

## **Day 3 Update**

### City of Vancouver Argument

Today counsel for the City of Vancouver (COV) continued his arguments in response to our Petition .

City of Vancouver again addressed the question of their decision not to consult with city residents. While COV admits that there is discretion to consult even where not expressly required under the Vancouver Charter, in the 2020 staff report city staff proposed that it would be "inappropriate" in the circumstances of the services agreement to consult with city residents, as the COV position was that they did not have jurisdiction over the development, and Council accepted this recommendation.

There was much discussion today about the authority to approve the services agreement in in-camera (secret) meetings. The general rule is that Council business must be conducted in meetings open to the public. The section of the Vancouver Charter relied on by COV for holding the meeting approving the services agreement in camera (s.165.2(1)(k)) concerns "negotiations and related discussions respecting the proposed provision of an activity, work or facility that are at their preliminary stages and that, in the view of the Council, could reasonably be expected to harm the interests of the city if they were held in public". There was much discussion today about the meaning of "preliminary" for the purposes of this section. COV position is that all negotiations are preliminary until the agreement is ready for signature. This was clearly an issue of concern for the Judge and at the end of the day she advised she would have her clerk undertake some further research into this issue.

Counsel for COV reviewed the "benefits" put forward in the staff report as the rationale for the decision to enter into the Senakw Services Agreement. One such benefit asserted was that the Squamish Nation takes the position that the Burrard Bridge trespasses on their reserve land. While COV did state that they disagree with this legal position it was asserted that the services agreement resolves the issues between the parties during the term of the service agreement such that COV continues to have access to the bridge during the term. This was advanced as a benefit and rationale for entering into the agreement.

COV has argued for judicial review of the COV decision to go in-camera and the COV decision to approve the services agreement on a reasonableness basis rather than on a correctness basis. Their position is that the services agreement should not be set aside based on a substantive review of these decisions unless the Council decisions are ones that no reasonable municipality would make.

Further notable COV positions were:

- There were no requirements for procedural fairness owed to COV residents in making the decision to enter into the services agreement, and we had no legitimate expectation of consultation on traffic or Vanier Park issues based on statements made.
- Council decided it was not in the City's best interests to negotiate scale and density and or to conduct public consultation as that would have "soured" their relationship with the First Nation.
- The services agreement was authorized under s 145 of the Vancouver Charter which provides the power to engage in commercial, industrial or business activities and under the provisions of the Indian Self Government Enabling Act. We can expect to hear more on this from KPRA counsel tomorrow.

### Squamish First Nation Argument

Counsel for the Squamish Nation spent a great deal of time reviewing the history of the reserve lands.

He also addressed the authority to make the decision to enter into the services agreement in camera (in secret). Squamish Nation arguments will continue tomorrow.

### **What Happens From Here?**

Squamish Nation argument will continue on Friday morning and then KPRA will have the opportunity to reply.

The current understanding is that the hearing will complete on Friday.