



## SPECIAL COUNCIL MEETING MINUTES

OCTOBER 18, 2012

A Special Meeting of the Council of the City of Vancouver was held on Thursday, October 18, 2012, at 2:16 pm, in the Council Chamber, Third Floor, City Hall, for the purpose of hearing a Land Averaging Appeal pursuant to Section 9 of By-Law No. 10444, "A By-Law to Average Land Assessments for 2012".

**PRESENT:** Deputy Mayor Raymond Louie  
Councillor George Affleck  
Councillor Elizabeth Ball  
Councillor Adriane Carr  
Councillor Heather Deal\*  
Councillor Kerry Jang  
Councillor Andrea Reimer  
Councillor Tim Stevenson  
Councillor Tony Tang

**ABSENT:** Mayor Gregor Robertson (Leave of Absence - Civic Business)  
Councillor Geoff Meggs (Civic Business)

**CITY CLERK'S OFFICE:** Pat Boomhower, Meeting Coordinator

\* Denotes absence for a portion of the meeting.

### COURT OF REVISION

MOVED by Councillor Jang  
SECONDED by Councillor Deal

THAT this Council resolve itself into a Court of Revision for the purpose of hearing a Land Averaging Appeal pursuant to Section 9 of By-Law No. 10444, "A By-Law to Average Land Assessments for 2012", Deputy Mayor Louie in the Chair.

CARRIED UNANIMOUSLY

## Land Averaging Appeal

### 1. 50 Water Street (tax folio number 580-172-32-0000)

The Court of Revision had before it for consideration a brief prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*):

Tab	Description
1.	Email from Paul Sullivan, agent to the Owner of 50 Water Street, to City of Vancouver dated July 18, 2012
2.	Vancouver Property Info Report on 50 Water Street
3.	Table of BC Assessment Values and Taxes Payable for 50 Water Street
4.	2012 Averaging Review Request Form for 50 Water Street
5.	Letter from City of Vancouver to Paul Sullivan dated August 23, 2012
6.	Section 374.4 of the <i>Vancouver Charter</i> , S.C.B. 1953, c. 55
7.	City of Vancouver By-law No. 10444

Circulated at the meeting was a brief submitted by the Agent on behalf of the property owners (*6 pages - on file in the City Clerk's Office*). In addition, the Agent for the property owners presented a visual presentation (*on file in the City Clerk's Office*).

Iain Dixon, Assistant Director of Legal Services, and Grace Cheng, Senior Manager, Long-term Financial Planning, were present on behalf of the City of Vancouver. Brian Keenan, Principal, Burgess, Cawley, Sullivan & Associates Ltd, was present as Agent for the property owners and Nancy Bendtsen was present on behalf of herself and her husband as the property owners of 50 Water Street.

Mr. Dixon provided an overview of the Land Averaging Appeal process pursuant to the City of Vancouver By-Law No. 10444, as well as Council's role in the Court of Revision under Section 9 of the By-law, sitting as a tribunal for the appeal for the property set out in the agenda. He advised the issue before the Court of Revision was to evaluate whether the By-law has been appropriately applied to the property and whether the appeal should be allowed or rejected. Mr. Dixon also described the materials before Council.

Mr. Keenan submitted the appeal is based upon an error made by BC Assessment (BCA) on the land value for the 2008 and 2009 Assessment Roll which is not something that a reasonable taxpayer could foresee, nor would it have been noticeable to the typical taxpayer due to land averaging in tax calculations and lack of communication to the property owner regarding changes in their tax bills.

He noted the property owners entered into a Heritage Revitalization Agreement with the City of Vancouver which provided a tax forgiveness worth \$768,678 or ten years of Property Tax,

whichever came first, for the turn-of-the-century site and explained that heritage land value is limited by the heritage designation in that owners cannot tear it down.

Mr. Keenan advised the problem created in previous years has a tax implication of approximately \$110,000 for the property owners, and that the issue of fixing past mistakes arises in 2012 because it is the first year which shows an Average Land value on the City's Tax Notice. He presented the tax history and referred to the property owners' tax invoices from the City and the lines with "zero" for the 2010 and 2011 Averaged Land amount. When BCA made a significant change in land value and improvement value in 2008 and 2009, there was nothing in the 2010 Tax Notice from the City which tells the property owner the taxable value was \$10.6 million. The effect of BCA allocating more to the land value increased property taxes and the City's tax billing system hid the mistake from the property owner until 2012.

He noted the *BC Assessment Act* provides no mechanism to fix this and nowhere else in British Columbia uses land averaging. He submitted that if the taxpayer was made aware then they could have appealed to the BCA earlier. Mr. Keenan further submitted that the *Vancouver Charter* gives Council the authority to fix errors or omissions of any of the assessed values, and the Land Averaging By-law makes the assumption that the BCA assessment value is correct.

Mr. Keenan and Mr. Dixon responded to questions.

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*At 2:40 pm Council recessed briefly to confirm that all members could remain for rest of the proceedings.*

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The Chair provided clarification on the role of Council sitting as a Court of the Revision. Mr. Keenan and Mr. Dixon responded to additional questions.

Nancy Bendtsen commented on her and her husband's business, noting they wanted to expand and chose the Gastown area to grow their small family business at 50 Water Street. She described it as a leap of faith which they were able to do because of the City of Vancouver Heritage Registration Agreement program. Mrs. Bendtsen noted they made a deal with the City and that she could not see the errors. She further noted she wanted a fair deal.

Grace Cheng, Senior Manager, Long-term Financial Planning, provided background on the appeal, noting Paul Sullivan, Burgess, Cawley, Sullivan & Associates Ltd., had requested a review of the application of the 2012 Land Assessment Averaging By-law, and that the Heritage Revitalization Agreement package included incentive worth \$2,500,000 along with transferable density, a façade grant, and a \$768,700 property tax exemption.

Ms. Cheng explained the taxable values, tax transfer, and formulas based on BC Assessment (BCA) costing and advised it was the City of Vancouver Collector of Taxes' view that the By-law had been correctly applied and the calculated average value was on a basis consistent with statutory and regulatory provisions. She further explained the Collector is obliged to use BCA's values and that the Collector does not have any influence to adjust BCA's assessment value. Ms. Cheng noted the onus is on the owner to go through the appeal process with BC Assessment.

With regard to Mr. Sullivan's statement that BCA admitted an error was made in prior years' (2008 and 2009) land values, Ms. Cheng noted Mr. Sullivan did not provide written evidence which could substantiate that statement. City staff's inquiry to BCA could not find acknowledgement of an error. Staff's understanding was that the BC Assessment re-allocation of land values from land to improvement of this property was part of a region-wide re-costing on all heritage properties, therefore this property was not alone.

In conclusion, Ms. Cheng advised there is no provision in the Vancouver Charter or City of Vancouver By-law to have the Collector of Taxes alter the assessment. BCA has the responsibility of assessment, while the City of Vancouver has the responsibility of tax rate.

Ms. Cheng responded to questions.

In his closing remarks, Mr. Keenan submitted that City's contention that BCA did not make a mistake, is hearsay and he noted there are no documents. He further submitted that the significant change in the assessed value of the land is clear indication of an error by BCA. He submitted that either the earlier low number was wrong or the newer high value was wrong and that this discrepancy clearly demonstrates an error by BCA.

Mr. Keenan responded to questions and invited the property owner for additional comment.

Mrs. Bendtsen submitted that she did not receive a notice that there was going to be review of heritage properties and had no reason to call based on what she saw at the bottom of the City's Tax Notice.

In closing, Mr. Dixon reiterated the powers of the Court of Revision as an adjudicating body to decide whether the interpretation of the By-law to Average Land Assessments for 2012 has been applied appropriately to the site 50 Water Street. Mr. Dixon submitted that no evidence has been provided by the Appellant to show an error. He further noted the Collector of Taxes applied the number supplied by BC Assessment.

## Decision

In discussion Council members noted that within the rules of the City of Vancouver *2012 Land Assessment Averaging By-law*, they could not find any errors in the application of the By-law to the property at 50 Water Street. Council commented that while they sympathize with the owner and appreciate the time the owner has put in to bring the issues forward, the issues are outside the purview of the Court of Revision and the onus is on property owners for due diligence.

MOVED by Councillor Jang  
SECONDED by Councillor Reimer

THAT, as there has been no error demonstrated in the application of the Land Assessment Averaging By-law (No. 10444) for 2012 to the property known as 50 Water Street in the City of Vancouver, Council dismisses the Appeal.

CARRIED UNANIMOUSLY  
(Councillor Deal absent for the vote)

**RISE FROM COURT OF REVISION**

MOVED by Councillor Stevenson  
SECONDED by Councillor Tang

THAT the Court of Revision rise and report.

CARRIED UNANIMOUSLY  
(Councillor Deal absent for the vote)

**ADOPT REPORT OF THE COURT OF REVISION**

MOVED by Councillor Stevenson  
SECONDED by Councillor Ball

THAT the report of the Court of Revision be adopted.

CARRIED UNANIMOUSLY  
(Councillor Deal absent for the vote)

The Special Council adjourned at 3:40 pm

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