (d) the need to replace or improve, over time, single room accommodation in the city.

(7) In determining whether to approve a permit, the Council or delegate may also consider any other matters that the Council or delegate considers relevant.

...

(11) A designation as single room accommodation may apply to property that, in the opinion of Council, could have been designated as single room accommodation on July 11, 1997 if the Council had had the authority to make that designation on that date.

(12) Section 569 (1) applies in relation to the exercise of any power or duty under this section by the Council or a delegate, or by any inspector, official or board of the city.

[44] Section 569(1), which is referred to in s. 193D(12), provides:

(1) Where a zoning by-law is or has been passed, amended, or repealed under this Part, or where Council or any inspector or official of the city or any board constituted under this Act exercises any of the powers contained in this Part, any property thereby affected shall be deemed as against the city not to have been taken or injuriously affected by reason of the exercise of any such powers or by reason of such zoning and no compensation shall be payable by the city or any inspector or official thereof.

[45] Section 193D authorizes the City Council to adopt a bylaw governing single room accommodation. The Council adopted the SRA By-law in October 2003.

[46] In *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241, the Supreme Court discussed the decisions made by municipalities at para. 23:

In *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342, 2000 SCC 13, at para. 36, this Court quoted with approval the following statement by McLachlin J. (as she then was) in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231, at p. 244:

Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise

caution to avoid substituting their views of what is best for the citizens for those of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction" which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives. [Emphasis in original.]

[47] The impugned provision in the SRA By-law is the former s. 3.2(b) which, in 2003, provided:

3.2 The conditions of exemption referred to in section 3.1 are as follows:

(a) a permanent resident does not occupy or customarily occupy the room as living accommodation;

(b) the room is not in a building or portion of a building classified under the *Assessment Act* and its regulation as Class 1 - residential; and

(c) the room is in a building or portion of a building in respect of which the owner has an obligation to pay or remit hotel room tax under the *Hotel Room Tax Act* and its regulations.

[48] In 2007, the definitions of permanent resident and transient guest in the SRA By-law were amended to read as follows:

"permanent resident" means an individual who, in return for rent, occupies or usually occupies a room as his or her residence, and does so for at least 30 days;

"transient guest" means a tourist, hosteller, or other individual who, in return for rent, occupies a room on a transient basis for business or pleasure, and not as his or her residence, and does so for fewer than 30 days.

[49] The petitioner asserts that the City did not have the statutory power to legislate condition 3.2 (b) because it mixes tax questions with social housing objectives. However, s. 193D gives the City a broad power to designate what is a single room accommodation, including designating "by specific designation or description, all, part or proportions of buildings as single room accommodation for the purposes of the by-law." In the SRA By-law, single rooms that meet the three conditions are exempted. Although the petitioner asserts that the classification under

the *Assessment Act* should not be considered in determining whether a single room is subject to the SRA By-law, no authority was provided to support that proposition.

[50] The purpose of the SRA By-law was to prevent housing used by “permanent residents” from being converted to commercial use. In my view, nothing in the legislation prohibits the City from making it a condition for exemption that the property not be classified as residential by the Assessment Authority.

[51] As a result, I have concluded that the City had the authority to pass the SRA By-law.

Should the SRA By-law be quashed because it is uncertain, vague or discriminatory?

[52] For the following reasons, I conclude that the SRA By-law should not be quashed on the basis it is uncertain, vague or discriminatory.

[53] The following test for vagueness was confirmed in *Service Corporation International (Canada) Ltd. v. City of Burnaby*, 2001 BCCA 708 at para. 24:

The test was neatly stated by Mr. Justice Romilly in *Sundher v. Surrey*, (1995), 30 M.P.L.R. (2d) 250 (B.C.S.C.) at para.37:

Thus, the test for vagueness is whether the provision in the by-law is so uncertain that it does not provide an adequate basis for reaching a conclusion about its meaning by reasoned analysis applying legal criteria and taking into account the context of the legislative enactment.

[54] The petitioner asserts the SRA By-law is vague and uncertain because it does not distinguish between single room occupancy and single room accommodation. However, as stated earlier, the City used the terms interchangeably and the SRA By-law contains a definition of single room accommodation in s. 2.2. When the SRA By-law was enacted, the exemption criteria were clearly set out in s. 3.2. Accordingly, I conclude that there is no uncertainty as to the meaning of a “single room accommodation” in the bylaw.

[55] The petitioner argues that the SRA By-law is discriminatory because hotels in some areas of the city that operate in the same manner as the Patricia Hotel are not impacted by the bylaw.

[56] The City concedes that the SRA By-law is discriminatory but says that the discrimination is permitted by statute. The general principle regarding municipal discrimination is that it is forbidden unless authorized by statute: *Montreal (City of) v. Arcade Amusements Inc.*, [1985] 1 S.C.R. 368; and *Allard Contractors Ltd. v. Coquitlam (District)*, [1993] 4 S.C.R. 371.

[57] As stated in *Allard Contractors* at para. 76:

In two recent decisions, this Court has had occasion to consider the question of what constitutes discrimination in the municipal law sense: *R. v. Greenbaum*, [1993] 1 S.C.R. 674, and *R. v. Sharma*, [1993] 1 S.C.R. 650. I do not find it necessary to re-examine the approach taken in those cases. It is sufficient to note that a by-law discriminates illegally when such discrimination is not authorized by enabling legislation. As stated in *Sharma* (at p. 668): "discrimination can only occur where the enabling legislation specifically so provides or where the discrimination is a necessary incident to exercising the power delegated by the province". In a phrase, discrimination may be either expressly or impliedly authorized: see *Montréal (City of) v. Arcade Amusements Inc.*, *supra*, at p. 414.

[58] Section 193D(3) authorizes a by-law which may:

- (a) apply to all or part of the city, as specified in the by-law;
- (b) designate, by specific designation or description, all, part or proportions of buildings as single room accommodation for the purposes of the by-law;

[59] In this case, s. 193D allows for discrimination in that it allows the City to designate areas of the City and designate parts of buildings as single room accommodation. There is no evidence of illegal discrimination in the SRA By-law.

Upon what standard should the City's decision that the Patricia Hotel was subject to the SRA By-law be reviewed?

[60] The decision in *Rascal Trucking* dealt with the applicable standard of review for the issue of whether the City had the jurisdiction to pass the impugned bylaw, and for the exercise of an authorized or *intra vires* municipal action. At para. 37, the

Court held that the standard for review of *intra vires* municipal actions should be patent unreasonableness.

[61] In *Dunsmuir v. New Brunswick*, [2008] 1 S.C.R. 190, the Supreme Court of Canada collapsed the standard of patent unreasonableness into the general reasonableness standard. Reasonableness was defined at para. 47:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[62] In *Canada (Citizenship and Immigration) v. Khosa*, [2009] 1 S.C.R. 339, the Court commented further on the reasonableness standard at para. 59:

Reasonableness is a single standard that takes its colour from the context. One of the objectives of *Dunsmuir* was to liberate judicial review courts from what came to be seen as undue complexity and formalism. Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

[63] In *O'Flanagan v. Rossland (City)*, 2009 BCCA 182 at para. 19, the Court of Appeal held that the standard of review for the exercise of an *intra vires* municipal action is reasonableness. At para. 24, Hall J. writing for the majority stated:

... What I draw from the case of *Rascal Trucking*, cited to us by counsel in this case, is that courts should be slow to impose their notions of what is fair or appropriate in place of decisions of those in local government. As McLachlin J. (as she then was), dissenting, observed in *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 at 244, 110 D.L.R.

(4th) 1 (cited in *Rascal Trucking*), "courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils."

[64] Accordingly, while the decision of the Council not to exempt the Patricia Hotel from SRA By-law is subject to review for reasonableness, a great deal of deference should be shown to the Council.

Was the City's decision that 94 rooms of the Patricia Hotel were not exempt from the SRA By-law unreasonable?

[65] For the following reasons I conclude that the City's decision that the 94 rooms was not exempt from the SRA By-law is not unreasonable.

[66] The Patricia Hotel is in the geographic area defined by the SRA By-law and is designated in Schedule A. Therefore, it is subject to the SRA By-law.

[67] The issue is whether the Council acted reasonably in denying the petitioner's application for an exemption for all of the rooms in the Patricia Hotel. The basis for exemptions has narrowed since the adoption of the SRA By-law in 2003.

[68] The petitioner applied to the City for the exemption of 101 rooms and the conversion of 94 rooms of the Patricia Hotel in 2008. At that time, Council considered a staff report which recommended that both the exemption and the conversion be approved.

[69] The petitioner asserts that there was no requirement for the conversion as the Patricia Hotel did not contain any rooms which contained permanent residents. However, the Patricia Hotel had a split assessment whereby 94 of the rooms were in a portion of a building classified as Class 1 - residential under the *Assessment Act* and its regulation. As a result, those rooms did not meet the exemption requirements set out in 3.2(b) of the SRA By-law and the petitioner was required to apply to convert the 94 rooms.

[70] The petitioner relied on a report prepared by Deloitte & Touche that the Patricia Hotel may have been “grandfathered” by the Assessment Authority when it received the residential classification for the 94 rooms. However, the petitioner’s documents indicate that the petitioner made submissions to the Assessment Authority in which it indicated the 94 rooms in question were “Reserved & Dedicated for Only Monthly” and that “Dedicated Monthly Rooms are Deemed to be UNAVAILABLE for Daily or Weekly Rental at Anytime.”

[71] As well, at the time of the petitioner’s application, “permanent resident” was defined in the SRA By-law as 30 days or more.

[72] In *Kamloops (City) v. Northland Properties Ltd.*, 2000 BCCA 344, the Court considered the difference between a transient guest and a resident, and stated at paras. 17-18 that although no hard and fast rule can be drawn in term of length of stay, generally speaking persons staying in suites for periods of one month or more are more likely to be residing than persons who stay for shorter periods of time.

[73] In this case, the 94 rooms were reserved for rental for 30 days or more. Given that there was evidence before the Council that the 94 rooms in issue did not meet the conditions for the exemption, it cannot be said that the Council acted unreasonably in determining the 94 rooms were not entitled to an exemption.

Was the City’s decision to refuse the petitioner’s application for a conversion permit unreasonable or done in bad faith?

[74] The petitioner also asserts that the City should have accepted its application for conversion.

[75] Section 4 of the SRA By-law authorizes a conversion permit, which allows SRA rooms to be converted. Section 4.6 authorizes the Council to impose a charge and conditions on a conversion permit. Section 4.5 provides that in response to an application for conversion the City may:

- 1) impose conditions before approval of the conversion;

- 2) issue the conversion permit with conditions attached;
- 3) issue the conversion permit, or
- 4) refuse to issue the conversion or demolition permit.

[76] Section 193D(3)(d) specifically grants the City the power to define what change of occupancy or other changes constitute conversion. The SRA By-law defines "conversion" as:

"conversion" or "convert" means:

(a) a change in the form of occupancy, intended form of occupancy, or customary form of occupancy of a designated room from living accommodation for a permanent resident to living accommodation for a transient guest or to another purpose,

...

(f) a re-classification of a building or any portion of a building from Class 1 - residential to any other class referred to in the *Assessment Act* or its regulations

...

"designated room" means a room Council has designated, under section 2.2, as single room accommodation.

[77] Although the petitioner asserts no rooms in the Patricia Hotel are being converted, it is clear that if the 94 rooms were rented to transient guests that would fall within the definition of both (a) and (f). As discussed earlier, the petitioner advised the Assessment Authority that the 94 rooms were reserved for rentals of over 30 days. The petitioner is not being compelled to convert, and can continue to operate the Patricia Hotel in the current manner without converting.

[78] The issuance of a conversion permit is discretionary. However, the petitioner submits that members of the City Council acted in bad faith when considering the conversion application because they took into consideration an alleged incident that occurred in 1986.

[79] A municipality must act in the public interest and the courts have generally deferred to municipal council's judgment in exercising its discretion as long as it does so with a *bona fide* or good faith intention to act in the public interest.

[80] In *Equity Waste Management of Canada v. Halton Hills (Town)* (1997), 35 O.R. (3d) 321 (C.A.), the Ontario Court of Appeal discussed what constitutes bad faith on the part of a municipal council at para. 61:

The more recent judgment of Robins J. in *H.G. Winton Ltd. v. North York (Borough)* (1978), 20 O.R. (2d) 737 at pp. 744-5 (Div. Ct.) contains a similar but perhaps even broader definition of bad faith:

To say that council acted in what is characterized in law as 'bad faith' is not to imply or suggest any wrongdoing or personal advantage on the part of any of its members: *Re Hamilton, Powder Co. and Township of Gloucester* (1909), 13 O.W.R. 661. But it is to say, in the factual situation of this case, that Council acted unreasonably and arbitrarily and without the degree of fairness, openness, and impartiality required of a municipal government ...

[81] In this case, there is no record of the discussion at the Council meeting where the petitioner's application for a conversion permit was considered. The only evidence of what occurred is in the affidavit of Wayne Nelsen, the president of the petitioner. Mr. Nelsen deposes that:

At the City Council meeting of October 16, 2008 at which I was present some councilors referred to a 1986 incident at the hotel (Olaf Solheim matter) and as well objected to the Assessment Authority's classification on the basis the City was losing some tax revenue. I believe there is a bias here on the part of a number of councilors and I felt that I did not get a fair hearing. One City Counselor suggested the City's remedy was to take the matter with the Assessment Authority.

[82] Counsel for the City acknowledges the result of the application for the conversion permit was peculiar in that it was a tie vote after an amendment to the original recommendation. However, a majority of the Council did not agree to the conversion permit, so the permit was refused.

[83] The City did not produce a copy of the transcript or any record of the Council meeting, and there is no evidence as to why members of the City Council rejected

the application and recommendations of staff to grant the conversion permit. As stated earlier, the purpose of the SRA By-law is to prevent the loss of SRO housing in the area of the Patricia Hotel. The staff report makes it clear that "because the hotel has not housed permanent guests for years, the conversion does not displace tenants and there is not a loss of rooms for permanent residents since the hotel has not operated as a residential hotel for two decades."

[84] Mr. Nelsen deposes the Council considered extraneous matters that occurred in 1986 in coming to its decisions without providing the petitioner any opportunity to respond to the matters raised by Council.

[85] In the factual situation of this case, there is evidence that members of the Council acted unreasonably and arbitrarily, and without the degree of fairness, openness, and impartiality required of a municipal government.

What is the appropriate remedy?

[86] The petitioner asserts that the appropriate remedy in the event that it is found that the Council did not act reasonably or acted unfairly is a declaration that the SRA By-law does not apply to the Patricia Hotel. However, in my view, the appropriate remedy is to remit the petitioner's conversion application to the Council for reconsideration to determine whether it should be granted and, if so, under what terms and conditions.

[87] Section 5 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 provides:

(1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.

(2) In giving a direction under subsection (1), the court must
(a) advise the tribunal of its reasons, and

(b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

[88] The definition of “tribunal” in the *Judicial Review Procedure Act* is “one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.” That definition is broad enough to include the Council for the City.

[89] Accordingly, I remit the issue of whether the petitioner’s application for conversion should be granted back to the Council for reconsideration.

[90] The remainder of the relief sought by the petitioner in the petition is dismissed. Given the divided result, each party will bear its own costs.

“Gerow J.”

2012 Single Room Accommodation Permit Application



CITY OF VANCOUVER
COMMUNITY SERVICES
Housing Centre

**SINGLE ROOM ACCOMMODATION
CONVERSION* or DEMOLITION*
PERMIT APPLICATION**

SR No. _____

Civic Address: 403 EAST HASTINGS ST, VANC BC
 Legal Description: Lot _____ Subdivision _____ Block _____ District Lot _____ Plan _____
 Building Name: BUDGET INN - PATRICIA HOTEL

This area must be completed by the person signing this application.

Your Name: WAYNE NELSEN You are the:

Mailing Address: % 102-403 EAST HASTINGS ST Property Owner
 City: VANC BC 02 Agent for Property Owner
 Postal Code: V6A 1P6
 Phone Number: 604-220-7211
 Company Name: 338186 BC LIMITED (THE PATRICIA HOTEL)

Note: If the applicant is NOT the property owner, a letter of consent signed by the owner must also be submitted.

Owner's Information (if owner is a corporation, provide Incorporation Certificate and names and addresses of all directors & associates):

Property Owner's Name <u>WAYNE NELSEN, DIRECTOR OF 338186 BC LIMITED</u>	
Address: <u>% 102-403 E HASTINGS ST</u>	City: <u>VANC</u>
Postal Code: <u>V6A 1P6</u>	Phone Number: <u>604-220-7211</u>
Property Owner's Name <u>JANET NELSEN, DIRECTOR OF 338186 BC LIMITED</u>	
Address: <u>% 102-403 E HASTINGS ST</u>	City: <u>VANC</u>
Postal Code: <u>V6A 1P6</u>	Phone Number: <u>604-220-7211</u>
Property Owner's Name	
Address:	
City:	
Postal Code:	
Phone Number:	

This application is to: (Check applicable box) 001 <input checked="" type="checkbox"/> Convert* occupancy of designated room(s) 002 <input type="checkbox"/> Change term or nature of tenancy of designated room(s) 003 <input type="checkbox"/> Change frequency of rent payments for designated room(s) 004 <input type="checkbox"/> Convert* vacant designated room(s) 005 <input type="checkbox"/> Repair or alter designated room(s) 006 <input type="checkbox"/> Demolish* designated room(s) *see definitions of "conversion" and "demolition" on reverse side of form under "Explanatory Notes"	Total # of storeys in this building: <u>6</u> Total # of SRA rooms in this building: <u>94</u> Total # of non-SRA rooms in this building: <u>101</u>
--	--

Describe nature of the proposed conversion or demolition:
Well before the passing of the SRO
by-law, the Patricia has operated
as a budget hotel and not an SRO.

City of Vancouver Single Room Accommodation Conversion or Demolition Permit Application - continued

THIS SECTION MUST BE COMPLETED:	OFFICE USE
Are there any permanent residents needing to relocate as a result of this proposed conversion? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, you must provide the following information:	
1. The number of permanent residents that will be affected? _____	
2. A list of names of the residents needing relocation, their room nos. and length of residency	
3. Proposed relocation strategy for existing tenants	
You must also include with this application the following required supporting documents:	
1. An affidavit, sworn by the owner or, if the owner is a corporation, by a director of the corporation, setting out why the owner wants to convert or demolish the designated room	
2. Records required under the Hotel Guest Registration Act or Hotel Room Tax Act, tax assessment records, guest ledgers, and daily rent receipts, for the current calendar year and for the three immediately preceding calendar years, in respect of the designated room	
3. One set of floor plans of the existing and proposed floor layout as described below*	
4. Tentative schedule for construction (if applicable)	


* Explanatory Notes:

- Definition of "conversion" or "convert" means the following under the Single Room Accommodation By-law:
 - (a) a change in the form of occupancy, intended form of occupancy, or customary form of occupancy of a designated room from living accommodation for a permanent resident to living accommodation for a transient guest or to another purpose,
 - (b) a change in the term or nature of the tenancy to which a permanent resident has the right in respect of a designated room,
 - (c) a change in the frequency of the rent payments a permanent resident must make in respect of a designated room,
 - (d) an occupancy or use, or the suffering or allowing of an occupancy or use, of a vacant designated room for a purpose other than living accommodation for a permanent resident,
 - (e) a repair or alteration to a designated room or any improvement or fixture in it or a replacement of any such improvement or fixture, except for repairs or alterations that are minor in nature and have no material effect on the enjoyment by permanent residents of their living accommodation,
 - (f) a reclassification of a building or any portion of a building from Class 1-residential to any other class referred to in the Assessment Act and its regulations, or
 - (g) a loss of exemption in respect of a designated room from an obligation to pay or remit hotel room tax under the Hotel Room Tax Act and its regulations;
- Definition of "demolition" or "demolish" means the following under the Single Room Accommodation By-law:
 - "to pull, knock, or tear down or to raze, wholly or partially, a designated room"
- Floor plans must be legible, drawn to a scale NOT less than 1/8" to 1", and must:
 - (a) Include dimensions and layout of all floor levels including basement and underground parking;
 - (b) Identify on each floor:
 - rooms that provide accommodation for permanent residents;
 - rooms that provide accommodation for transient guests (tourists);
 - rooms that provide other non-residential accommodation uses (e.g., lounge, storage rooms, etc.);
 - (c) Indicate on each floor the square footage of all rooms and common areas;

Office Use Only

As owner or owner's agent, I have verified that the information contained within this document and associated applications and plans is correct, and describes a use, a building or a work which complies with all relevant by-laws and statutes. I acknowledge that responsibility for by-law compliance rests with the owner and the owner's employees, agents and contractors. I will indemnify and save harmless the City of Vancouver, its officials, employees and agents against all claims, liabilities and expenses of every kind, in respect of anything done or not done pursuant to this application or fact sheet or ensuing permit, including negligence and/or the failure to observe all by-laws, acts or regulations.

Further, I acknowledge that any information and documents provided with this SRA conversion/demolition permit application will be attached to the report to Council and as such, be made available to the public.

SIGNED AT VANCOUVER, BC THIS 4th DAY OF MAY 2012 
Signature of Applicant

RX Date/Time 05/04/2012 10:51 6048768854 P.001
05/04/2012 10:39 6048768854 BUDGET INN PATRICIA PAGE 01

CANADA
PROVINCE OF BRITISH COLUMBIA

NUMBER

I HEREBY CERTIFY THIS TO BE A
TRUE COPY OF THE ORIGINAL DATED
THE 13TH DAY OF JULY, 1988

338186



Dellis Rand
DELLIS RAND - SOLICITOR

Province of British Columbia
Ministry of Finance and Corporate Relations
REGISTRAR OF COMPANIES

COMPANY ACT

Certificate of Incorporation

I HEREBY CERTIFY THAT

338186 B.C. LIMITED

HAS THIS DAY BEEN INCORPORATED UNDER THE COMPANY ACT

GIVEN UNDER MY HAND AND SEAL OF OFFICE

AT VICTORIA, BRITISH COLUMBIA,

THIS 23RD DAY OF DECEMBER, 1987

Roberta J. Lowdon

ROBERTA J. LOWDON
DEPUTY REGISTRAR OF COMPANIES

