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Community Association Files Amended Court Petition to Stop Development near Emery Barnes Park

Vancouver, BC – July 7, 2014

The Community Association of New Yaletown (CANY) on July 3 filed an amended petition in BC Supreme Court regarding the land swap and redevelopment of 1099 Richards and 508 Helmcken.

New documents recently obtained by CANY show that the City of Vancouver entered into a Land Exchange Contract with the developer months before the rezoning was publicly considered by Council and did not disclose this at the public hearing—a clear violation of procedural fairness.

The amended petition alleges that the City, in approving development of the 36-storey tower at 508 Helmcken St. and a related building across the street at 1099 Richards St.:

- **Withheld crucial information** from the public about the planned development, including the January 28, 2013 Land Exchange Contract between the City and the Developer, the January 31, 2013 Lease Surrender Agreement between the City, the Developer and 127 Society and May 15, 2013 Development Agreement between the City, Developer, 127 and BC Housing;
- **Fettered its voting discretion** contrary to the *Vancouver Charter*; and
- **Repeatedly breached its legal duty to procedural fairness.**

“The public hearing process relating to this development was completely flawed and totally unfair. Documents we obtained from the City after filing our original petition in May show that the City had, unbeknownst to the public, already entered into a Land Exchange Contract with the developer, months before the matter was put before Council for approval,” said Jon Green, President of the Community Association of New Yaletown (CANY). “By the time the rezoning was publicly considered by Council, the agreement was a done deal.”

“At the public hearing, I witnessed overwhelming public opposition to the rezoning of the Jubilee House site,” said Alexander Hayne, a neighbourhood resident. “My New Yaletown neighbours were begging the City to reduce the size of the proposed 36-storey condo tower to save the character of Emery Barnes Park and to better fit within our neighbourhood.”

“I was deeply disappointed when Council voted to approve the project with no changes to building height or density—against the emotional pleas of New Yaletown residents,” continued Hayne. “I invite other concerned Vancouver residents to join me in supporting the CANY lawsuit to hold our government accountable to conduct the rezoning via a fair and transparent process.”

Hundreds of residents have signed CANY's Change.org petition online at <https://www.change.org/petitions/the-city-of-vancouver-save-emery-barnes-park-and-vancouver-s-green-space> and are donating towards legal fees and following updates on the case at www.newyaletown.ca.

The petition is scheduled for a 3-day hearing commencing on August 18, 2014. CANY is asking the Court to set aside Council's decision to rezone 508 Helmcken and to declare the Land Exchange Contract unenforceable.

Background

508 Helmcken is situated at the northeast corner of Emery Barnes Park, in centre of New Yaletown in downtown Vancouver. The City-owned land is currently the site of Jubilee House social housing. The City had previously planned and budgeted to extend the park to occupy the entire block after Jubilee House was replaced.

The approved development, if built, will permanently prevent the park from occupying the entire block as previously planned. On that site would instead be a for-profit development, the densest residential building in the city. The planned tower massively exceeds neighbourhood plan bylaws:

- over 4.5 times as tall as allowed in the Downtown Official Development Plan,
- over 5.5 times as dense, and
- twice as close to the sidewalks and lanes as is required by law.

The tower was approved via a series of breaches of procedural fairness, and in disregard of overwhelming (90%) neighbourhood opposition.

Summary of Legal Claims

The legal Petition, prepared by Nathalie Baker of the law firm of Baker and Baker, sets forth the facts of the case:

- In 2011 the developer proposed a land swap with the City. The developer proposed to build a new social housing building at 1099 Richards to replace the Jubilee House and, in exchange, the City would give the developer its property at 508 Helmcken

and rezone it to permit a 36-storey mixed-use residential building of a size that exceeded current zoning.

- **There is evidence before the Court that the City and the developer had signed a Land Exchange Contract before the rezoning application was presented for Council approval at a public hearing. This signed Land Exchange Contract unlawfully fettered Council's decision-making capacity at the public hearing.**
- In order for the public to make meaningful representations to Council, the City is required to disclose all relevant documents. The City did not disclose the signed Land Exchange Contract and other important documents—a clear breach of procedural fairness.
- The projects at 1099 Richards and 508 Helmcken were inextricably linked by the Land Exchange Contract, and by the City's claim that the social housing at 1099 Richards somehow justified vastly exceeding the density and size bylaw limits for 508 Helmcken set forth in the Downtown Official Development Plan (DODP). One could not proceed without the other. Despite this interdependence, the City moved the two projects through the approval process separately, denying the public and Council from considering the combined impact of the two developments. Citizens were not allowed to discuss 1099 at the 508 hearings, and not allowed to discuss 508 at the 1099 hearings—another breach of procedural fairness.
- On July 23, 2013 the City voted to rezone 508 Helmcken. A condition of the rezoning bylaw was that the developer first *complete* the construction of the social housing building at 1099 Richards. Council voted in favour of the rezoning despite overwhelming public opposition.
- The Development Permit Board (DPB) voted to allow a development permit for 1099 Richards, based on City staff's repeated assurances that Council had expressly approved an increase in density for that site as part of its rezoning of 508 Helmcken.
- Following the hearing, City staff admitted that Council had never approved the increased density for 1099 Richards.
- The law requires "*prior* Council approval" of any density increase, and any increases approved must be issued *only* for developments offering "*low cost* housing." The development at 1099 Richards contains only 87 *social* housing units, the same number as in the Jubilee House building it replaces, and contains no *low-cost* housing. The development at 508 Helmcken is 100% for profit, with no low cost or social housing.
- The City then held a new hearing on Feb 19, 2014 to approve what they then called their "conditional" approval of the permit for 1099 Richards. But this retroactive approval still did not fulfil the legal requirement for "*prior* Council approval."
- To cover up its errors, in early 2014 the City slipped proposed amendments into a set of DODP bylaw changes relating to the West End Community Plan—an entirely different neighbourhood. The hidden amendments to Section 3.13 of the DODP deleted the requirement that Council give *prior* approval, and changed the

requirement that zoning exceptions be only for *low-cost* housing to instead allow exceptions for “low-cost housing or social housing.”

- This bylaw amendment relating to the New Yaletown neighbourhood was not mentioned in the City’s recommendations to Council for the West End Community Plan or in its staff Report. The changes were instead tucked into an exhibit at the end of the almost 90-page West End Report. The relevance of these amendments to the New Yaletown neighbourhood or to 508 Helmcken was never mentioned as part of the proceedings approving the changes to the DODP bylaws—another violation of procedural fairness.
- Even after these secret changes to the DODP bylaws, the rezoning of 508 Helmcken still remained conditional upon the *completion* of the building at 1099 Richards. On March 11, 2014, Council voted to approve the rezoning of 508 Helmcken, even though the developer had not even started construction at 1099 Richards, let alone completed construction as required by law.
- Having exhausted all attempts at discussion and consultation with the City to amend or reduce the size and density of the developments, the Community Association of New Yaletown filed its legal challenge in BC Supreme Court.

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