

File No.: 04-1000-20-2017-243

November 27, 2017

s.22(1)

Dear s.22(1)

Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am responding to your request of June 26, 2017 for:

Correspondence sent to the City of Vancouver from November 16, 2016 to June 20, 2017 in relation to requests for exemptions or a cap on the Empty Homes Tax under the following three categories (second home, capping the tax for high-value properties, and homes listed for rent or sale) specified in the report to Council for June 28, 2017, "Amendments to vacancy tax bylaw".

All responsive records are attached. Some information in the records has been severed, (blacked out), under s.14 of the Act. You can read or download this section here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00

Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2017-243); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at foi@vancouver.ca if you have any questions.

Yours truly,



Barbara J. Van Fraassen, BA
Director, Access to Information

Barbara.vanfraassen@vancouver.ca
453 W. 12th Avenue Vancouver BC V5Y 1V4
Phone: 604.873.7999
Fax: 604.873.7419

Encl.

:cf

December 8, 2016

VIA E-MAIL
Heidi.granger@vancouver.ca

Peter D. Fairey*
*Law Corporation
Direct +1 604 891 2266
peter.fairey@gowlingwlg.com

City of Vancouver
Legal Services
453 West 12th Avenue
Vancouver, BC
V5Y 1V4

Attention: Heidi Granger

Dear Sirs/Mesdames:

Re: Vacancy Tax

We have now had an opportunity to review By-law No. 11674 - "a By-law to impose and collect vacancy tax", promulgated on November 16, 2016.

We have identified what we believe is an unintended consequence for a small number of home owners for whom the by-law has drastic consequences, but whose homes are not suitable to assist in providing affordable rental housing in Vancouver.

Non-resident owners who have built or purchased luxury homes worth over \$40 million are faced with a tax which is punitive in its scale, particularly where such homes are not practical to rent. The Mayor's letter states: *The goal of the Empty Homes Tax is to provide an incentive for property owners to rent out their homes, which will increase our housing supply and help families and young people to stay in our community...*. Renting a house assessed at \$50 million is not going to relieve Vancouver's housing shortage as no person who needs to rent can afford even its operating and staffing costs, yet the City is imposing a \$500,000 per year vacancy tax on such a single house in addition to already substantial property taxes paid with respect to such a property.

These specialty homes provide full time employment for their maintenance and operation as many have sophisticated but very complicated operating systems and features. Their owners are often here several months a year enjoying the properties and contributing to the local community and economy but these are not principal residences (as their owners sometimes own homes in multiple countries) so they are liable for the vacancy tax. They would never have had designed and constructed, or purchased these world-class homes if they knew they would be charged a vacancy tax of such magnitude.

We are confident this was not a contemplated, much less intended, consequence of the vacancy tax. The intent was to increase the supply of affordable rental housing in Vancouver and not to penalize

this group which has led to some phenomenal architectural achievements and internationalization of our City.

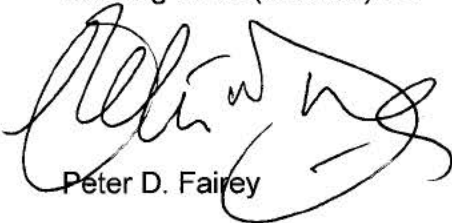
With respect, we would suggest that a vacancy tax of \$500,000 or \$600,000 per year for one house is not fair or reasonable for anyone to pay, particularly where the house is not rentable as an economic reality. An exemption exists where a property is not rentable due to strata corporation restrictions, but not for being unable to rent it for basic economic reasons. Assessed values are anticipated to go up by as much as 30% this year so the excessiveness of the vacancy tax on the top end of the scale will only worsen.

Obviously, the owner of a home worth \$50 million can invite a relative to live in the home. However, while fully compliant with the rules, this would be contrived and not increase the rental housing supply. Why force owners of these homes to install a relative? There needs to be an exemption for homes that, like strata properties with restrictions in their bylaws, are genuinely not capable of being rented. While many people may not feel sympathy towards wealthy homeowners, it is important to remember that the elite homes really are not the target of the Empty Homes Tax. Perhaps a simple to administer exception can be created for any home the property tax with respect to which exceeds \$150,000 per year. The contribution to the City is already very substantial. In any event, when one considers the purpose of the Empty Homes Tax, it is clear that these homes were not considered or intended to be captured within the new tax's net.

This problem is obviously not widespread but the consequences for those affected is of a very serious magnitude, so a subtle, practical solution needs to be found. We have made a suggestion but invite an alternative which addresses this distinct issue for some unique properties in the City. We would be pleased to discuss this with whomever at the City is appropriate.

Yours truly,

Gowling WLG (Canada) LLP



Peter D. Fairley

PDF:hg

From: "[Granger, Heidi](mailto:Heidi.Granger@vancouver.ca)" <Heidi.Granger@vancouver.ca>
To: "[Fairey, Peter D.](mailto:Peter.Fairey@gowlingwlg.com)" <Peter.Fairey@gowlingwlg.com>
Date: 5/12/2017 8:54:58 AM
Subject: RE: Vacancy Tax

Hi Peter – I am not aware of any litigation having been commenced challenging either the by-law (enacted pursuant to Part XXX of the Vancouver Charter) or the tax.

Heidi

Heidi Granger, Solicitor

City of Vancouver Law Department
Mailing Address: 453 W. 12th Avenue
Vancouver, BC V5Y 1V4
Courier Address: 401-515 W. 10th Avenue
Vancouver, BC V5Z 4A8
Telephone: (604) 829-2001
Fax: (604) 873-7445
Ext: 82001

From: Fairey, Peter D. [<mailto:Peter.Fairey@gowlingwlg.com>]
Sent: Friday, May 12, 2017 8:42 AM
To: Granger, Heidi
Subject: RE: Vacancy Tax

Thanks for getting back to me.

The simplistic approach of this policy is disappointing but perhaps understandable considering who is running city hall.

Can you tell me if any litigation has commenced challenging the bylaw and/or tax? I have been approached by other parties concerned about some of the unfair consequences of the bylaw. I will not likely to be personally acting – in light of no response from the City my principal client entered into a compliant lease arrangement some months ago (at considerable inconvenience).

Regards/

Peter

Peter D. Fairey, QC
Partner
T +1 604 891 2266
peter.fairey@gowlingwlg.com



From: Granger, Heidi [<mailto:Heidi.Granger@vancouver.ca>]
Sent: May-11-17 3:52 PM
To: Fairey, Peter D. <Peter.Fairey@gowlingwlg.com>
Subject: RE: Vacancy Tax

Hi Peter – my apologies for the delay. I did escalate the request for a cap or exemption for high value properties to our senior executives responsible for implementation of the vacancy tax and at this time, staff does not plan on recommending to Council that the by-law be amended to include such a cap or exemption. I note that the tax is applied to the parcel and provided that any part of the residential property (e.g. a suite, outbuilding or coach house) is either the principal residence of an occupier or rented out (for consecutive or non-consecutive terms of at least 30 days) for at least 6 months of the year, the tax would not apply. Let me know if you wish to discuss further.

Heidi

Heidi Granger, Solicitor

City of Vancouver Law Department

Mailing Address: 453 W. 12th Avenue

Vancouver, BC V5Y 1V4

Courier Address: 401-515 W. 10th Avenue

Vancouver, BC V5Z 4A8

Telephone: (604) 829-2001

Fax: (604) 873-7445

Ext: 82001

From: Fairey, Peter D. [<mailto:Peter.Fairey@gowlingwlg.com>]

Sent: Thursday, March 23, 2017 2:21 PM

To: Granger, Heidi

Subject: Vacancy Tax

Heidi,

Has your staff group considered this further?

Kind regards/

Peter

Peter D. Fairey, QC

Partner

T +1 604 891 2266

peter.fairey@gowlingwlg.com



Gowling WLG (Canada) LLP

Suite 2300, Bentall 5

550 Burrard Street

Vancouver BC V6C 2B5

Canada



gowlingwlg.com

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From: Granger, Heidi [<mailto:Heidi.Granger@vancouver.ca>]

Sent: December-23-16 11:30 AM

To: Fairey, Peter D.

Subject: RE: Vacancy Tax

Hi Mr. Fairey,

I have forwarded your letter to our staff group and we are considering the issue further in the new year. I will be able to better advise on this in January.

For the property status declarations, they will be sent in December of each year starting in December 2017 and the

declaration is in respect of the past calendar year (so, the declaration sent in December 2017 will be for the period from January 1, 2017 – December 31, 2017).

For clarity – property status declarations will not be sent in December 2016 as we could not retroactively apply the by-law so that it applies to the 2016 year.

Heidi

From: Fairey, Peter D. [<mailto:Peter.Fairey@gowlingwlq.com>]
Sent: Friday, December 23, 2016 11:22 AM
To: Granger, Heidi
Subject: RE: Vacancy Tax

Ms. Granger:

I was just following up on this matter and wondered if any consideration has yet been made for the concern I raised.

I also wonder in the interim if you could clarify if the declarations process will be this December (mailing) through February (return by taxpayer) with respect to the past year or prospectively – although how could people “declare” regarding the year ahead? Or will it commence in January 2018 regarding the occupancy during 2017 year in retrospect. The by-law is not clear on that. It would seem somewhat unfair for it to cover the current past 12 months where people affected would have had no ability to rent out the property for a sufficient period to avoid any penalty but I just wanted to be sure I understood the law and its mechanics when advising clients.

Thanks- and I realize today may not be the best to respond - but at your early convenience in the future would be appreciated.

Kind regards/

Peter D. Fairey, QC
Partner
T +1 604 891 2266
peter.fairey@gowlingwlq.com

From: Granger, Heidi [<mailto:Heidi.Granger@vancouver.ca>]
Sent: December-08-16 10:18 AM
To: Fairey, Peter D.
Subject: RE: Vacancy Tax

Hi Mr. Fairey,

Thanks for your letter and you are correct, I am part of the staff team who worked on the by-law. I appreciate you taking the time to put this letter together and will forward your comments to the rest of the staff team on this.

Heidi

Heidi Granger, Solicitor
City of Vancouver Law Department
Mailing Address: 453 W. 12th Avenue
Vancouver, BC V5Y 1V4
Courier Address: 401-515 W. 10th Avenue
Vancouver, BC V5Z 4A8
Telephone: (604) 829-2001
Fax: (604) 873-7445
Ext: 82001

From: Fairey, Peter D. [<mailto:Peter.Fairey@gowlingwlg.com>]
Sent: Thursday, December 08, 2016 10:13 AM
To: Granger, Heidi
Subject: Vacancy Tax

Ms Granger:

I attach a self-explanatory letter concerning the City's vacancy tax by-law. I understand that you were involved with its creation. If I am misinformed and you are not the correct person to whose attention this should be sent please pass it along to the correct person and let me know. Thank you for considering the concerns set out in my letter.

Kind regards/

Peter Fairey
Partner
T +1 604 891 2266
peter.fairey@gowlingwlg.com

Gowling WLG (Canada) LLP
Suite 2300, Bentall 5
550 Burrard Street
Vancouver BC V6C 2B5
Canada

gowlingwlg.com

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