

File No.: 04-1000-20-2025-318

September 11, 2025

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 May 23, 2025 under the ***Freedom of Information and Protection of Privacy Act*** for:

Record of written determinations issued by the Vacancy Tax Review Panel, as required under Section 6.15 of the Vacancy Tax By-law No. 11674, for all review requests decided. Date range: January 1, 2022 to May 22, 2025.

All responsive records are attached*. Some information in the records has been severed (blacked out) under s.22(1) and s.22(3)(d) of the Act. You can read or download these sections here: http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/96165_00.

*Please note, the records responsive to the date range of January 1, 2022 to August 27, 2024 are publicly available at the following link: <https://vancouver.ca/files/cov/2024-700-release.pdf>.

Under Part 5 of the Act, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request 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 (2025-318); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

Kevin Tuerlings, FOI Case Manager, for

[Signed by Kevin Tuerlings]

Cobi Falconer, MAS, MLIS, CIPP/C
Director, Access to Information & Privacy

If you have any questions, please email us at foi@vancouver.ca and we will respond to you as soon as possible. You may also contact 3-1-1 (604-873-7000) if you require accommodation or do not have access to email.

Encl. (Response package)

:pm

The City of Vancouver Vacancy Tax Review Panel Decision

Date: January 24, 2025

File Number: RC-2023-00009

Requestor: s.22(1)

Vacancy Reference Year: 2022

Civic Address: s.22(1)

Folio: s.22(1)

OVERVIEW OF ISSUES:

- [1] The registered owner claims an exemption from the vacancy tax on the basis that the property was undergoing redevelopment or major renovations where permits had been issued. In support of that claimed exemption the owner supplied four undated photographs of a boarded up dwelling in a dilapidated state surrounded by temporary metal fencing to prevent entry. No other evidence or explanations were provided. The issue is whether the owner has established that the exemption applies.
- [2] This Tax Review Panel finds that the owner has not met the burden of proof that the exemption applies and that the Vacancy Tax applies.

FACTS:

- [3] The following facts are taken from the material provided by the City, except for the description of the subject building below based on the four photographs.
- [4] The registered owner purchased the subject property on s.22(1). The owner
s.22(1)
s.22(1)
s.22(1)
- [5] Permits were issued by the City for the adjacent properties in 2020. According to the material provided by the City no permits have been issued or applied for respecting the subject property in the subject vacancy reference period.
- [6] For the 2021 vacancy reference period, the owner's representative declared the subject property as "Exempt – Redevelopment or Renovation" and provided the development permit number for the adjacent property as the applicable permit. The City determined that this permit was not related to the subject property. On November 02, 2021, that development permit was withdrawn by the owner's representative who cited the

purchase of the subject property and potential purchase of a third site as the reasons for the withdrawal. The representative confirmed an understanding that once the registered owner consolidates two or more sites, a development permit resubmission is required.

- [7] According to City records no permits have been applied for respecting the subject property in the relevant vacancy reference period. The City records review shows that there is no development permit or rezoning enquiry/application under review and that the subject property is not vacant land or heritage property, and is not part of a phased development.
- [8] As noted when the owner sought review it supplied four undated colour photographs to support its position that the exemption applied. They show the exterior of an older residential dwelling with boarded up windows apparently in decrepit state on a property also in poor condition surrounded by temporary metal fencing. It would appear that the building is not habitable but no details of its interior condition or livability are otherwise provided.
- [9] After the initial determination that tax was payable the registered owner sought an initial review by the Vacancy Tax Review Officer. The only explanation for the review request was: "Last year we were exempt from the empty home tax as we are in the process of redevelopment and major renovation as it is in process s.22(1) [REDACTED] s.22(1) [REDACTED] As noted, other than the photographs no additional evidence or explanation was provided.
- [10] That review concluded that no exemption applied, and tax is payable. The owner applies for further review from this Panel.

ANALYSIS:

- [11] In accordance with the Vacancy Tax Review Adjudication process, the Panel has independently reviewed all the evidence submitted by both the City and the owner. As noted earlier the Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the relevant provision of the *Vacancy Tax By-law* for the following reasons.
- [12] Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer made reasonable factual findings and interpreted the By-Law in light

of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

[13] The owner here made little if any effort to provide suitable evidence for the claimed exemption or any explanation of why the exemption would apply. On the facts before the Panel it does not.

[14] The claimed exemption is under section 3.2 of the Vacancy Tax By-law. It reads:

Property undergoing redevelopment or major renovations

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

(a) redevelop or safely carry out major renovations to the property:

i. for which permits have been issued by the City in the vacancy reference period, and

ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay,

[15] Even if, due to the state of the building, the property was deemed unimproved with any dwelling under subsection (b) of section 3.2, an exemption would not apply as there was no permit application submitted and under review in the subject vacancy reference period.

[16] The lack of a permit issued or permit application under review is fatal to this claim.

FINAL DETERMINATION:

[17] My final determination is that Vacancy Tax should be imposed on the subject property. The review is denied.



Panel: Michael F. Welsh, K. C.

File Number: RC-2023-00009

Date: January 24, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

Date: September 25, 2024
Requestor: s.22(1) ("Owner")

File Number: RC-2023-00027
Vacancy Reference Period: 2021 calendar year
Folio: s.22(1)

Civic Address s.22(1)
("Property")

OVERVIEW OF ISSUES:

1. The Owner's legal counsel, Thorsteinssons LLP ("Counsel") has made a direct request of the City's Associate Director, Revenue Services, that a determination of a Vacancy Tax Review Officer ("Review Officer"), received by the Owner, be reviewed by another review officer.
2. The City's Vacancy Tax Manager has advised Counsel that there is no provision in the current Vacancy Tax By-Law 11674 ("Bylaw") which allows for a Notice of Complaint to be reviewed by another Vacancy Tax Review Officer. In accordance with the Bylaw, the file was referred to the Vacancy Tax Review Panel ("Panel"), which Panel was directed to conduct a review of the Review Officer's determination which found the Property to be subject to the vacancy tax.
3. The primary issue for determination by the Panel is whether the Owner has established that the Property is exempt from the payment of vacancy tax under section 3.2 of the Bylaw for the 2021 vacancy reference period ("2021 Period").

BACKGROUND FACTS:

4. Prior to the purchase of the Property, the Owner entered into a consulting agreement on May 17, 2020 for the development, design and construction of a new home on the Property.
5. The Owner purchased the Property on s.22(1).
6. The Owner engaged an architect on September 24, 2020 to design, produce drawings and assist in the permit process.
7. The Owner signed a rental property management contract on October 1, 2020.
8. The Owner entered into a Construction Management Contract dated April 27, 2021.
9. The Development and Building Permit request was initially submitted on or about August 30, 2021, and rejected on or about November 30, 2021.
10. The Demolition Permit s.22(1) was submitted May 25, 2022 and issued July 20th 2022.
11. The final Development and Building Permit s.22(1) was issued on August 11, 2022.

PROCEDURAL HISTORY:

12. The Owner filed a property status declaration in accordance with sections 4.5 and 5.2 of the Bylaw, declaring an exemption based on the Property being vacant for more than 6 months for the 2021 Period because of undergoing redevelopment or major renovation.
13. On August 16, 2022, the Vacancy Tax Department informed the Owner that their property status declaration had been selected for an audit and asked the Owner to provide information and evidence in support of their declaration, including completion of a specified questionnaire in its entirety (the "Audit").
14. By email dated September 27, 2022, the Vacancy Tax Office advised that "based on the evidence provided to date, we do not consider that this property was unoccupied for more than 6 months because the property was undergoing redevelopment or major renovations". The Owner was invited to provide any additional information that could show that the Property was exempt under the Bylaw.
15. The Owner requested and was provided with an extension for submission of additional information. The Owner provided the Vancouver Tax Office with the following written explanation in the Audit Questionnaire:

"Awaiting for permit to issue. Permit#: s.22(1)

s.22(1)

s.22(1)

s.22(1)

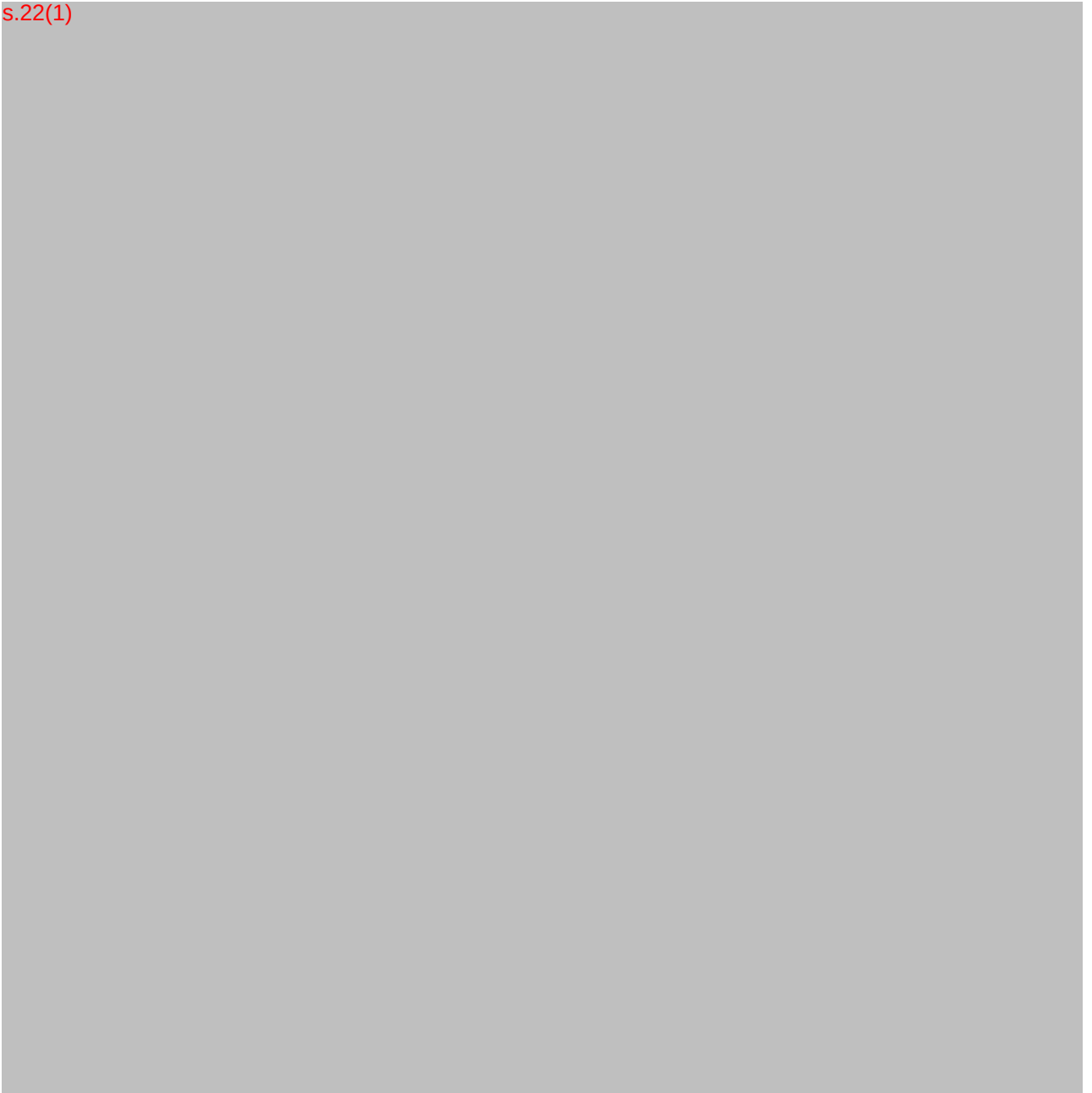
as well as some supporting documents, namely copies of:

- i. Permit# s.22(1)
 - ii. Rental listings (Craigslist)
 - iii. Text Message Chains regarding prospective tenant (end of Sep – early Oct)
 - iv. Rental Property Management contract
 - v. Construction Management contract.
16. By letter dated October 27, 2022, the Vacancy Tax Department concluded the Audit, determined the status declaration to be non-compliant resulting in the Property being subject to the vacancy tax. The letter went on to say that the reason(s) for its non-compliant conclusion, was due to there being inappropriate evidence received from the Owner, specifically that:

"Based on the evidence provided, the City determines that this property does not qualify for this exemption per Section 3.2 of the Vacancy Tax By-Law (No. 11674), on the basis

that:(b) the renovations were not being carried out with issued permits on or prior to July 1st 2021”.

17. The Owner was not satisfied with the results of the Audit and retained Counsel to assist in submitting a Notice of Complaint (“NOC”). Counsel set out its arguments and analysis in a detailed and comprehensive letter dated February 6, 2023 (“Submission”) and provided as evidence in support of the NOC Submission, the following additional contracts, invoices, documents and email correspondence threads related to the construction of the Owner’s new home upon the Property:
s.22(1)



s.22(1)



s.22(1)

18. By letter dated July 19, 2023, the Owner was informed by the City that:

“[T]he Vacancy Tax Review Officer has concluded their review of your submitted complaint and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax” (the “Determination”).

19. The reasons for the Determination were set out as follows:

- Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the City. To be eligible for an exemption under section 3.2(a) of the Vacancy Tax By-Law, a building permit must have been issued in the vacancy reference period.
- A building permit application s.22(1) was submitted on April 20, 2022 and issued on May 25, 2022. As the building permit was not issued within the 2021 reference period, it is not eligible for the “Property undergoing redevelopment or major renovation” exemption in Section 3.2(a) of the Vacancy Tax By-Law.
- The Review Officer notes the architect was provided an initial intake date of August 30, 2021 to submit the application in person. The permit application was rejected November 30, 2021 and during 2022 steps were taken to receive the building permits.
- The exemption for major renovation or redevelopment is only applicable to properties that are undergoing active construction for which permits have been issued. This exemption does not apply to properties for which building permits are in review and pending issuance.
- Owners who are awaiting building permits must ensure that the property continues to be occupied as a principal residence or rented out for at least six months of the year.

- If the property is not the principal residence of an occupier or tenanted to an arm's length tenant for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.
20. The Owner and Counsel were not satisfied with the outcome of the review and sought avenues to have the NOC reviewed by another review officer.
21. Counsel described the Owner's reason for review in part as follows:
- “The decision of the auditor must be vacated. The By-Law in effect in 2021 does not require that a permit application be submitted by July 1st of the vacancy reference period. Moreover, the text, context and purpose of section 3.2 of the By-Law does not support the Auditor's conclusion, accordingly, the assessment lacks a valid legal basis.”
- “The vacancy tax notice dated November 8, 2022, and the determination made by the review officer dated July 19, 2023, must be rescinded for the reasons set out in our complaint dated February 6, 2023 and our subsequent communications with the Vacancy Tax Office.
- The complaint explained that paragraph 3.2(b) of the By-law applied to the property for the year. However, the determination letter asserted that paragraph 3.2(a) did not apply, making no mention of paragraph 3.2(b).
- In other words, it appears the complaint was ignored, so much so that the review officer ruled based on an entirely different provision. They clearly did not contend with the complaint itself, but rather perhaps with some imagined, fictional version of what the complaint might have been.”

ANALYSIS & REASONS:

22. The Panel conducted an independent adjudicative review of this matter. In accordance with the Vacancy Tax Review Adjudication process, the Panel can review all the factual material afresh. The case has been subject to a detailed review, involving all available evidence submitted by both the City and the Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.
23. Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer made reasonable factual findings and as a matter of law correctly interpreted the Bylaw in light of those facts. Of course, that applies to factual matters and not to interpretation of the law. There is no

burden on any party with respect to interpreting the law. That is the role of the adjudicator, which in this Review Process is the Panel.

24. The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20. At para. 26, the court noted that "The fundamental rules on the allocation of evidentiary burden in this matter remain valid The taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law." At para. 29, the court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it -- the duty to ascertain the correct interpretation lies with the court."

25. The Bylaw, like all legislation, is to be interpreted according to the following principles adopted by the Supreme Court of Canada in *Rizzo & Rizzo Shoes* ([1998] 1 SCR 27):

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

26. Furthermore, as articulated by the Supreme Court of British Columbia in *Belmont Nominee Ltd. v. Vancouver (City)* 2021 BCSC 2492 (at para. 71):

Administrative decision-makers interpreting legislative provisions must consider the text, context and purpose of the provisions in order to arrive at the authentic meaning of the provision: see *Hillier v. Canada (Attorney General)*, 2019 FCA 44.

27. Accordingly, in conducting its review, the Panel has considered the intention and objective of the Bylaw, which, as stated on the City's website, "is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver".

Redevelopment and/or Renovation

Section 3.2

28. The Owner's annual declaration for the 2021 Period claimed exemption from tax based on the "redevelopment or renovation" provisions of section 3.2 of the Bylaw which read at that time¹ as follows:
- 3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:
- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City, and
 - ii. which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay, or;
 - (b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:
 - i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and
 - ii. which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay, or;
 - (c) *[As the Owner did not seek the exemption described in paragraph 3.2(c), it has not been considered by the Panel in this Review.]*
29. As noted in Counsel's Submission, amendments to section 3.2 were made by the City during the 2021 Period by By-Law No. 13258, which provided that to be eligible for an exemption under section 3.2, certain events, set out in each of paragraphs (a), (b) and (c), had to occur by July 1st of the vacancy reference period. The Panel agrees with Counsel however, that as By-Law No. 13258 was not enacted until February 8, 2022, the said amendments are of no effect in respect of the Property and its compliance or non-compliance with section 3.2 for the 2021 Period.
30. Based on the evidence provided by the Owner, the Property was not occupied as a principal residence nor tenanted at any time during the 2021 Period. As the Property was unoccupied for all of the 2021 Period, the Panel finds that the Property has met the first condition of section 3.2, being "unoccupied for more than six months during the vacancy reference period".

¹ Bylaw No. 11674 consolidated for convenience only to December 10, 2020, amended to include By-law No. 12628 effective January 1, 2021.

Paragraph 3.2(a)

31. The exemption provided by paragraph 3.2(a) requires that three additional conditions be met:
 - i. first, the Property must be subject to redevelopment or major renovations,
 - ii. second, the City must have issued permits, and
 - iii. third, the Chief Building Official must form an opinion whether the redevelopment or major renovations were carried out diligently and without unnecessary delay.
32. With regard to the *first* condition, based on the scope of work reflected in both the architect's and contractor's contracts, it is clear that the Owner intended that the Property be redeveloped and undergo major renovations. The Submission confirms that construction did not commence until 2022, thus the Panel finds that no active construction took place during the 2021 Period.
33. With respect to the *second* condition, the Panel finds that the development & building permit, s.22(1) was not issued by the City at any point during the 2021 Period, but rather it was issued on August 11, 2022.
34. The Panel finds there is no need to consider the *third* condition, having found there to have been no active construction taking place during the 2021 Period.
35. The Panel concludes that the Property was not exempt from taxation under paragraph 3.2(a), as the requirements set out in that paragraph have **NOT** been met.

Paragraph 3.2(b)

36. Owner's Counsel submits that:

"Section 3.2 of the By-Law, including paragraph 3.2(b), was amended by By-Law No. 13258 effective February 8, 2022, adding the words "by July 1st of the vacancy reference period". Accordingly, the July 1st requirement did not apply to 2021 vacancy reference period.

Furthermore, the text of paragraph 3.2(b) requires that a permit application be made and have been under review by the City. The text of paragraph 3.2(b) does not require the owner(s) to have commenced or have carried out any renovations with issued permits on or prior to July 1st, 2021, nor does it require the permit application be successful. . .

Only paragraph 3.2(a) – a separate, but related, exemption – requires that a permit be issued and the development being undertaken diligently and without unnecessary delay. As the exemption claimed is under paragraph 3.2(b), the requirements of 3.2(a) do not apply". (emphasis added)

37. The Panel finds that paragraph 3.2(b), when read in its grammatical and ordinary sense, provides for three possible exemption scenarios:
- i. redevelopment, or
 - ii. initial development,
of residential property that is unimproved with any dwelling units; or
 - iii. rehabilitation and conservation of heritage property. (emphasis added)
38. Two of the exemption scenarios requires residential property to be unimproved and the third scenario applies only to heritage property. No matter which exemption scenario is being relied upon, two further conditions must be met in respect of the residential property, namely:
- i. either a:
 - a. complete rezoning enquiry or application, or
 - b. development permit application, or
 - c. heritage alteration permit application,has been submitted by or on behalf of the registered owner and is under review by the City; and
 - ii. in the opinion of the Director of Development Services, the submission is being diligently pursued and without unnecessary delay.
39. A property that is “unimproved with any dwelling units” means that it is vacant land with no existing building. Based on the list of permits and documents set out in Schedule 2 of Counsel’s Submission which indicates that the Owner applied for the Demolition Permit on May 25, 2022 and it was issued on July 20, 2022, the Panel finds that the Property was not “unimproved with any dwelling units” during the 2021 Period.
40. Whether one relies on the digital intake date of August 6, 2021, or the later in-person intake date of August 30, 2021, the Panel finds that the original development and building permit application was initially submitted on behalf of the Owner during the 2021 Period and was under review by the City through to November 30, 2021, and beyond, when the rejection and request for resubmission was received by the Owner.
41. Counsel argues that:
- “the Owners were not only diligent in their pursuit of the permit application, but consistently and frequented (sic) sought answers from the City with respect to their application. It is unquestionable that the Owner’s pursued the applications with the

highest level of diligence and without unnecessary delay. This conduct persistent even after the City rejected the application”.

42. Although there is no evidence that the Director of Development Services was ever asked to provide their opinion as to whether the permit application was diligently pursued, without unnecessary delay, by the Owner, the Panel finds that Counsel’s Submission and attachments, including copious pages of email threads, has amply shown the “diligent and continuous efforts” of engagement with the City by the Owner’s team of designer, contractor and architect.
43. In the Bylaw, “heritage property” means property that:
- “(a) in the opinion of a person or body authorized to exercise a power under the *Vancouver Charter* in relation to the property, has sufficient heritage value or heritage character to justify its conservation; or
 - (b) is protected heritage property”.
44. According to Counsel, the Property “was designated *character merit* by the City of Vancouver as it s.22(1) causing the Owner’s architect to have made “various enquiries to the City to confirm the appropriate interpretation of certain zoning by-laws and the applicable by-laws for character merit (sic) property zoned RS-5”. Counsel submits that:

Character merit properties are unique and subject to specific building and zoning by-laws. Notably character merit (sic) properties that are to be demolished are not eligible for conditional provisions of the relevant zoning by-laws, only the outright provisions.

The zoning by-laws relevant to *character merit* properties may impact to the FSR achievable and therefore must be considered prior to the design.

The City confirmed that character merit properties were not subject to conditional provisions of the relevant zoning by-laws, only the outright provisions.

45. The Panel has considered the foregoing and finds that despite the Property’s *character merit* status, there is no evidence that the Property is a heritage property.

Conclusion

46. Although it is unclear to the Panel as to how a registered owner indicates, when making their declaration, which of the three exemption paragraphs set out in section 3.2 they wish to rely upon for their Property, the Auditor proceeded based on the belief that the Owner was relying on exemption 3.2(a).

47. The Panel finds that the Auditor erred in finding that the Property did not qualify for the section 3.2 exemption based primarily on the Owner being in non-compliance with a requirement in section 3.2 contained in an amendment which had not yet been enacted.
48. Whatever ambiguity may have initially existed regarding which section 3.2 exemption the Owner wished to rely upon, the Submission by Counsel in respect of the NOC submitted to the Review Officer was very clear that the Owner was relying solely on exemption 3.2(b).
49. The Panel finds that the Review Officer erred in failing to either consider the merits of Counsel's Submission regarding exemption 3.2(b), or, at the very least, provide reasons for not having done so.
50. Setting aside the Auditor's and Review Officer's determinations, the Panel must review all the factual material afresh and based on that material, the Panel concludes that the Owner has not established the Property to be exempt under paragraph 3.2(b) for the 2021 Period.
51. While a development permit was applied for and under review during the 2021 Period, paragraph 3.2(b) only applies to a property that is unimproved with any dwelling units. If there is an existing building on the property, then the exemption in paragraph 3.2(b) does not apply.

FINAL DETERMINATION:

52. In conclusion, having reviewed and considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Bylaw, the Panel determines that the reason the Property was unoccupied for more than six months during the 2021 Period was not because it was undergoing redevelopment with a pending development permit application since the Property was not unimproved land. Accordingly, the Property is not eligible for an exemption under paragraph 3.2(b) of the Bylaw.
53. The Panel's final determination is that Vacancy Tax SHOULD be imposed on the Property.

Review Determination: DENIED



Panel: Arlene H. Henry, KC

Date: September 25, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: November 4, 2024

File Number: RC-2024-00010

Requesters: s.22(1)
(the "Owners")

Vacancy Reference Year: 2021

Civic Address: s.22(1)
(the "Property")

Folio: s.22(1)

At the request of the Owners, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owners claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

The Audit Process and Determination

By letter dated August 18, 2022 addressed to the Owners and to s.22(1), the City's Vacancy Tax Office advised that the declaration filed in relation to the Property for the 2021 Vacancy Reference Year would be audited. The Owners were advised to complete a questionnaire and upload all specified documents by September 21, 2022.

The Owners submitted a copy of a Plumbing Permit dated July 13, 2020 obtained by s.22(1) s.22(1), that referenced repiping the entire building in which the Owners' Property was situate. The work involved 37 suites on 4 floors of the building. The permit noted that no Building Permit was sought or obtained. The work was described as "Renovation."

Also included by the Owners were two inspection reports. One was dated April 28, 2021 and said it was in relation to s.22(1). It commented that the work done involved "Domestic water risers, suites water piping tests and fire-stop." The inspector noted that the work "passed" the inspection. Another report was dated September 9, 2021. It commented on the work inspected and conclusion reached involved "Water pipes and firestop final passed. Schedule C-B sent to documents."

In response to the questionnaire, the Owners described what happened with the Property thus:

Major plumbing renovation that has caused the property to be vacant. Due to the delays that came with COVID, the project was extended over 6 months – it was finished in July 6, 2021. Then due to unforeseen damage substantial damage to the suite, the company had to fix it and that extended to mid-September 2021.

The Owners also supplied a copy of a letter from s.22(1) to the building's property manager concerning the work done by s.22(1) on the Property. The letter set out a series of complaints that s.22(1) d" by being used as a "communal washroom" and "storage shed" for equipment and supplies during the repiping work throughout the building.

s.22(1) went on to complain about the damage to the Property as follows:

s.22(1)



Here is what I saw when I entered my suite on July 2, 2021:

s.22(1)



s.22(1)



s.22(1)

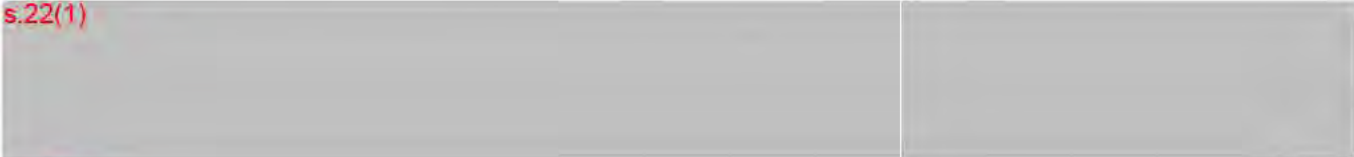


s.22(1)



The letter referred to video and photos to show the damage. The video and photos were made available to the Auditor and Review Office. They were not included in the materials provided to this Panel, but the Panel accepts the Owners' description of what they show and thus they are not required for review. There does not appear to be any issue about the fact that there was damage done and that corrective work was required. The point of contention is rather over whether the nature of the work that was required can be described as "major renovations" and whether the permit that was obtained was for such "major renovations."

s.22(1)



s.22(1)



s.22(1)

s.22(1)

The Auditor's main concern in relation to the declaration and the evidence submitted appears to have been that no building or development permit was obtained. Instead, only the plumbing permit noted earlier was obtained. The Auditor's note about the situation was that: "Per Section 3.2(a) of the Bylaw, minor renovations do not qualify a property for an exemption to the Vacancy Tax. Upon review, no Building Permit for major renovations or redevelopment was issued for work at the property under audit prior to July 01, 2021."

By a letter dated October 26, 2023, the Auditor wrote to the Owners and confirmed what had been set out in a voicemail left on their telephone service. The Auditor noted that the Owners' declaration for the 2021 Vacancy Reference Year claimed that the Property was exempt under the "Redevelopment or Renovation Exemption." The Auditor explained that exemption's requirements, quoting from the bylaw, as follows:

The Vacancy Tax bylaw states that a vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than 6 months during the vacancy reference period in order to [...]

(a) redevelop or safely carry out major renovations to the property;

- i. for which permits have been issued by the City by July 1st of the vacancy reference period, and*
- ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay.*

Minor renovations do not qualify for the renovation exemption. There are many types of renovations that may make occupancy unsafe or impractical while work is underway. However, very few of these will require the home to be unoccupied for 6 months. The vast majority of renovation projects can be completed in less than six months. If a renovation project can be completed in less than six months, the home will not be eligible for the renovation exemption.

In order to qualify for an exemption under Section 3.2(a) of the Vacancy Tax Bylaw, a Building Permit for a redevelopment or major renovation must have been issued prior to July 01 of the relevant vacancy reference period. Upon review, no building permit was issued for the property under audit within the reference period. Permit PP-2020-02216 for the building to be re-piped was issued prior to July 01, 2021 on July 13, 2020, however, this type of permit is not considered under Section 3.2(a).

Based on the evidence provided to date, we do not consider that this property was unoccupied for more than 6 months because the property was undergoing redevelopment or major renovations.

The Auditor gave the Owners additional time, till November 7, 2022, to submit any further information or documents that would show that the Property was exempt.

By a letter dated January 24, 2023, the Owners and s.22(1) were advised of the results of the audit. The City's Auditor determined that the declaration filed was non-compliant and that the Property was subject to the Vacancy Tax for the 2021 Vacancy Reference Year and set out the following basis for that:

Inappropriate Evidence

Based on the evidence provided, the City determines that this property does not qualify for this exemption per Section 3.2 of the Vacancy Tax By-Law (No. 11674), on the basis that:(a) the renovations were not major renovations

The Auditor's January 24, 2023 letter advised that the Owners could have the audit determination reviewed by a Vacancy Tax Review Officer. The Owners opted to do that by filing a Notice of Complaint.

The Review Officer's Process and Determination

The Review Officer reviewed the Owner's Notice of Complaint, the Auditor's Determination letter and the materials included in the file.

The Owners set out that they regarded the Property as "unsafe" during the plumbing renovations and the subsequent correct measures being undertaken. As such, it could not reasonably be occupied, in their view.

By a letter dated April 3, 2023, the Review Officer set out the following for the Owners and required that they provide by April 17, 2023 any further materials that ought to be considered before a final determination was made.

This property was declared exempt under the Redevelopment or Renovation exemption. Section 3.2 of the Vacancy Tax bylaw states that a vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to redevelop or safely carry out major renovations to the property:

- i. for which permits have been issued by the City by July 1st of the vacancy reference period, and
- ii. which, in the opinion of the Chief Building Official or their delegate, are being carried out diligently and without unnecessary delay.

This exemption only applies to properties that are undergoing active construction and where permits have been issued. The construction work must be carried out diligently and without unnecessary delay. Properties that are under construction, but their permits are pending, will be subject to the Vacancy Tax.

Homeowners who are awaiting permits must ensure that the property is either occupied as a principal residence or rented out (in periods of 30 or more consecutive days) for at least six months of the vacancy tax reference period.

Based on the evidence provided to date, we do not consider that this property was unoccupied for more than six months because the property was undergoing redevelopment or major renovations as there were no building permits issued. Please advise when the prior tenant in 2018 moved out and submit the response letter from the strata and s.22(1)

Please let us know if you consider that you have additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw.

No further materials were provided, it appears. The Review Officer followed up with an extension and further request, allowing until May 4, 2023.

The Review Officer investigated matters further. Those included reviewing the status for the 2021 Vacancy Reference Year of the other units in the same building as the Property. Those units appeared

to be occupied notwithstanding the plumbing renovation and other work going on. That indicates that for the 2021 Vacancy Reference Year those units were occupied by a principal owner or tenant for 6 months or more. The Review Officer concluded that the Owners' arguments concerning the Property were not borne out and that the plumbing permit did not require the unit to be unoccupied for six months of the reference period.

The Review Officer issued a determination letter dated April 24, 2024 to the Owners that advised that the Auditor's determination had been confirmed and the Property was subject to the Vacancy Tax. The Officer explained matters thus:

The reasons for the determination are as follows:

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the City. To be eligible for an exemption under section 3.2(a) of the Vacancy Tax By-Law, a building permit must have been issued within the reference period.

A plumbing permit issued to the building (covering all units) is not eligible for the "Property undergoing redevelopment or major renovation" exemption in Section 3.2(a) of the Vacancy Tax By-Law. The permit did not require the unit to be unoccupied for more than six months of the vacancy reference period.

The City specifically provides information relating to the renovation exemption and that it does not apply for minor renovations. The City website and renovation exemption information bulletin both include plumbing upgrades as projects that can usually be completed in less than six months' time and, therefore, will not generally qualify for the major renovation exemption.

If the property is not the principal residence of an occupier or tenanted to an arm's length tenant for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

The Owners were not satisfied with the outcome of the Review Officer's Process and Determination and opted to request a review by the Panel, saying this s.22(1)

s.22(1)

The Panel's Review and Determination

The starting point for this review is with the bylaw provision. Section 3.2(a) reads thus:

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

(a) redevelop or safely carry out major renovations to the property:

- i. for which permits have been issued by the City in the vacancy reference period, and
- ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay.

In this case, the Property was left unoccupied for "more than six months during the vacancy reference period". The reason for that, according to the Owners' declaration, was that it was subject to major renovations. From a lay perspective, having major plumbing work as described here [s.22\(1\)](#) in a strata building over a period of months and months seems to fit. But the bylaw limits even what may otherwise be considered "major renovations" by inserting two requirements. The first is that "permits have been issued by the City in the vacancy reference period." The second is that the Chief Building Official or delegates hold the opinion that the work is "being carried out diligently and without unnecessary delay."

The Vacancy Tax Bylaw itself does not specify what permits are for "major renovations" and what ones are for "minor renovations." Administratively, the City's Vacancy Tax Office policy is that where a building permit or development permit are issued, the renovations are (at least generally) considered to be "major renovations." Where, as here, the renovations are authorized by the City's Building Department by a different permit (here, a Plumbing Permit), they are (again, generally) not.

The Review Officer's letter says as much with this sentence: "The City website and renovation exemption information bulletin both include plumbing upgrades as projects that can usually be completed in less than six months' time and, therefore, will not generally qualify for the major renovation exemption."

The Review Officer does not quote the precise passage that was relied upon for that statement, but the City of Vancouver's website does include this:

Minor renovations do not qualify for an exemption.

- There are many types of renovations that may make occupancy unsafe or impractical while work is underway. However, very few of these will require the home to be unoccupied for 6 months; rather, the vast majority of renovation projects can be completed in less than 6 months' time.

The Panel is of the view that the s.22(1) unit strata or apartment complex that involves some time when it is "unsafe or impractical" for units (perhaps on a rolling basis, rather than all together for the same duration) to be occupied does not readily fit within the meaning of "minor renovations." It sounds instead, when viewed in the aggregate, as a major renovation of the whole building.

That said, the question where a strata complex is involved is whether any particular strata unit is "unsafe or impractical" for occupancy for more than 6 months in a given vacancy reference year. That requires an analysis of the facts relating to that unit.

The Panel does not agree with the Auditor or Review Officer's determination that the fact that no building permit was obtained is determinative. The City's policy, as the Review Officer acknowledges, allows that some other kinds of permits may qualify for being considered "major renovations". That appears to the Panel to be the case here.

Here, it appears that the Property would have been available for occupation for more than 6 months in the 2021 Vacancy Reference Year, but for the issue of the damage done to the Property by the plumbing contractor and the time taken to repair that.

The Owners' complaint letter to the strata property manager dated July 5, 2021 says that:

s.22(1)

The Panel is of the view that completion of the work by the contractor means more than s.22(1).
s.22(1) A competent, professional plumbing contractor, like contractors generally, is obliged to leave the premises in a clean and tidy condition and not to have damaged the

premises. Where that does not happen, the Panel's view is that the date at which re-occupation of the premises takes place properly has to be considered extended to deal with those deficiencies.

The issue was therefore not the plumbing work itself, but rather the failure of the contractor to complete the job, leave the premises in a clean and tidy condition and correct damage to the Owners' Property that the contractor had occasioned. That too additional time (to September 2021) for corrective measures to be taken.

The question arising from that, however, is whether it allows the Owners to claim that what the Panel agrees is "major renovation" work should be deemed to have reasonably continued past the 6 month mark in the vacancy reference year so as to afford them an exemption. That is a more troublesome point in the analysis.

In the Owners' favor, however, is the fact that no one disputes that up to June 28, 2021, the Property was vacant due to the work being done under the permit. In order to qualify for the exemption, the Owners only need show that the work being done under the permit extended to July 1, 2021. That is a mere few days after the notional completion and re-occupancy date of June 28, 2021 issued by the plumbing contractor. The fact that the contractor agreed with the Owners' complaints about the premises not having been left in a clean and tidy condition and that there was damage to the premises requiring correction, undermines that contractor's initial notice that June 28, 2021 was the effective date for completion.

The Owners set out the work that was required to be done as corrective measures as follows:

s.22(1)



Those do not require any new permit, although arguably they should have been completed and corrected prior to any declaration of completion. They seem, by themselves, to involve what may be deemed

“major renovations.” There is also no real explanation why it took till September 2021 to complete them and for the Owners to be able to occupy the Property.

That said, the fact that there were concerns about sanitary conditions (i.e., requiring new toilets and disinfecting measures) and the nature of the repiping work itself support the Owners’ concerns about fitness for re-occupation of the premises.

The focus of attention should not get distracted by it taking till September 2021, however. If it reasonably was to take more than just a few days, then that period of time would push the period the Property was not safe or practical for occupation past the July 1, 2021 date and render the period in the vacancy reference year that it was not fit for occupation to more than 6 months.

The Panel adopts a common sense and practical view to when “major renovations” should be deemed to be over and occupancy of premises reasonably expected to resume. In this case, the plumbing work’s completion would not realistically be the point in time when the “major renovations” should be deemed completed. Rather, the deemed completion should be when the plumbing work is done, inspections passed and the contractor has cleaned up and demobilized from the site in a professional and workmanlike manner so that the Owner may re-occupy or authorize someone to occupy the premises.

In this case, that last step – clean up, sanitization and demobilization – extended the period during which the Owners could not reasonably occupy the Property past the 6-month mark in the vacancy reference year. As such, the exemption should be considered applicable.

The Panel notes that there is no direct evidence what the Chief Building Official or delegate’s opinion as to the progress of the work was here, other than the inspection reports showing that the plumbing work passed inspection. That is likely sufficient for present purposes, although it would have been preferable for one or another of the Owners or the City of Vancouver’s Vacancy Tax Office to have made inquiries and ascertained whether there was other evidence from the Chief Building Official’s office. Absent that, the Panel relies upon the evidence that has been presented. It does not indicate any concerns on the part of the Chief Building Official or delegates as to the efficient and timely completion of the work authorized by the permit here.

In conclusion, the Panel’s view is that the Owners established the requirements for the exemption in that there was a permit, the work was for major renovations and that the period that the Property was not available for occupation extended to more than 6 months in the 2021 Vacancy Reference Year.



File Number: RC-2024-00010

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality establishes that the Owners are entitled to an exemption of this Property from taxation under section 3.2 of the Bylaw.

Thus, the Panel has arrived at a final determination that Vacancy Tax should not be imposed on the Property for the 2021 Vacancy Reference Year.

Review Determination: GRANTED



Panel: Robert D. Holmes, K.C.

Date: November 4, 2024.

The City of Vancouver Vacancy Tax Review Panel Decision

Date: September 16, 2024

File Number: RC-2024-00027

Requestor: s.22(1)

Vacancy Reference Year: 2020

Civic Address: s.22(1)

Folio: s.22(1)

OVERVIEW OF ISSUES:

- [1] The registered owner declared an exemption from the Vacancy Tax on the basis that the subject property was undergoing redevelopment or major renovations where permits had been issued, or alternatively that the land was vacant. The property is not vacant as it contains a dwelling that is not safely habitable. No permits were issued in the subject reference period of 2020 and none applied for in 2020. A development permit was applied for in 2019 and issued in 2022. Both at audit and on the Vacancy Tax Review Officer (VTRO) stage the exemptions sought were denied and the property found taxable.
- [2] The owner seeks review based on unsafe and potentially hazardous condition of the dwelling for occupation, and the futility and waste of time of any efforts to rehabilitate the dwelling to make it habitable and then to tenant it when it will then just be torn down as part of the property redevelopment.
- [3] The issue is whether there are any exemptions from taxation that apply in the circumstances.

FACTS:

- [4] The subject property was bought in s.22(1) s.22(1) That s.22(1) was expected to take until 2024 to complete.
- [5] The property when purchased and in the s.22(1) vacancy reference period contained an s.22(1) from the photographs and other evidence provided, is in a very decrepit condition. The owner's representative calls it "the remains of a house".

- [6] The owner's representative determined that the dwelling was unsafe to occupy and so uninhabitable. Its plans from the time of purchase were to demolish it.
- [7] According to information obtained by the City the condition of the dwelling was so deteriorated that the purchase agreement stated it was purchased "buyer beware", and so the owner was aware of its uninhabitable condition from the time of purchase.
- [8] The owner had a hazardous material inspection done that lists risks including rotting vermiculite, a damaged bell and spigot, asbestos duct tape, and a collapsed ceiling. The interior was noted as being severely damaged and there is water intrusion damage from the dilapidated exterior state. The photographs provided show the building exterior in an extreme state of deterioration.
- [9] The owner's representative explained to the City that, to make the dwelling safe and habitable for a tenant, the whole property would have to undergo major and extensive repairs and renovation. Given the overall objective to develop multi-family homes on this and the adjoining properties, such a renovation, followed shortly after by a demolition, is to the owner not only a waste of funds but also could cause environmental harm, which the owner, s.22(1), did not wish to do. It was also not feasible to undertake this costly process just to have a tenant in the property for a short period of time.
- [10] The owner's representative states that a development permit was applied for in 2019. The City confirms that:

"This is for a staged development (whereby an s.22(1) s.22(1). The development permit s.22(1) was applied for in 2019 (submitted April 10, 2019). It was then approved and issued on June 2, 2022."
- [11] City records also include a demolition permit that was applied for on April 29, 2021, and a building permit that was applied for on May 3, 2021. The building permit and a salvage and abatement permit were issued June 28, 2022.

AUDIT AND VACANCY TAX REVIEW OFFICER DECISIONS:

- [12] As noted at both these stages the property was found to be taxable as no renovations or redevelopment was carried out under permit in the 2020 vacancy reference year and

the dwelling on the property as not occupied. In particular the VTRO stated in the decision:

There is no exemption for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation with an issued building permit pursuant to section 3.2(a) of the *Vacancy Tax By-Law*. The vacancy tax by-law amendment for hazardous or damaged residential property was not enacted until June 28, 2023.

ANALYSIS:

- [13] In accordance with the Vacancy Tax Review Adjudication process, the Panel has independently reviewed all the evidence submitted by both the City and the owner. The Panel finds, on a balance of probabilities, that the Property does qualify for an exemption under the relevant provision of the *Vacancy Tax By-law* for the following reasons.
- [14] Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer made reasonable factual findings and interpreted the By-Law in light of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).
- [15] In this case the exemption claimed is under section 3.2(a) or 3.2(b). Those sections read in 2020 as follows:
- 3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:
- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City in the vacancy reference period, and
 - ii. which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay

(b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:

i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period, and

ii. which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay, ...

[16] With section 3.2(a) no redevelopment or major renovation was done in 2020 and no permits issued to allow that work and thus that exemption does not apply.

[17] While a development permit was applied for in 2019, section 3.2(b) only applies to property that is unimproved with any dwelling units.

[18] The By-law does not define “dwelling unit” or “unimproved”. However, under the *Vancouver Charter*, “improvements” is defined as including “... buildings, structures, machinery and other things so affixed to the land as to make them in law a part of the land”. In this case there is a building or structure affixed to the property, albeit a decrepit one. The issue is whether that building or structure is a “dwelling unit”.

[19] The *BC Building Code* defines “dwelling unit” as “... a suite operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities”.

[20] Under the *City’s Zoning and Development By-law* No. 3575, a “dwelling unit” is defined as “[a] self-contained housekeeping unit”. “Housekeeping unit” is in turn defined as: “[a] sleeping unit containing facilities for cooking”.

[21] *Black’s Law Dictionary* does not define this term, but does define “dwelling house”:

The house in which a man lives with his family; a residence; abode; habitation; the apartment or building, or group of buildings, occupied by a family as a place of residence.

[22] It is a cardinal rule in statutory construction that the words of an [enactment] are to be read in their entire context, in their grammatical and ordinary sense harmoniously with

the scheme of the [enactment], the object of the [enactment], and the intention of [the legislative body that passed the enactment], (From Driedger, *The Construction of Statutes*, Toronto, Butterworths, 1974 @ p. 67)

- [23] In *Okanagan-Similkameen (Regional District) v. Leach*, 2012 BCSC 63 the Court summarized:

[54] A statute is presumed not to have superfluous words or provisions and the courts should presume that all words were included for a specific purpose and should be given effect. The rule of effectivity was described by Ruth Sullivan in *Driedger on the Construction of Statutes*, 5th ed. (Markham, ON: LexisNexis, 2008) at 210: “every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose”.

- [24] The position of the owner is that the building or structure is not safely habitable. Clearly when it was constructed it was “used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities”. In the 2020 vacancy reference period it would appear to no longer have had some of those facilities, and perhaps none of them.

- [25] The purpose of the *Vacancy Tax By-law*, as stated on the City website, is as follows:

We introduced the Empty Homes Tax in 2017 to help:

Return empty or under-utilized properties to use as long-term rental homes for people who live and work in Vancouver

Relieve pressure on Vancouver's rental housing market, as our city has one of the lowest rental vacancy rates in Canada.

- [26] It is hard to envision how requiring this owner to spend substantial time and funds to make the structure on this property safely habitable for a few months before tearing it down accomplishes that task. Also not clear is whether the owner could even do so without obtaining permits for those renovations and repairs from the City, and if they would be issued in time to permit the owner to do so before the structure was torn down.

- [27] I find that the grammatical and ordinary meaning of “dwelling unit” when read harmoniously within the context of the By-law’s scheme and objects, and in accordance

the stated intention of the City in passing it, mean a residential building that is or can be reasonably readied for safe occupancy with the requisite sleeping, living, cooking and sanitary facilities. Owners are required to ensure that such units are occupied unless specific exemptions under the By-law exist. I do not find that it encompasses a hazardous and unsafe structure where there is no practical purpose in trying to make it habitable as the property is being re-developed, and the structure is in any event being removed in a reasonably short timeframe.

- [28] In this case, during the subject vacancy reference period, this residential property was being redeveloped after a complete development permit application had been submitted by or on behalf of the registered owner and was under review by the City, and as I have found there was no dwelling unit on the property.
- [29] I note that this conclusion is reached on the particular facts of this case and is restricted to those facts.
- [30] As a result I find that the exemption under section 3.2(b) applies.
- [31] The owner also referred to the current exemption under section 3-10 of the By-law for property that is uninhabitable because it was substantially damaged or destroyed by a disaster or is in a hazardous condition due to circumstances beyond the reasonable control of the owner. It is not strictly necessary to consider this alternative submission of the owner given the finding just made, but for the owner's benefit I will deal with it and explain why it does not apply.
- [32] The VTRO noted that this section was added to the By-law by an amendment enacted on June 28, 2023, and as such is not applicable in the 2020 vacancy reference period.
- [33] The Panel agrees with this conclusion. There is a legal presumption that enactments are not retroactive in application unless they are specifically stated to operate retroactively. See Driedger, *Statutes: Retroactive Retrospective Reflections*, (1978) 56 CRB vol. 2 at pp. 268-269:

A retroactive statute is one that operates as of a time prior to its enactment . A retrospective statute is one that operates for the future only . It is prospective, but it imposes new results in respect of a past event . A retroactive statute operates backwards . A retrospective statute operates forwards, but it looks backwards in that it attaches new consequences for the future to an event that took place before the statute

was enacted. A retroactive statute changes the law from what it was; a retrospective statute changes the law from what it otherwise would be with respect to a prior event.

[34] And at p. 271. "It is usually easy enough to identify a retroactive statute . It will say that it came into force on a day prior to its enactment, or that it operates on past transactions."

[35] In this case there is no basis to find retroactive application. Retrospectivity also does not apply as it operates moving forward (in this case from June 29, 2023) with respect to past events.

FINAL DETERMINATION:

[36] My final determination is that Vacancy Tax should not be imposed on the subject property. The review is granted.



Panel: Michael F. Welsh, K. C.

Date: September 16, 2024

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Decision Date: April 2, 2025

File Number: RC-2024-00033

Requestor: s.22(1)
(the "Owner")

Vacancy Reference Year: 2021

Civic Address: s.22(1)
(the "Property")

Folio: s.22(1)

Introduction

At the request of the Owner, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subjected to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Owner's Failure to File a Property Declaration

The Owner neglected to file a declaration as to the Property for the 2021 Vacancy Reference Year. When confronted with the fact that such failure meant that the Property was deemed vacant and subject to tax, the Owner filed materials, albeit late, and explained the initial lapse as follows:

s.22(1)

That was deemed to be a Notice of Complaint and engaged the process by which the City Review Officer investigated the Owner's claim for exemption and made a determination whether it was established.

The City's Review Officer requested the Owner fill out a questionnaire. In s.22(1) responses to that, the Owner said that the Property was used as a principal residence since s.22(1) presumably referring to s.22(1). The Owner also said that the s.22(1) for in relation to the Property. The Owner supplied certain materials s.22(1) with the Property's address on it, a sprinkler service invoice addressed to the Property's address, a home insurance document to the Owner that referred to the Property as a secondary residence, and a garage service invoice addressed to s.22(1).

By a letter dated January 13, 2023, the Vacancy Tax Review Officer, on behalf of the Collector of Taxes of the City, acknowledged receipt of the Owner's Notice of Complaint and advised as follows:

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s.22(1)

The Review Officer went on to list the documents and information supplied by the Owner with the Notice of Complaint, but noted they were insufficient, as follows:

- s.22(1)
- Sprinkler service invoice dated June 16, 2022.
- Home insurance documentation for a policy effective May 10, 2022 to May 10, 2023.
- Garage service invoice dated April 5, 2022.
- *The sprinkler invoice, garage service invoice, and home insurance documentation were not relevant in the 2021 vacancy reference period (January 1, 2021 to December 31, 2021).

*s.22(1)

The Review Officer then enumerated what kinds of documents and information were required to establish the exemption that the Owner was claiming. A deadline of January 27, 2023 was set.

Please provide the following documents to support your notice of complaint for 2021: Any THREE of the following supporting documents: (Note: all documents must display the homeowner's name, the property address, and the date of issuance)

- 2021 Homeowner Insurance Policy (ensuring the policy covers 6 months or more in 2021)
- 2021 ICBC vehicle registration and insurance (ensuring the policy covers 6 months or more in 2021)
- 2021 Mortgage Statement
- 2020 tax year CRA T-Slips (T4/T5/T3)
- 2020 tax year CRA notice of assessment, issued in 2021.
- Utility Bills for 6 months in 2021 (BC HYDRO / FORTIS BC)
- Any 2021 dated correspondence from a government authority (e.g. Canada Child Benefit, Canada Pension Plan (CPP), Old Age Security or Guaranteed Income Supplement (OAS/GIS), Employment Insurance (EI).
- 6 months of bank and/or credit card statements in 2021 (name/address/statement date must be shown, financial information can be redacted).
- Internet/cable bills spanning 6 months in 2021.
- Cellphone bills spanning 6 months in 2021.

The Owner was also asked to explain why the insurance document supplied referred to the Property as s.22(1)

The Owner did not respond.

Section 5.4 of the Vacancy Tax Bylaw provides as follows:

5.4 A registered owner:

- (a) must provide any information or submit any evidence that is required by the Collector of Taxes or vacancy tax review officer in accordance with this by-law;
- (b) must provide the information or submit the evidence in the form and within the time stipulated by the Collector of Taxes or vacancy tax review officer; and
- (c) must not provide false information or submit false evidence to the Collector of Taxes or vacancy tax review officer.

It is clear from this provision that when information was requested and a deadline given, the Owner was obliged to comply in a timely manner. The Owner failed to do so with respect to the Review Officer's January 13, 2023 letter and several further letters. The Review Officer kept extending the deadlines.

Thus, the Review Officer sent a follow-up letter dated January 30, 2023 asking for the same materials again. A new deadline of February 13, 2023 was set. The letter was apparently mailed and emailed to the address given by the Owner.

That did not elicit a response from the Owner either. So, a letter dated February 14, 2023 asking for the same materials again was sent out, with the following deadline spelled out: "If we do not hear back from you by March 7, 2023, we will proceed with determining your complaint on the basis of the information that we have received to date."

On February 14, 2023, the City's Review Officer called the Owner's phone number. The message stated that the Owner was not receiving calls. Leaving a message was not afforded as an option.

On February 15, 2023, the City's Review Officer sent an email to the Owner at the email address the Owner had given. It stated:

We have sent you 2 clarification requests regarding the notice of complaint s.22(1) via mail on January 13, 2023 and January 30, 2023; as well as an email reminder on January 30, 2023.

If you require an extension to provide the information we previously requested, you will need to reply to this email before March 7, 2023.

If we do not hear back from you by March 7, 2023, we will proceed with determining your complaint on the basis of the information that we have received to date.

We have attached the final notice reminder that will be sent to the registered owner's address on file.

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On March 26, 2023, a representative of the Owner or perhaps the Owner using that person's email address contacted the City's Vacancy Tax Office. The email says it is from s.22(1) but the email address used was the one the Owner had given and to which previous emails from the City had been sent. The email stated:

s.22(1)

s.22(1) also appears to have contacted the Vacancy Tax Office and suggested that the Property was tenanted for the 2021 Vacancy Reference Year.

The documents supplied with the March 26, 2023 email are as follows:

- (a) A Premium Insurance statement providing coverage for the Property from May 2021 to May 2022 stating that it was rented out.
- (b) An October 29, 2021 invoice to s.22(1) the Property's address. The invoice was s.22(1)
- (c) A November 23, 2021 invoice from s.22(1)
- (d) An October 4, 2021 invoice from s.22(1)

The Review Officer responded to s.22(1) advised that these documents were insufficient and asked what status for the property (tenanted or owner-occupied principal residence) the Owner wanted to pursue. There does not appear to be any further response on behalf of the Owner to that.

By a letter dated July 26, 2023, the Review Officer repeated much of what had been stated before and gave a new deadline to the Owner of August 9, 2023 to file any further materials.

We have received your Notice of Complaint regarding the Vacancy Tax for the property at s.22(1) s.22(1) We have completed an initial review of your file and do not consider that the information provided to date is sufficient and appropriate to establish that the residential property was the principal residence of a homeowner for at least six months in 2021. Three additional supporting documents covering six months of the 2021 reference period is required. Please note that this is the final deadline.

Any three of the following 2021 documents from the occupant:

- ☐ Official certificate of homeowners insurance effective for six months of the 2021 period

- ☐ Valid ICBC vehicle insurance and registration effective for six months of the 2021 period (include the first and second page)
- ☐ Correspondence from a government authority regarding the receipt of benefits such as a pension, unemployment benefits, housing benefits, etc. (ex CRA notice of assessment with date issued in 2021 – normally for the 2020 tax year)
- ☐ Utility bills for the period of occupancy (ex BC Hydro or Fortis BC; January, July and December invoices for the 2021 period)
- ☐ Other document(s) to support principal residency for six months of the 2021 period (ex recurring bills/statements, credit card statements, telephone invoices, internet invoices, delivery receipts, pay stubs etc)

Please let us know if you consider that you have additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw.

That “final” reminder and request was not answered.

Another “final” email and letter was sent dated October 13, 2023 by the Review Officer repeating earlier requests and giving yet another deadline, this time October 27, 2023.

The Review Officer noted the following concerning the materials received from the Owner:

The homeowner has provided insufficient evidence to support the 2021 declaration being requested with this Notice of Complaint. The homeowner has provided 1 primary document ^{s.22(1)} and 0 supporting documents. There was 3 attempts to obtain further documentation from the homeowner but were non-responsive.

There's additional risk found with the home insurance invoice #7240, the property was declared a secondary residence. The homeowner did not declare an additional property under the Complaint questionnaire. The homeowner's primary property was not found in the evidence submission.

The history of declarations concerning the Property shows that it was declared tenanted for 2018, but declared occupied as a principal residence for 2019 and 2020. For 2019 and 2020, the Owner was the occupier claiming the Property as principal residence.

The materials in support of that inconsistent position were insufficient as well. By a letter dated April 11, 2024, the City wrote and advised of the Review Officer's final determination:

This letter is to inform you that the Vacancy Tax Review Officer has concluded their review of your submitted complaint and all supporting documents provided in support of your Property Status Declaration.

Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax.

The reasons for the determination are as follows:

A “principal residence” means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

The Vacancy Tax Review Officer considers that the evidence provided was not sufficient to determine that this property was the principal residence of an occupier for at least six months in the vacancy reference period, and is considered vacant under Section 2 of the Vacancy Tax By-Law.

If the property is not the principal residence of an occupier or tenanted for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

Based upon this determination, the Vacancy Tax Notice is due and payable. Failure to pay by December 31st will cause the outstanding amount to be applied to your property tax account.

The letter concluded by advising the Owner that if they disagreed and wanted an external Panel review they had 94 days from the date of the letter within which to initiate that.

The Owner is deemed to have received notice of the final determination four days after mailing, as is set out in section 6.10 of the bylaw:

6.10 A determination of the vacancy tax review officer that has been mailed in accordance with this by-law is deemed to have been received by the registered owner four days after mailing.

Several months after that, it appears that the Owner had accountants contact the City Vacancy Tax Office. The email response dated August 7, 2024 from Michael, a Financial Services employee in the City’s Vacancy Tax Office was put forward. That email started by saying, “Thanks for your inquiry on July 10, 2024” and apologizing for the delay in responding. The inquiry was apparently as to bringing a review proceeding. The email included the following statement:

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The Homeowner may put forward a different property status declaration and provide relevant supporting documents. RC-2024-00033 has been reactivated with a new deadline of August 15, 2024.

That ignores the Bylaw provisions concerning the effect of a “final determination” by the Review Officer and the time within which any review by this Panel is to be made.

Section 6.8 of the bylaw sets out that the Review Officer is to make a determination:

6.8 Subject to the provisions of this by-law, the vacancy tax review officer must, within a reasonable time, consider the notice of complaint and any supplementary information and evidence, make a determination on the complaint, advise the registered owner in writing of the determination and, if the complaint is successful, rescind the vacancy tax notice.

That determination happened here, with the April 11, 2024 letter noted above. There is no suggestion that the Review Officer’s determination was made without jurisdiction. The Review Officer reviewed and considered the Notice of Complaint from the Owner and all of the materials submitted by or on behalf of the Owner. The Review Officer also had notice of the multiple failures of the Owner to respond to requests, provide documents and information and otherwise comply with the Vacancy Tax Bylaw.

As will be discussed later, after having issued the determination letter, the Review Officer was “*functus officio*” – a term meaning that his role with regard to the 2021 Vacancy Reference Year for this Property was completed and done.

There is no provision in the Bylaw allowing for “reactivation” of a matter already decided by a determination letter. Indeed, what happened here did not purport to reactivate the Review Officer’s role, but rather extend time for a review application to be brought before this Panel.

The Bylaw does allow for a request for review by the Panel of the Review Officer’s determination, but only in the circumstances and within the time spelled out. Bylaw sections 6.9 to 6.14 read thus:

6.9 The vacancy tax review officer must advise the registered owner of the determination by mailing a copy of the determination to the registered owner at the address appearing on the real property tax roll.

6.10 A determination of the vacancy tax review officer that has been mailed in accordance with this by-law is deemed to have been received by the registered owner four days after mailing. 6.11 A registered owner who has received a determination of the vacancy tax review officer may request a review of that determination by the vacancy tax review panel.

6.12 A registered owner who wishes a review by the vacancy tax review panel **must submit a review request to the vacancy tax review panel within 90 days of the date of deemed receipt of the determination of the vacancy tax review officer.**

6.13 The review request must:

- (a) identify the residential property in respect of which the request is made;
- (b) include the full name of the requestor and a telephone number or email address at which the requestor may be contacted during regular business hours;
- (c) indicate whether the requestor is the registered owner of the property to which the request relates;
- (d) if the requestor is an agent acting on behalf of the registered owner, include information regarding the nature of their terms of agency and authority to act on behalf of the registered owner; and
- (e) state the grounds on which the review request is based.

6.14 The vacancy tax review panel may refuse a review request if the registered owner or requestor fails to comply with the provisions of section 6.13 of this by-law.

The Owner had 90 days from deemed receipt of the April 11, 2024 Review Officer determination within which to submit a review request to the vacancy tax review panel. That did not happen.

If one counts four days after April 11, 2024, the starting point for counting the 90 days would be Monday, April 15, 2024. The 90th day would thus be July 14, 2024, which is a Sunday. Even allowing for the date to be extended to July 15, 2024 as a result of section 25 of the *Interpretation Act*, the Owner failed to submit a review request to the vacancy tax review panel within 90 days of the date of deemed receipt of the determination of the vacancy tax review officer.

What apparently occurred is set out in an email dated August 7, 2024 from the City's Vacancy Tax Office (by "Michael, Vacancy Tax, Financial Services") to s.22(1). It refers to an "inquiry" by s.22(1) made to the City on July 10, 2024. The nature of the inquiry is not set out. No written inquiry has been produced to the Panel. If it was recorded as a message, no transcript of that has been produced. It seems more likely that it was a telephone message, given that the August 7, 2024 email starts by saying, "Thanks for your inquiry on July 10, 2024. Apologies for the delayed response."

The August 7, 2024 email goes on to say:

As you mention, Notice of Complaint s.22(1) was completed on April 11, 2024 with a Not Accepted outcome. The Vacancy Tax Bylaw allows for the decision to be reviewed by an External Panel (<https://ljvancouver.ca/homeproperty-development/submit-a-request-for-review.aspx>). The Homeowner may put forward a different property status declaration and provide relevant supporting documents. RC-2024-00033 has been reactivated with a new deadline of August 15, 2024.

By a letter dated August 14, 2024, s.22(1), an accounting firm representing the Owner, wrote to the City seeking external review by this Panel of the Review Officer's decision. The materials supplied by the accountants included a copy of a property management agreement, a residential tenancy agreement and 2021 financial statements showing the receipt of rental income that year and

expenses attributable to that. That is, of course, a shift in position made on behalf of the Owner from having asserted previously that the Property was occupied by ^{s.22(1)} a ^{s.22(1)} principal residence to one of asserting that it was occupied by tenants for the 2021 Vacancy Reference Year.

s.22(3)(d)

s.22(3)(d)

It appears to the Panel that the Owner now wishes the Panel to sit as an adjudicator of first instance as to the new materials supplied with the August 14, 2024 letter from the Owner's accountants. The Vacancy Tax Bylaw does not provide for such a course of action.

Neither does it afford a Vacancy Tax Review Officer or anyone else in the Vacancy Tax Office to extend the time that section 6.12 of the Bylaw provides: "A registered owner who wishes a review by the vacancy tax review panel must submit a review request to the vacancy tax review panel within 90 days of the date of deemed receipt of the determination of the vacancy tax review officer."

The Bylaw does have provisions for extending time for some things. For example, the Notice of Complaint process before the Review Officer may, pursuant to section 6.4, have the Review Officer extend the time within which a complaint may be brought and sets out limits to that and provides that a penalty must be paid for late filing.

There is no equivalent jurisdiction either with the Review Office or with this Panel or anyone else to extend the time for submitting a review request to the Panel after the 90 days from the date of deemed receipt of the Review Officer's determination has been made.

Once a Review Officer has issued a determination, that is supposed to be an end to the Notice of Complaint process. The decision is supposed to be final. If the Owner wants to have it reviewed, the Owner must file, in a timely way, a request for review by this Panel. If that is not done, then the matter is concluded and over with.

This is not unique just to the Vacancy Tax Bylaw. It applies to many other contexts. Where the Legislature or City Council want to provide for a power to extend time, they may do so. In this situation, City Council enacted a provision allowing for extensions of time for bringing a Notice of Complaint. But it did not do so with respect to review by this Panel.

The B.C. Court of Appeal has considered whether it had jurisdiction to extend the time within which an appeal from an arbitration award could be brought. After reviewing case law concerning arbitrations and other tribunals, it held at para. 10 of *Math4Me Learning Inc. v. 1099615 B.C. Ltd.*, 2024 BCCA 369, that “if there is no authority in legislation that creates an appeal procedure, to grant an extension of time to appeal, then there is no jurisdiction in the court to do so.”

If the court lacks such power on an appeal that is provided by statute from a tribunal, then the Panel finds that it has no power to extend time for a review of a Review Officer’s determination where the review request to the vacancy tax review panel is not submitted within the 90 days specified in the Bylaw.

The Panel’s jurisdiction has thus not been properly engaged by what has happened here. That is sufficient to dismiss and deny the purported review request on grounds that it has not been brought in a timely manner and the Panel lacks jurisdiction to entertain it.

If the Panel has jurisdiction, then several additional questions arise. One is what the effect is from the Owner’s failure to comply with the requests for information made to ^{s.22(1)} by the Review Officer. Another is whether the Panel ought to review evidence that the Owner, through ^{s.22(1)} accountants’ August 14, 2024 submission, wants to proffer raising a claim for exemption based on new grounds, i.e., tenancy.

Bylaw Provisions Concerning Owners Obligations to Make a Declaration and Provide Information

Section 2.3 of the Vacancy Tax Bylaw provides that:

2.3 Residential property is considered to be vacant property if:

- (a) it has been unoccupied for more than six months during the vacancy reference period; or
- (b) it is deemed to be vacant property in accordance with this by-law.

Section 4.5 of the Vacancy Tax Bylaw provides that:

4.5 For each real property tax folio, a registered owner or his or her agent or authorized representative must complete and return only one property status declaration to the City in the form and manner required by the City on or before the 2nd business day of the February following the receipt of the property status declaration form or instructions to make the property status declaration.

To reinforce that, the bylaw sets out the following duties of the Owner:

5.1 A registered owner of residential property must not fail to make a property status declaration in accordance with this by-law.

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5.2 A registered owner of residential property must submit a completed annual property status declaration to the City on or before the 2nd business day in February of each year.

So, for the 2021 Vacancy Reference Year, the Owner was obliged to complete and return a declaration by the 2nd business day of February 2022.

The Owner did not do what was required concerning a declaration for the 2021 Vacancy Reference Year in a timely way or at all.

Section 4.12 of the bylaw provides that:

4.12 The Collector of Taxes must review the property status declaration, and all information and evidence collected in regards to a parcel of residential property and must determine whether or not the parcel is taxable property that is subject to the vacancy tax, except that, in the case of a parcel of residential property deemed to be vacant under this by-law, the Collector of Taxes must consider the parcel to be vacant property and subject to the vacancy tax.

Section 7.1 provides a deeming provision where there is a failure to provide a declaration or response to requests for documents and information:

7.1 A parcel of residential property in respect of which a registered owner:

- (a) fails to make a property status declaration as required by this by-law;
- (b) makes a false property status declaration;
- (c) fails to provide information or to submit required evidence to the Collector of Taxes in accordance with this by-law, including, without limitation, the information or evidence that may be required pursuant to Sections 4.7, 4.8 or 4.9 of this by-law; or
- (d) provides false information or submits false evidence to the Collector of Taxes;

is considered to be vacant property and is subject to the vacancy tax.

In this case, the Owner failed to make a property status declaration on time as required. The Owner then asserted the principal residence exemption as part of the Notice of Complaint process before the Review Officer. The Review Officer had justifiable concerns about whether that was a false declaration given, among other things, the insurance invoice reference to the owner having this Property as a “secondary residence.”

The Owner had a representative contact the Review Officer and assert that the Property was tenanted and that afforded an exemption. That shifting ground adds to the concerns. But when asked for information that the Bylaw itself spells out as appropriate evidence to support declarations, the Owner simply did not respond and did not provide what was requested and required.

Finally, after having lost before the Review Officer and knowing that the determination made in the April 11, 2024 letter was final, the Owner waited, past the period spelled out in the bylaw for seeking review by this Panel, before purporting to instigate a Panel review.

The Owner cannot say that s.22(1) was not informed of this. The determination letter states expressly at its conclusion that if she wanted a review of the Review Officer's determination it had to be made in a timely manner: "Your request for review must be submitted within 94 days of the date of this letter."

Sections 6.13 and 6.14 of the Vacancy Tax Bylaw provides for bringing reviews before this Panel:

6.13 The review request must:

- (a) identify the residential property in respect of which the request is made;
- (b) include the full name of the requestor and a telephone number or email address at which the requestor may be contacted during regular business hours;
- (c) indicate whether the requestor is the registered owner of the property to which the request relates;
- (d) if the requestor is an agent acting on behalf of the registered owner, include information regarding the nature of their terms of agency and authority to act on behalf of the registered owner; and
- (e) state the grounds on which the review request is based.

6.14 The vacancy tax review panel may refuse a review request if the registered owner or requestor fails to comply with the provisions of section 6.13 of this by-law.

Notably, if one takes the accountants' August 14, 2024 letter and enclosures as a request for Panel review, the grounds on which the review is based is that there was a tenancy during at least 6 months of the 2021 Vacancy Reference Year. Those grounds for review were not put before the Review Officer and does not really fall within the scope of the determination issued.

Section 6.15 of the Vacancy Tax Bylaw provides:

6.15 Subject to the provisions of this by-law, the vacancy tax review panel must, within a reasonable time, consider the review request based on the materials provided pursuant to section 6.13 and, without a hearing, make a determination on the review, advise the registered owner in writing of its determination and, if the review request is successful, rescind the vacancy tax notice.

That leads to a question whether the accounting materials are materials "provided pursuant to section 6.13."

Setting aside for the moment whether the Panel review was timely started, given that this is a Panel review of a decision of the Review Officer, there is a substantial question whether a disappointed Owner (or representatives) can simply throw forward materials and arguments that they failed to provide to the Review Officer and treat those as falling within section 6.13.

The Panel is of the view that what the Owner is trying to do here fails to comply with the Bylaw provisions. s.22(1) seeks a review of something that was not reviewed by the Review Officer and on materials that were not put before the Review Officer. Simply put, s.22(1) request for review, even were it made in a timely manner, fails to comply with the provisions of section 6.13 of this by-law and the Panel's view is that it ought to be refused on those grounds.

Further, even if it were timely and properly brought, the Panel is of the view that the Owner does not have a free pass to put new materials before the Panel on what is supposed to be a review process. In the law courts, case law has developed rules over when "new evidence" may properly be admitted on an appeal after a decision has been made by the trial court. Those limit the circumstances when that may be done, a topic that the Panel will discuss in the next section.

The Law Relating to "New Evidence" and "Fresh Evidence"

In the courts, applications for "new evidence" or "fresh evidence" may be presented and principles for determining when those should be allowed have been developed. Those were recently addressed by the Supreme Court of Canada in *Barendregt v. Grebliunas*, 2022 SCC 22.

A question had arisen in lower courts whether the Supreme Court's "Palmer test" (named after the case in which it was decided) applied just to applications for the admission of "new evidence" (i.e., evidence that existed before the trial and decision of the court had been made, but had not been put forward at the trial) or to "fresh evidence" (i.e., evidence that arose after the trial decision).

The "Palmer test" required that an applicant seeking to put forward further evidence after a decision had been reached had to show that with due diligence they could not reasonably have located and produced the evidence before, that the evidence was relevant, credible, and could have affected the result at trial.

Karakatskanis, J., for the Supreme Court majority, noted that there were two major policy considerations that affected the development and application of rules for admission of such evidence. The first was the goal of ensuring finality in adjudication. If that did not exist, disappointed litigants would simply start another lawsuit and contest again things decided against them, trying on new positions, arguments and evidence. In order to make the justice system work effectively, parties had to be encouraged to bring their whole case forward and then abide by the results. The second consideration was the "interests of justice" and ensuring that judicial decisions were based on the truth and achieved a just result.

At para. 48, the court wrote:

[48] The primary issue in this appeal is whether and how the *Palmer* test applies to "new" evidence. According to the Court of Appeal, evidence is "new" if it pertains to facts that occurred after trial; "fresh" evidence pertains to facts that occurred before trial, but which, for one reason or another, could not be put before the court.

The BC Court of Appeal had decided that with “fresh evidence”, the Palmer test requirement that the applicant show “due diligence” should not apply. Their theory was that since “fresh evidence” was evidence that did not exist prior to the trial, no amount of diligence could have uncovered it and allowed the party to present it.

The Supreme Court disagreed and found that the distinction between “new evidence” and “fresh evidence” was not useful and reiterated the Palmer test requirements for both:

[54] Applying a different test for admitting new evidence — which dispensed with the due diligence criterion — failed to safeguard the delicate balance between finality and order, and the interest in a just result. It is also inconsistent with this Court’s *Palmer* jurisprudence. Indeed, this Court has consistently applied *Palmer* to evidence pertaining to events that occurred between the trial and appeal: see, for example, *Catholic Children’s Aid Society*, at p. 188; *R. v. Owen*, 2003 SCC 33, [2003] 1 S.C.R. 779, at paras. 50-51; *Sipos*, at paras. 29-30. The evidence in *Palmer* concerned facts that occurred both before and after trial and thus included both “fresh” and “new” evidence. The additional evidence included sworn declarations made by one of the key trial witnesses who recanted his testimony after trial, declaring that the RCMP promised him money before trial and made the payment after trial.

[55] The *Palmer* test is sufficiently flexible to deal with both types of evidence. As I will explain, the core inquiries under all four criteria remain the same regardless of when the evidence, or the specific fact, came into existence. Because the same test applies, it is unnecessary to distinguish between “fresh” and “new” evidence. *Palmer* applies to the admission of all additional evidence tendered on appeal for the purpose of reviewing the decision below.

On the facts in that appeal, Karakatskanis, J., found that the new or fresh evidence ought not be received. At paras. 67-72, she noted that meeting the due diligence requirement was not essential in all cases and, while cautioning that doing so should be “exceptional”, she gave several illustrations of when it was appropriate. In essence, doing that involved finding that the “interests of justice” in getting a just result based on true facts outweighed the administration of justice and the parties’ interests in the finality of the court’s decision.

Panel Conclusions

In the present case, the Owner offers no explanation or justification for not having put the additional materials before the Review Officer. The Owner, by s.22(1) or through agents, representatives and advisers s.22(1) could have enlisted, had an opportunity to be heard by the Review Officer on whatever s.22(1) chose to put forward. s.22(1) did not put forward the materials s.22(1) now seeks to have the Panel review, ignoring that the primary function of the Panel is to review what was before the Review Officer. On that basis, the diligence requirement has not been met. This does not appear to be a case where an exception to establishing diligence would be appropriate.

In any event, there is no explanation why, with the application of due diligence, the Owner could not have come up with this evidence. It was all in existence prior to the Review Officer's determination. The Property Management Services contract is from 2010. The Residential Tenancy Agreement is from 2013 providing for a 2-year lease term to 2015. The s.22(1) show rental income in 2021, but there is no indication in those documents who the tenant was. The deposit reported as being held s.22(1) matches the amount of the deposit described in the 2013 Tenancy Agreement, but there is nothing to support an inference that it is the same tenants as in 2013. The Property Insurance documents were provided to the Review Officer and date to 2021.

The letter from s.22(1) says that the Owner says, that the same tenants have occupied the Property since 2013. But that runs counter to the Owner's declaration for the 2021 Vacancy Reference Year and for prior years that the Property was occupied by the Owner as a principal residence. Inconsistencies such as that need more of an explanation than a second-hand statement from the Owner's accountant. Also, if the same tenants were in occupation of the Property for 6 months or more in 2021, the Owner or someone acting on s.22(1) behalf could have sought and obtained the confirmatory evidence from them that would have supported the tenancy exemption claimed.

In a typical case involving a tenant, Review Officers look for government issued documentation that identifies the tenant and shows the tenant's address is the address of the subject property. Copies of rent cheques from the tenant during the Vacancy Reference Year in question are requested to confirm the validity of the tenancy. A statement from the tenant and a Form providing for consent from the tenant for such further searches to be made by the landlord and the Vacancy Tax Office are requested. Section 4.9 of the Vacancy Tax Bylaw sets out a non-exhaustive list of items that it should have been straightforward enough for the Owner, accountant, property manager or someone else assisting s.22(1) to have obtaining from the tenants, if they were such, to prove their occupancy of the Property in 2021.

It is important to keep in mind that the Owner bears the burden of proof of establishing the facts necessary to support the claim for exemption that s.22(1) makes. Here, s.22(1) claimed an exemption based on principal residence and failed to provide appropriate and sufficient documentation to support that. Now, on the review process before this Panel, s.22(1) seeks to claim exemption based on there being a tenancy. But again, the materials provided are insufficient, in the Panel's view. Were this matter properly before the Panel, the Panel would not find that the Owner had met the burden of proof on here to demonstrate the tenancy exemption applied. While the documents thrown forward at this late stage might have been of assistance if provided together with a thorough presentation of evidence of a tenancy for 6 months or more during the 2021 Vacancy Reference year, taken by themselves, these do not pass muster.

The Panel's determination is that this matter has not been properly brought before it, given the late delivery of the request and submission of materials for Panel review and based on the fact that what the Owner seeks here is not a review of the Review Officer's determination of s.22(1) original claim for exemption, but rather a claim for exemption on other grounds and based on evidence not put before the Review Officer.

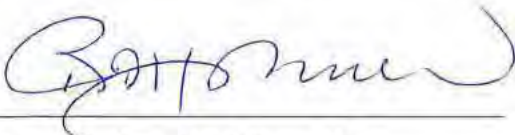
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Further, even if the request and submission from the Owner were considered to have been properly brought, the Panel rejects the request for new evidence to be presented to it and finds that it does not meet the required standard for admission of new evidence on this review. There has been no “due diligence” by the Owner in providing evidence. All of the materials provided at this stage were either in the Owner’s possession or within her control so that § 22(1) could have obtained and produced them.

Finally, even if that material were to be considered as appropriately put before the Panel, the Panel is of the view that it is insufficient and does not establish the tenancy exemption claimed for the 2021 Vacancy Reference Year.

Based on the foregoing, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property for the 2021 Vacancy Reference Year.

Review Determination: REFUSED AND DENIED

A handwritten signature in blue ink, appearing to read "Robert D. Holmes", is written over a horizontal line.

Panel: Robert D. Holmes, K.C.

Date: April 2, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

Date: October 28, 2024

File Number: RC-2024-00033

Requestor: s.22(1)

Vacancy Reference Year: 2021

Civic Address: s.22(1)
s.22(1)

Folio: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of an April 11, 2024, decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

The Review Officer found that there was insufficient evidence to determine that the Property was occupied as a principal residence for at least six months in the vacancy reference period.

In accordance with the Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for the claimed exemption under the *By-Law*. However, the Panel refers the matter of whether the Property is entitled to an exemption under section 2.2(b) of the *By-Law* back to the Vacancy Tax Review Officer for consideration.

Procedural History

The property owner has owned the Property since s.22(1). It was declared tenanted for the 2018 reference period and as the principal residence of the homeowner for the 2019 and 2020 vacancy reference years. The owner declared the Property exempt from the vacancy tax for the 2021 tax year on the basis that it was occupied as their principal residence and had been their principal residence "for the past 10 years."

The owner submitted a s.22(1), a sprinkler service invoice dated June 16, 2022, home insurance documentation for a policy effective May 10, 2022, to May 10, 2023, and a garage service invoice dated April 5, 2022, in support of the declaration.

On January 13, 2023, and again on January 30, 2023, the Vacancy Tax Department informed the owner that the home insurance documentation and the two service invoices were not relevant to the 2021 vacancy period and asked the owner to submit any three of the following additional documents: a 2021 Homeowner Insurance Policy; a 2021 ICBC vehicle registration; a 2021 Mortgage Statement; 2020 Tax year CRA T-records; 2020 Tax year CRA notice of assessment, issued in 2021; Utility Bills for 6 months in 2021; any 2021 correspondence from a government authority; internet/cable or cellular telephone bills for 6 months in 2021; or 6 months of bank or credit card statements for 2021.

When the Tax Department did not receive the requested information, a compliance analyst attempted to contact the owner by telephone on February 14, 2023. The call was not answered, and the message stated that the owner was not accepting any calls. There was no option to leave a message. The Tax Review Officer then issued a final notice asking that the requested documentation be provided no later than March 7, 2023, failing which the complaint would be determined based on the information provided to date.

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On March 27, 2023, the owner's representative emailed the Tax Department and subsequently provided documentation related to a tenancy. As the Tax Department was not clear which exemption the owner was declaring, the owner was asked to clarify which declaration they wished to pursue and permitted the owner to submit additional documentation. The owner was given an August 9, 2023, deadline for the submission of documents. After receiving no information, on October 13, 2023, the Tax Department once again requested that information be provided with a new deadline of October 27, 2023.

The Tax Department noted that the home insurance documentation submitted by the owner indicated that the Property had been declared as a secondary residence, and the owner had not submitted any information regarding their primary residence.

On May 10, 2024, the Vacancy Tax Department informed the property owner that, based on the information submitted, the Tax Review Officer determined that the evidence was not sufficient to determine that the Property was the principal residence of an occupier for at least six months. Consequently, the Tax Department considered the Property vacant under section 2 of the *By-Law* and was therefore subject to the vacancy tax.

On August 14, 2024, s.22(1) acting on behalf of the owner, sought a review of the Tax Department's decision. s.22(1) submits that the Property, except for the basement, has been rented to an arm's length tenant and s.22(1) submitted a copy of a Property Management Agreement between the property owner and s.22(1) dated April 28, 2010, a copy of a fixed term tenancy agreement between s.22(1) and tenants for the Property effective August 1, 2013 and ending July 31, 2015. The agreement specifies that after the end of the fixed term, the tenancy would continue on a month-to-month basis. Also included in support of the declaration were statements showing rental income for the Property from June to December 2021 and an April 6, 2021, invoice for tenant insurance for the Property.

The material submitted with the review includes an August 7, 2024, email from the Vacancy Tax Department to s.22(1) regarding its July 10, 2024, inquiry regarding an exemption for the Property under a different status. The Tax Department informed the agent that the complaint had been reactivated with a new deadline for providing supporting documentation to August 15, 2024.

Analysis

The *By-Law* imposes a vacancy tax on every parcel of taxable property in accordance with the provisions of the *By-Law* (section 2.1).

Section 2.2 (a) of the *By-Law* provides that residential property is considered to be unoccupied if it is "*not the principal residence of an occupier.*"

Section 2.3 provides that residential property is considered to be vacant property if:

- (a) It has been unoccupied for more than six months during the vacancy reference period; or
- (b) It is deemed to be vacant property in accordance with this by-law.

The *By-Law* defines "principal residence" to mean:

The usual place where an individual lives, makes their home and conducts their daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver's licenses, personal identification, vehicle registration and utility bills, and, for the purposes of this by-law, a person may only have one principal residence.

Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer has correctly interpreted the *By-Law* considering the facts before them. (*Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

The Panel has considered the intention of the *By-Law*, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

I am not persuaded that the Vacancy Tax Review Officer improperly interpreted the *By-Law* in denying the declared exemption based on all the evidence submitted by the deadlines set by the Tax Review Office.

Although the property owner initially provided some documentation, three of the four documents were not relevant to the 2021 reference year.

The Property owner was clearly informed what documentation would be considered and given several deadlines to provide that documentation. The owner was also clearly notified that any documentation was to be provided by March 7, 2023, after which the requested exemption would be assessed based on the evidence submitted to that date.

Section 5.4 of the *By-Law* provides that a registered owner

- (a) Must provide any information or submit any evidence that is required by the ... vacancy tax review officer in accordance with this by-law;
- (b) Must provide the information or submit the evidence in the form and within the time stipulated by the ...vacancy tax review officer, and

....

Section 6.10 provides that a registered owner who has received a determination of the vacancy tax review officer may request a review of that determination by the vacancy tax review panel.

The Panel concludes that there is no error in the Vacancy Tax Review Officer's determination that the property owner failed to submit sufficient evidence within the time stipulated by the Vacancy Tax Review Officer to establish that the Property was the principal residence of the property owner.

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However, in light of the information submitted after the April 11, 2024, determination that presumptively supports a claim that the property was occupied for residential purposes by an arm's length tenant under tenancy for a term of at least 30 consecutive days, I refer this matter back to the Vacancy Tax Review Officer for a determination under section 6.7 of the *By-Law*.

Decision

Having reviewed the property owner's documents and submissions as well as the relevant sections of the *By-Law*, the Panel refers the question of whether the property owner is entitled to an exemption from taxation under the *By-law* back to the Vacancy Tax Review Officer for consideration.

Review Determination: REFERRED BACK FOR DETERMINATION



Panel: C. L. Roberts
Date: October 28, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: November 4, 2024

File Number: RC-2024-00034

Requestor: s.22(1)
(the "Owner")

Vacancy Reference Year: 2021

Civic Address: s.22(1)
(the "Property")

Folio: s.22(1)

At the request of the Owner, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Audit Process and Determination

By a letter dated August 15, 2022, an Auditor with the City of Vancouver Vacancy Tax Office wrote the Owner and advised that the Owner's declaration claiming that the Property was exempt from the Vacancy Tax for the 2021 Vacancy Reference Year was subject to audit. The letter asked the Owner to fill in an online questionnaire and upload relevant documents by September 18, 2022.

The Owner did not respond to this, did not provide any response to the questionnaire and did not provide any documents or information in response to the request. That is regrettable. The Vacancy Tax Bylaw provides that those are required, and that failure to do so may afford an alternative basis for deeming the Property to be subject to the tax: sections 7.1 and 4.7, 4.8 and 4.9 explain that. That does not appear to have been invoked by the Auditor or the Review Officer and so the Panel will not consider it applicable on this review. It remains the case, however, that the Owner's failure to engage actively in the process and to provide information and documents in a timely manner hardly assisted his case.

The Auditor spoke by telephone with the Owner on April 24, 2023. The Owner explained that the building was undergoing envelope repairs and that s.22(1) would have felt bad renting it out to a tenant while that was going on.

The Auditor explained that the permit for that work and the work itself was not such as to require that the Property be left unoccupied. s.22(1)
s.22(1).

The Auditor was not persuaded by the Owner's arguments and advised that since the Property could have been occupied, unless there was something further provided to support the Owner's contentions, the Property would be considered subject to the tax.

The Owner advised that the tax was a lot of money and that the s.22(1) explained that the strain of having to pay the tax was significant. The Auditor referred the Owner to the Residential Tenancy Branch and the Landlords BC association for information regarding concerns about tenancies in circumstances like this.

By a letter dated May 1, 2023, the Auditor noted that the Owner had declared that the basis for the exemption was that the Property was undergoing redevelopment or major renovations. The Auditor set out the terms of the Vacancy Tax Bylaw applicable to that exemption and then explained the requirements.

The Vacancy Tax bylaw states that a vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to:

Sec. 3.2 (a):

redevelop or safely carry out major renovations to the property:

- i. **for which permits have been issued by the City by July 1st of the vacancy reference period (July 1, 2021), and**
- ii. which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay.

The exemption for major renovation or redevelopment is only applicable to properties that are undergoing active construction for which building permits have been issued. This exemption does not apply to properties for which building permits are in review and pending issuance. This exemption also does not apply to properties where work has been performed without a permit, even if the unpermitted work has resulted in the property no longer being habitable.

Homeowners who are awaiting permits must ensure that the property is either occupied as a principal residence or rented out (in periods of 30 or more consecutive days) for at least six months of the vacancy tax reference period. Once an occupancy permit has been issued for the property, or the property passes final inspection, the building is considered complete and fit for occupancy. If this occurs in the first six months of the tax year, the property does not qualify for the redevelopment exemption.

If there is an existing building on the property, then the exemption in section 3.2(b) and (c) does not apply. There is no exemption for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation with an issued building permit pursuant to section 3.2(a).

There was no evidence submitted for the audit.

Based on previous compliance information, we do not consider that the property was unoccupied for more than 6 months in order to redevelop or safely carry out major

renovations for which permits were issued by the City by July 1st of the vacancy reference period.

The Auditor advised that if the Owner had further information to provide, that should be done by May 15, 2023. No response was made by the Owner to that and no further information provided.

By a letter dated May 16, 2023, the Auditor advised the Owner that the determination of the audit was that the Property was not exempt. Thus, the Property was subject to the tax. The Auditor advised the Owner that if the Owner was not satisfied with this result, the Owner could file a Notice of Complaint and that a Vacancy Tax Review Officer would review the determination. The Owner opted to pursue that course.

Review Officer Review and Determination

The Owner provided additional information and documents to the Review Officer. These largely repeated what the Owner had told the Auditor in their teleconference. There were, additionally, photographs of the exterior patio of the Property and the building entrance, both of which were either "off limits" or had restricted access during the construction work. The Owner also included some exchanges with the strata corporation and manager about the same, all of which confirmed that WorkSafe BC requirements during construction precluded access to the balcony/patio area. The materials also referred to the noise that was going on during construction work.

The Owner advised as well that due to its location and size, the balcony/patio area of the Property was used by the contractors to store equipment and as a staging area. Notices from the strata property manager underscored that the Owner was not to have access to that area during the construction work.

The Owner's position was that the equipment on the balcony presented a liability and hazardous conditions for anyone present in the strata unit. Additionally, the Owner's position was that it would be unreasonable for an average person or family to rent a living facility that would be intruded by workers at any time of the year.

The Owner also supplied a copy of a notice dated April 26, 2021 from the strata property manager advising that once the exterior work was done, strata lot owners would have to replace the blinds on the interior of their windows and gave information on an approved list of contractors for that purpose.

The Owner also provided a copy of a notice dated September 8, 2021 from the strata property manager advising

s.22(1)

s.22(1)

The notice set out that if the Owners were not around to provide access to the workers, then arrangements would have to be made so that access could be given through other means. The import of this appears to be that continued occupation of the premises by the Owner during the 5 days of work that was contemplated was assumed.

The Review Officer did not find it necessary to contact the Owner to discuss the review.

The Review Officer reviewed the materials that were before the Auditor and the additional materials provided by the Owner with the Notice of Complaint and Review Process.

The Review Officer also considered the building permit that had been obtained for the work in question. The Review Officer noted the following about the permit and the use of the units in the building:

... the building permit was issued for the entire building and the scope of the permit did not prevent occupancy of the property in 2020 for at least six months. The Review Officer confirmed on March 30, 2023 with the Development, Buildings, & Licensing office that the units were not vacated due to the permit and all were or could have been occupied. The envelope repair did not require units to be vacated for the purposes of the permit.

Further, the Review Officer noted that the building permit was issued for the strata corporation and concerned the exterior building envelope repairs for the whole building that were required. It was not a building permit for the Property (i.e., the strata unit) itself. The Officer's assessment as to the degree of intrusion into the Property was described thus:

Based on the evidence submitted, there was some construction work that occurred inside the unit. The letter from the strata corporation stated it would be approximately 5 to complete the required work. The inability to use the exterior patio, while an inconvenience, would not render the unit unoccupiable.

The Review Officer also examined whether other units in the same building had claimed exemption from the tax due to inability to occupy it as a result of the construction work. There were none. Instead, most all were occupied, either as principal residence or tenanted.

By a letter dated May 7, 2024, the Review Officer advised the Owner of the results of the review. The determination that the Property was not exempt and was instead subject to the tax was upheld. The basis for that was explained, as follows:

Based upon a review of your submitted information and evidence to support your complaint, the Vacancy Tax Review Officer has determined that your property remains subject to the Vacancy Tax.

The reasons for the determination are as follows:

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the City. To be eligible for an exemption under section 3.2(a) of the Vacancy Tax By-Law, a permit must have been issued within the reference period.

Permit s.22(1) was issued on July 27, 2020, the permit was issued for the entire building and the scope of the permit did not prevent occupancy of the property in 2021 for at least six months. The Review Officer confirmed with the Development, Buildings, & Licensing office that the units in the building were not vacated due to the permit. The exterior envelope repair did not require units to be vacated for the purposes of the permit.

for at least six months of the vacancy reference period.

If the property is not the principal residence of an occupier or tenanted to an arm's length tenant for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

The Review Officer advised the Owner that if the Owner was dissatisfied with this determination, the Owner could seek a review from the Panel. The Owner opted to request that the Panel review the case.

The Owner Bears the Burden of Proof to Show That an Exemption Applies

The law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that:

"The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister's factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: "the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court."

In this case, the Owner's burden was to establish that the renovations concerning the building envelope required that the Property be left vacant for more than 6 months in the 2021 Vacancy Reference Year. That has not been done.

Evaluating Credibility and Reliability of Evidence

All evidence must be subjected to appropriate scrutiny. O'Halloran, J.A., in the oft-cited B.C. Court of Appeal decision in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, explains how an evaluation of the credibility of evidence given by interested parties should be made:

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

The Supreme Court of Canada recently reiterated in *R. v. Kruk*, 2024 SCC 7 that evaluating credibility and reliability is grounded in common sense:

- "It is widely recognized that testimonial assessment *requires* triers of fact to rely on common-sense assumptions about the evidence." (para 72);
- "...common-sense assumptions necessarily underlie *all* credibility and reliability assessments. Credibility can only be assessed against a general understanding of "the way things can and do happen"; it is by applying common sense and generalizing based on their accumulated knowledge about human behaviour that trial judges assess whether a narrative is plausible or "inherently improbable" (para. 73);
- "Common sense underpins well-established principles guiding credibility assessment — including the now-universal idea that witnesses who are inconsistent are less likely to be telling the truth — and assists in assessing the scope and impact of particular inconsistencies. Reliability also requires reference to common-sense assumptions about how witnesses perceive, remember, and relay information, invoking generalizations about how individuals tend to present information that they are remembering accurately and completely, as opposed to matters about which they are unsure or mistaken. A trial judge may, for example, infer that a witness was credible yet unreliable because they appeared sincere but displayed indicia that tend to suggest an unclear or uncertain memory (e.g., equivocation, phrases such as "hmm . . . let me see", long pauses, or failure to provide much detail), (para. 74).

Finally, in their footnote 4, the court set out factors on which credibility and reliability determinations are properly made:

Credibility assessments engage factors such as: the internal consistency and coherence of the witness's testimony and the incidence of inconsistencies with prior statements, especially those made under oath; consistency with other accepted facts and probable circumstances; the plausibility of the narrative presented by the testimony; evidence of a motive to fabricate; and demeanour, though courts should not rely exclusively on this consideration and should be conservative in according it weight Reliability assessments engage factors such as: the conditions under which the witness made the material observations; the level of detail in their testimony; the amount of time that elapsed between the observations and the testimony; and whether any intervening factors may have tainted the witness's memory, discussing reliability in relation to eyewitness identifications).

Some of those considerations are inapplicable here (e.g., this was not a trial with witness testimony given in person where a direct evaluation of demeanour and the manner and delivery of spoken evidence can be made; also, there is no suggestion here that the Owner fabricated any evidence), but many are and reflect the importance of carefully reviewing the evidence in context and as a whole.

With the foregoing principles relating to the burden of proof and to the need to carefully review evidence for credibility and reliability, the Panel will turn next to its review and evaluation of the evidence.

The Panel's Review and Determination

The Panel has reviewed the materials that were provided by the Owner to the Auditor and Review Officer, together with the notes of the Auditor's contact with the Owner and the other investigations they undertook (primarily in relation to the nature of the building permit and whether it required the strata units to be vacated).

The Panel is of the view that there was a building permit in place for the work here and that it constituted "major renovations". The Auditor noted that the permit was obtained by the strata corporation for its common property and had not been obtained by the Owner for work on the Owner's Property. Given that there was some work required to be done on the Owner's Property (e.g., the ceiling work to install anchors above the ceiling), there was obviously some spillover from common property to the Owner's separate unit. Also, the Auditor's comment about a distinction being made between strata lots and common property seems to ignore the fact that each strata lot owner owns not just their own strata lot but also an undivided interest in the common property. So, the fact that the building permit was taken out by the strata corporation (on behalf of all strata lot owners) and related largely to the common property is not a factor that would deprive the Owner of the basis to claim an exemption if the facts otherwise supported it in relation to the Property.

The duration of the work in the Vacancy Reference Year in question is not defined in the materials, but the vacancy is acknowledged by the declaration and other indications from the Owner to have exceeded 6 months.

The question then under section 3.2(a) of the Vacancy Tax Bylaw is whether the Property had to be left vacant for more than 6 months in the Vacancy Reference Year in question here because of the prosecution of the construction works provided for in the building permit.

The Auditor and Review Officer found against the Owner on that (and other) points.

The Owner has not presented any new materials or arguments to the Panel. It is incumbent on the Owner (who bears the burden of proving that the Property is exempt) to articulate clearly what facts and what provisions in the Vacancy Tax Bylaw support the declaration for an exemption.

The Owner's materials appear to focus on two areas:

- (a) whether the noise and bother of the construction work, as described above, generally made for the Property and other units to be unfit for occupation for more than 6 months in the Vacancy Reference Year;
- (b) whether there were factors specific to the Property that differed from and/or were additional to the factors that other strata unit occupants faced (e.g., the use of the Property's adjacent balcony/patio area to store equipment and as a staging area and the requirement for temporary access (for 5 days) to the master bedroom for construction work to be done installing anchors above the ceiling) rendered the Property unfit for occupation in the Vacancy Reference Year; and
- (c) whether personal factors concerning s.22(1) finding that the Property was exempt from the Vacancy Tax.

The Panel finds that none of these justify finding that the Property is exempt.

No doubt living in this building and in the Property presented inconveniences, frustrations and challenges given the fact of construction work going on, the noise and the prospect that, although most work was outside, at times workers would have to enter the interior of units to perform the work.

Those did not, however, render the Property unoccupiable. Indeed, the evidence that the other units in the building remained occupied and did not seek exemption due to "major renovations" requiring units to be left vacant runs counter to the Owner's argument.

The fact that the balcony/patio area for this strata unit was declared off-limits to the Owner and any occupier of the Property during the construction work done pursuant to the building permit does not provide a justification for the Property itself being left vacant. The basis for that was said to be safety. But there is nothing in evidence to suggest that safety concerns precluded occupancy of the interior of the strata unit.

The notice concerning access being required to the master bedroom for work on the ceiling (for 5 days) does not afford the Owner a basis for claiming exemption for any extended period either. The strata unit remained capable of occupancy.

Had it not been so, one would have expected WorkSafe BC, the strata property manager, the construction company or the City of Vancouver Building Department inspectors to have issued directives requiring the strata unit interior to be vacated. There is no evidence they did so. The most that occurred was the notice from the strata property manager to the Owner that WorkSafe BC requirements precluded the Owner or occupiers of the Property using the balcony/patio area. That left the whole of the interior of the strata unit available for use and occupancy.

Again, the Panel notes that the burden of proving the facts required to establish an exemption was on the Owner. If there was evidence available to establish that the Property was not fit for occupation and was, in essence, uninhabitable, the Owner should have led it. The Owner did not do so. The information and assertions that were provided fail to do so.

Next, the personal financial concerns and retirement plans of the Owner are not factors that allow for an exemption from the Vacancy Tax.

Neither do concerns about prospective tenants being upset by the construction work. The work was apparently required, the building permit gave it lawful authorization and no issues were noted by the Owner suggesting that it was not done in a competent manner that avoided any unnecessary hardship to those living in the building (or the Property).

The Owner expressed some concerns that tenants could possibly assert claims against the Owner due to the noise and bother of the construction work. The *Residential Tenancy Act* and the *Strata Property Act* both contain provisions for repair and maintenance of living units. The Owner has not provided any specific information or evidence on which to base allegations that the Property was not fit for tenancy on these grounds or that the Owner

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would have actually faced such liability. The Auditor referred the Owner to the Residential Tenancies Branch and to a Landlords BC. That did not lead to any further evidence from the Owner on this supposed concern.

Further, and perhaps more significantly, the Review Officer's investigations showed that other units remained occupied. The Owner's concerns do not appear to have had an evidentiary foundation in fact.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the Owner is entitled to an exemption from taxation under section 3.2 of the Bylaw for the 2021 Vacancy Reference Year.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: November 4, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: October 31, 2024

File Number: RC-2024-00035

Requestor: s.22(1)

Vacancy Reference Year: 2021

Civic Address: s.22(1)
s.22(1)

Folio: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of a May 14, 2024, decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

The Review Officer found that there was insufficient evidence to determine that the Property was occupied for residential purposes by an arms-length tenant under a tenancy agreement for a term of at least 30 consecutive days, for at least six months in the vacancy reference period. The Review Officer therefore considered the property vacant under section 2.3 of the *Vacancy Tax By-Law*. (the *By-Law*)

Section 6.10 of the *By-Law* provides that a registered property owner who has received a determination of the vacancy tax review officer may request a review of that determination by the vacancy tax review panel.

In accordance with the Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for the claimed exemption under the *By-Law*.

Background

The property owner has owned the Property since s.22(1). The property owner acquired the Property s.22(1). Although the Property was tenanted at the time of purchase in August 2020, that tenancy came to an end in December 2020.

On January 25, 2022, the property owner declared that the Property was exempt on the basis that it was tenanted for at least six months in the vacancy reference period. On February 1, 2023, the Vacancy Tax department notified the property owner that the declaration had been selected for an audit. During the audit period, the Tax Department made several requests for information.

The property owner provided a copy of a one-year fixed term residential tenancy agreement between the property owner and the tenant s.22(1) dated June 24, 2021, as well as "Lease addendum," also dated June 24, 2021. The property owner also submitted several bank statements and insurance documents for the reference period.

The Lease Addendum specifies the names of the principal occupants of the Property as s.22(1). Although the tenancy agreement specified that the rent was s.22(1), the addendum indicated that the tenant was to receive a 100% credit towards the rent for the months of July, August and September 2021. (Clause 39)

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The property owner also provided affidavit evidence from the tenant, s.22(1). In that affidavit s.22(1) identified s.22(1) s.22(1) stated that, with the consent of the property owner, s.22(1) entered into a verbal agreement to sublease the Property to s.22(1) further declared that the subtenant did not make the property their mailing address because of the pending development application.

The Tax Department sought two valid secondary documents which were never provided despite repeated requests to do so.

The property owner provided proof of property insurance coverage for the period August 31, 2020, to August 31, 2022, and a copy of a s.22(1). As a complete tax return was not submitted, the Tax Department was unable to verify the rental income claimed. The property owner also provided a copy of the tenant's s.22(1) which showed that the tenant was associated to a different address.

City records and evidence submitted by the property owner indicate the property was boarded up and in an unlivable condition to at least April 2021, including the fact that the home did not have water supply, and all electrical wiring had been removed. Although an electrical permit to repair the existing service was taken out on June 14, 2021, the permit was not completed, and the power was not connected.

On September 24, 2021, the Property s.22(1) s.22(1). The property owner says that the tenants received additional rent credits to the remainder of 2021. The property owner submits that although it "worked diligently to have the Property secured and assessed for the purposes of having it put back into inhabitable condition after the fire," the Property was not in a habitable condition by the end of the vacancy reference period.

The Tax Department noted that in addition to being s.22(1), s.22(1) was also declared to be a tenant of s.22(1). s.22(1) property owner confirmed that s.22(1) was paying rent for s.22(1). The Tax Department further noted that bank statements submitted in support of the declaration were not for the vacancy reference period and the amounts received were not associated with the named tenant.

The Vacancy Tax Review Officer concluded that there was insufficient evidence to determine that the property was occupied for residential purposes by an arm's length tenant under a tenancy agreement for a term of at least 30 consecutive days for at least six months in the vacancy reference period, stating in part:

...

The term "occupied" is not defined in the Vacancy Tax By-Law. In my view, the words of section 2.2 (b) must be interpreted in their "grammatical and ordinary sense." "Occupied" when referencing a physical space involves to take up or fill up a space. Although there is no requirement to physically occupy the property for a period of six months, a tenant would be expected to move into the property or to use the property for the intended purposes of residential occupancy.

The owner, tenants, or sub-tenants did not provide evidence to support they repaired or occupied the property. Given the extremely poor state and uninhabitable condition of the house in the months prior to

the lease commencement date, invoices related to material and labour costs for the repairs could have been submitted to support or corroborate those statements.

Submissions

The property owner contends that the Vacancy Tax Review Officer erred in rejecting the property owner's notice of complaint and that the decision is patently unreasonable. The property owner submits that it provided the Tax Review Officer with unequivocal evidence that the Property was rented out and that the tenancy agreement/sublease was for a period of at least six months. The property owner contends that the Vacancy Tax Review Officer erred in importing a physical occupation or physical use requirement into the meaning of "occupied" in section 2.2(b) of the *By-Law*. It argues that the *By-Law* does not include a physical occupation or use requirement; rather, it requires only a legal right to occupy the space.

The property owner also contends that the Tax Review Officer's decision "lacks transparency and intelligibility" in failing to consider relevant provisions of the *By-Law*, including the meaning and purpose of the term "occupied;" failing to consider the meaning or purpose of the relevant provision as a whole; failing to refer to the overall purpose of the *By-Law*; and failing to consider the lack of any physical occupation or use requirement in the *By-Law*.

Analysis

The *By-Law* imposes a vacancy tax on every parcel of taxable property in accordance with the provisions of the *By-Law* (section 2.1).

Section 2.2 of the *By-Law* provides that residential property is considered unoccupied in the following circumstances:

- (a) *The residential property is not the principal residence of an occupier; and*
- (b) *The residential property is not occupied for residential purposes by an arm's length tenant under a tenancy agreement, or by an arm's length subtenant under a sublease agreement, for a term of at least 30 consecutive days.*

....

Section 2.3 provides that residential property is considered to be vacant property if:

- (a) It has been unoccupied for more than six months during the vacancy reference period; or
- (b) It is deemed to be vacant property in accordance with this by-law.

Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel task is to ensure that the Vacancy Tax Review Officer has correctly interpreted the *By-Law* considering the facts before them. (*Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

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Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

The Panel has considered the intention of the *By-Law*, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

I am not persuaded that the Vacancy Tax Review Officer improperly interpreted the *By-Law* in denying the declared exemption based on all the evidence.

Although the property owner submitted several documents including a signed tenancy agreement, the Vacancy Tax Review Officer found that objective evidence did not support the declaration. I agree entirely with the Review Officer's decision.

Section 2.2(b) of the *By-Law* deems property to be vacant if it is not ...occupied for residential purposes...

The tenancy agreement between s.22(1) and the property owner is in a form that is prescribed by the *Residential Tenancy Act* of British Columbia ("RTA") [SBC, c. 78]. As such, it must comply with the provisions of the RTA.

Section 1 of the *RTA* defines "tenancy" to mean "a tenant's right to possession of a rental unit under a tenancy agreement," and a "tenancy agreement" as "an agreement...between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit."

The property owner does not dispute that s.22(1) is the s.22(1) which was s.22(1), nor that s.22(1) permanent residence was not that of the Property.

s.22(1) affidavit indicates that s.22(1) s.22(1). This statement is incongruent with the documentary evidence. The Lease addendum, signed only by the property owner and s.22(1) identifies s.22(1) as the "persons... occupying the rental unit." The *RTA* provides that "a tenant must not...sublet a rental unit" without the landlord's written consent (section 34(1)). Therefore, if there was an oral sublease agreement between s.22(1) s.22(1) such agreement was unenforceable under the *RTA*.

Clause 21 of the Lease addendum provides that "The Tenant agrees that as a condition of the Tenancy, the Tenant is responsible for maintaining the front and back yards, including regular lawn mowing... as required..." for six specified properties, including the Property. Clause 20 provides for a similar obligation for snow and ice removal. This addendum supports the Tax Review Officer's observations that although the property owner declared that s.22(1) was "renting" a number of properties from the property owner, there was no evidence that rent was paid by s.22(1) or anyone else for the Property for any month in 2021. While the property owner did suggest that the tenant paid rent, the documentation showed that the rent was then credited back to the tenant.

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Considering all the evidence before the Tax Review Officer, it was reasonable for the Review Officer to conclude that the "valid tenancy agreement" could not be considered credible or reliable and that the property was not occupied for residential purposes by an arm's length tenant.

Although s.22(1) declaring that s.22(1) (Affidavit paragraph 10). The evidence also supports the Vacancy Tax Review Officer's conclusion that, in the absence of any contrary evidence, that the Property was not capable of being occupied for residential purposes. According to the "valid tenancy agreement," the tenancy was to begin on June 24, 2021. On that date, the Property had no power or water supply. There was no evidence the Property had water or power at any time in 2021.

Furthermore, the Property was declared uninhabitable s.22(1)

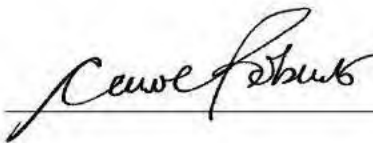
Given that a) there was no evidence that the property was capable of habitation; b) no rent was ever paid for the Property; c) the tenant, who s.22(1) for the property owner, s.22(1) s.22(1); and d) that the tenant rented additional properties from the property owner, also for effectively no rent, the Vacancy tax Review Officer's decision was both reasonable and well supported on the evidence before him.

The Panel concludes that there is no error in the Tax Review Officer's determination

Decision

Having reviewed the property owner's documents and submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owner is entitled to an exemption from taxation under section 2.2 of the *By-law*.

Review Determination: DENIED



Panel: C. L. Roberts
Date: October 31, 2024

File Number: RC-2024-00035

City of Vancouver Vacancy Tax Review Panel Decision

Date: October 29, 2024

File Number RC-2024-00036

Requestor (Registered Owner):
s.22(1) ("Owner")

Vacancy Reference Period: 2021

Civic Address: s.22(1)
s.22(1) ("Property")

Folio: s.22(1)

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax ("Tax").

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the Bylaw. The Property is not exempt from taxation under the Charter, and so the issue is whether it is exempt under the Bylaw.

3. S.2.2 of the Bylaw provides that residential property is considered to be unoccupied if it is not the principal residence of an occupier, and, is not occupied for residential purposes by an arm's length tenant or subtenant under an agreement, for a term of at least 30 consecutive days.

4. S.2.3 of the Bylaw provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period, or is deemed to be vacant in accordance with the Bylaw.

5. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. The Property was occupied by a tenant during 2018 and 2019. During s.22(1), and which made the Property uninhabitable while renovations were to take place. A property status declaration was made on behalf of the Owner for the vacancy reference period that declared the Property was exempt from taxation because it was

undergoing development or major renovations, but no permits were issued by the City for such renovations.

7. When repairs were delayed due to supply chain issues during COVID-19, in April, 2021, the Owner listed the Property for sale, without success. Eventually a tenant was found with the tenancy commencing January 1, 2022, but the Property was unoccupied for the entire vacancy reference period of 2021. After receiving a Vacancy Tax bill, the owner submitted a Notice of Complaint stating that this property was exempt for redevelopment or renovation, and that the application of the Tax was unfair, and requesting a waiver of the Tax.

8. The Owner submits that the Property should be exempt from the Tax because s.22(1), and it was exceedingly difficult to rent or sell the Property because vaccination proof was required to enter buildings during COVID-19, the number of people being given access to buildings was restricted and many tenants decided to move out of downtown to carry on work from home or because they lost their jobs. The Owner states that great efforts were made to rent the Property, including reducing the rent, and when that was not successful, to sell the Property, and provided evidence of those efforts. The Owner, s.22(1), and submits that while every possible attempt was made to comply with the intent of the Bylaw to encourage the use of residential homes and reduce the number of vacancies in the City, the end result is that the Tax is an unjust and unfair penalty to this particular Owner in these circumstances.

Analysis of Legal Issues Governing Review

9. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

10. S.3.2 of the By-law provides as follows:

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) Redevelop or safely carry out major renovations to the property
 - i. For which permits have been issued by the City in the vacancy reference period, and
 - ii. Which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay.

11. To be eligible for an exemption under s.3.2(a) of the By-Law, the property must be unoccupied for more than six months during the vacancy reference period in order to redevelop or conduct major renovations, for which permits have been issued to perform this work. No permits to redevelop or conduct major renovations to the Property were issued during 2021.

12. There is no exemption for the 2021 vacancy reference period for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation with an issued building permit pursuant to s.3.2(a) of the Bylaw. A Bylaw amendment providing an exemption for hazardous or damaged residential property was not enacted until June 28, 2023.

13. The jurisdiction of the Panel is solely to review the decision of the review officer and to interpret the Bylaw. It is not within the powers of the Panel to determine if the application of the Bylaw in a particular instance is unfair to an owner. Unfortunately the only exemption from the Tax in 2021 that may have been available to the Owner is the redevelopment or major renovation category, and the Owner does not meet the requirements of that exemption. In particular, the Property was unoccupied for the entirety of 2021 during which time no permits for repairs were issued by the City.

Decision

14. In conclusion, having considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Bylaw, the Panel determines that the reason the Property was unoccupied for more than six months in 2021 was not because it was undergoing redevelopment or major renovation with permits issued by the City. Accordingly the Property is not eligible for an exemption under s.3.2 of the Bylaw.

Review Determination: DENIED



Panel: Leslie E. Maerov

Date: October 29, 2024

City of Vancouver Vacancy Tax Review Panel Decision

Date: October 22, 2024

File Number RC-2024-00038

Requestor (Registered Owner):
s.22(1) ("Owner")

Vacancy Reference Period: 2021

Civic Address: s.22(1)
s.22(1) ("Property")

Folio: s.22(1)

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax ("Tax").

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the Bylaw. The derivation of what is taxable property comes from the Charter, which provides in s.396(1) that all real property in the city is liable to taxation. However, s.396 establishes that there are exemptions from the taxation in the following terms

Property tax exemptions

396. (1) All real property in the city is liable to taxation subject to the following exemptions:

- (c) Real property
 - (i) if
 - (A) an incorporated charitable institution is the registered owner or owner under agreement, either directly or through trustees, of the real property, and
 - (B) the real property is in actual occupation by the incorporated charitable institution and is wholly in use for charitable purposes;

3. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property under the Bylaw, which is all real property that is not exempt under the Charter or Bylaw, or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. The Owner is s.22(1) s.22(1) The Owner purchased the Property on s.22(1) s.22(1) A property status declaration was made on behalf of the Owner for the vacancy reference period that declared the Property was tenanted but while the Property was designated as residential property under the *Assessment Act*, it was in fact used as an office of the Owner in conducting its charitable purposes.
7. Upon being audited, the City considered the Property to be residential property designated as such under the *B.C. Assessment Act*, and non-compliant because it was not occupied by a residential tenant or subtenant for at least 6 months in the applicable vacancy reference period. Knowing of the use to which the Property was being put, the City advised that the Owner would have to submit a request to the B.C. Assessment Authority to change the classification of the property from residential to commercial, or file a development permit to change the zoning from residential to commercial.
8. The Owner submitted a Notice of Complaint indicating that the application to change the assessment classification or to change the zoning to commercial by filing a development permit failed essentially due to oversight as a result of rapidly changing officers and employees who neglected to file the application, and sought a relaxation of the application of the terms of the Bylaw.

Analysis of Legal Issues Governing Review

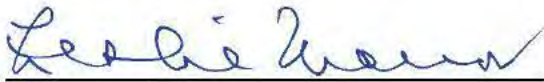
8. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.
9. This matter is quite straightforward. Both the Owner and the City have focused on the classification of the Property and its use, and whether the Property falls within the exemptions set out in the Bylaw. However, prior to considering whether a property is subject to the Tax or is exempt under the Bylaw, it must first be considered whether the property is in the first instance subject to taxation, or whether it is exempt under the Charter.
10. To be eligible for an exemption under s.396(1)(c) of the Charter, real property must be owned by an incorporated charitable institution and the property must be in actual occupation

by the incorporated charitable institution and wholly in use for charitable purposes. The Owner fits squarely within the terms of this exemption, and accordingly the Property is not liable to taxation. As a result the provisions of the Bylaw imposing a Vacancy Tax do not apply to the Property.

Decision

11. In conclusion, having considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Charter and the Bylaw, the Panel determines that the Property is not subject to taxation under the Bylaw due to it being exempt under the Charter, because it was owned by an incorporated charitable institution and was in actual occupation by the charitable institution and used wholly for charitable purposes during the Vacancy Reference Period.

Review Determination: GRANTED



Panel: Leslie E. Maerov

Date: October 22, 2024

The City of Vancouver Vacancy Tax Review Panel Decision

Date: January 25, 2025

File Number: RC-2024-00040

Requestor: s.22(1)

Vacancy Reference Year: 2021

Civic Address: s.22(1)

Folio: s.22(1)

OVERVIEW OF ISSUES:

- [1] The registered owner seeks an exemption on the basis that, in its words: “[p]roperty is vacant with an uninhabitable building on it, with Development Permit [i]ssued”. It references a permit issued in 2017 and cancelled by the City in 2021 on the stated basis that “no activity for three years”. The permit was re-opened in June 2022 after the registered owner provided further information.
- [2] The issues for determination are whether the exemption claimed could apply in the 2021 vacancy reference year, given the by-law was amended to include it in 2023, and if it does apply retroactively, whether the exemption claimed is made out on the evidence provided.
- [3] For reasons that follow the Panel concludes the exemption is not proven and that no other claimed exemption is made out on the evidence.

FACTS:

- [4] According to City records, the subject property was owned by the prior owner, s.22(1) from s.22(1). The property was purchased by the current registered owner on s.22(1). The BC Land Title Office transaction type was listed as ‘s.22(1)’. The utilization of the property by the registered owner from the time of purchase to the first Vacancy Tax declaration is unknown to the City and not stated in evidence by the owner.
- [5] The BC Assessment Authority Transaction Type states that the subject property was sold with consideration for both the land and improvements. The data base for the City also confirms that the prior owner s.22(1) s.22(1).
- [6] The current registered owner declared the property as “Exempt – Redevelopment or Renovation” for the 2017 and 2018 vacancy reference periods. The property was

subject to audit for the 2018 vacancy reference period. The Audit determined that the property was not in compliance with the Vacancy Tax By-law. No property status declaration was made for the 2019 vacancy reference period. The registered owner declared the property as "s.22(1)" for the 2020 vacancy reference period. The property was subject to audit for the 2020 vacancy reference period and the audit determined that the property was not in compliance with the Vacancy Tax By-law. No property status declaration was made for the 2021 or 2022 vacancy reference periods. The registered owner declared the property as "Exempt – Redevelopment or Renovation" for the 2023 vacancy reference period and the property was again made subject to audit for the 2023. The material before this Panel does not include the conclusion of that audit.

- [7] The owner's representative submitted a Notice of Complaint to make a late declaration for the 2021 vacancy reference period. The grounds for the complaint were "Owner Error / Omission". The representative stated that the property status for the 2021 vacancy reference period was "Redevelopment or Major Renovations". The representative stated that the property "is vacant with an uninhabitable building on it". The permit number given in support was Development Permit s.22(1).
- [8] The registered owner answered affirmatively to the question on the exemption declaration as to whether, "[t]his property was declared as unoccupied for more than 180 days in the applicable vacancy reference period because the property was undergoing redevelopment or major renovations where permits had been issued; or the land was vacant, was a heritage property or part of a phased development with applications under review".
- [9] The description provided for the development or redevelopment was s.22(1). This description was expanded to state that the development was a s.22(1) providing at-grade parking spaces, having vehicular access from the lane".
- [10] As evidence for the development work underway two invoices were provided. The first is from a structural engineering firm and dated April 14, 2020. It includes s.22(1). Clearly the work involved was in 2019 or earlier. The second is from a company doing an Integrated Risk Management (IRM) assessment for

runoff and domestic and fire flow water in the amount of s.22(1) and issued October 28, 2022. It is apparently for work done after the subject vacancy reference year.

AUDIT AND VACANCY TAX REVIEW OFFICER DECISIONS:

- [11] The Vacancy Tax Review Officer ("VRTO") determined that the claimed exemption for an uninhabitable building was not made out on the evidence and that the exemption, first added to the by-law in 2023, did not apply retroactively to 2021. The VTRTO further noted that no building permit was issued for the redevelopment at any point during 2021, nor up to the time of the VRTO decision in 2024, so that the claimed exemption was also not made out on the evidence even if it had applied.

ANALYSIS:

- [12] In accordance with the Vacancy Tax Review Adjudication process, the Panel has independently reviewed all the evidence submitted by both the City and the owner. As noted the Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the relevant provision of the *Vacancy Tax By-law* for the following reasons.
- [13] Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer made reasonable factual findings and interpreted the By-Law in light of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).
- [14] In this case the registered owner has failed to provide any evidence to support the claimed exemption, even if the Panel finds that exemption to apply in the 2021 year.
- [15] The relevant portion of Section 3.2 of the by-law as it stood in 2021 states that:
- A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:
- a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City, and

ii. which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay, or;

(b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:

i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and

ii. which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay,

[16] The owner claims that the property is “vacant” with an “uninhabitable building”. There is clearly an issue of whether a property with an uninhabitable building can be deemed as “unimproved with any dwelling units”, but the Panel does not need to determine that issue. The exemption requires a complete rezoning or development permit application to be submitted and under review. There was none in this case in the 2021 reference year. There were also no permits issued. This lack of permits or applications is fatal to the exemption claim of the registered owner.

[17] Further, there is no evidence as to the subject building on the property being uninhabitable. For this reason, the Panel does not need to address the issue of whether the Panel can retroactively apply the 2023 amendment to the by-law, addressing when property residential property may be exempt from the Vacancy Tax where it has become uninhabitable, to the vacancy reference year of 2021.

FINAL DETERMINATION:

[18] My final determination is that Vacancy Tax should be imposed on the subject property. The review is denied.



Panel: Michael F. Welsh, K. C.

Date: January 25, 2025

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Decision Date: January 21, 2025

File Number: RC-2024-00041

Requestor: s.22(1)
(the "Owner")

Vacancy Reference Year: 2019

Folio: s.22(1)

Civic Address: s.22(1)
(the "Property")

At the request of the Owner of the Property, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter.

In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owner claiming exemption.

In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Background

The Owner acquired the Property in s.22(1). At that time, the Property s.22(1) it s.22(1). The Owner acquired the Property with a view to demolishing existing structures and s.22(1). Progress in doing that has been very slow. Instead of keeping the property occupied as a residence, the Owner has chosen to treat it as being subject to redevelopment and left empty. Also, s.22(3)(d)

Failing to make a filing and provide support for an exemption from the Vacancy Tax leads to the Property being deemed to be vacant and the tax being applicable.

As a result of not making filings, having s.22(1) status for the Property and s.22(3)(d). In this case, the 2019 Vacancy Reference Year is the focus of attention. The Panel notes, however, that the record of materials from the City s.22(3)(d). The Panel will only deal with the 2019 Vacancy Reference Year in this decision.

In their complaint submission, the Owner set out that they held a Development Permit, s.22(1). It appears that they did not proceed with that and instead set about seeking a revised permit. The City's records showed that the 2017 Development Permit Application was made February 23, 2017, but that no formal Development Permit was in fact issued.

Further, in their complaint submission, the Owner argued that the Property was “vacant with an uninhabitable building on it.” No evidence that it was uninhabitable was provided. The City’s investigations noted that it had been occupied up till the time of sale to the current Owner in s.22(1)

Review Officer Determination

By a letter dated October 9, 2024, the Vacancy Tax Review Officer dismissed the complaint and upheld the deemed determination that the Vacancy Tax was payable on the Property for the 2019 Vacancy Reference Year. The officer gave reasons for that determination, as follows:

The reasons for the determination were set out as follows:

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the City. As there no building permits issued in the vacancy reference period, it is not eligible for the “Property undergoing redevelopment or major renovation” exemption in Section 3.2(a) of the Vacancy Tax By-Law.

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was carrying out redevelopment or initial development of residential property that is unimproved with any dwelling units, for which a development permit application is under review by the City. A development permit was not under review during the vacancy reference period, the property was not vacant land and therefore, it is not eligible for the “Property undergoing redevelopment or major renovation” exemption under Section 3.2(b) of the Vacancy Tax By-Law.

A property that is “unimproved with any dwelling units” means any property that is vacant land with no existing building. If there is an existing building on the property, then the exemptions in section 3.2(b) and 3.2(c) do not apply. There is no exemption for a property that is unoccupied solely because the building is in a state of disrepair and not in a condition for people to live in, unless it is undergoing redevelopment or renovation with an issued building permit pursuant to section 3.2(a) of the Vacancy Tax By-Law.

The vacancy tax by-law amendment for hazardous or damaged residential property was not enacted until June 28, 2023 and is not applicable to the 2021 vacancy reference period.

Owners who are awaiting building permits must ensure that the property continues to be occupied as a principal residence or rented out for at least six months of the year. This requirement also applies to projects requiring rezoning, so owners should maintain

occupancy while proceeding through the rezoning process. Unoccupied homes that are part of a land assembly are also subject to the tax if they are not occupied while the development site is proceeding through the rezoning or development permit process.

-

If the property is not the principal residence of an occupier or tenanted to an arm's length tenant for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

The Review Officer has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Review Officer has arrived at a final determination that Vacancy Tax should be imposed on the property.

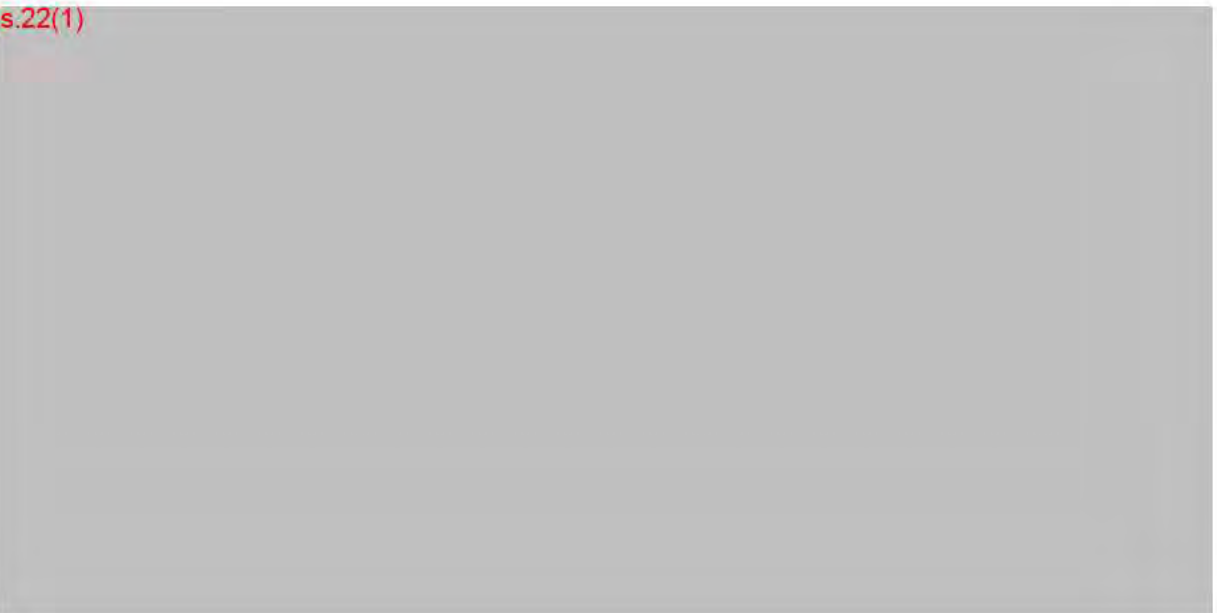
The materials submitted by the Owner are woefully inadequate.

The materials consisted of:

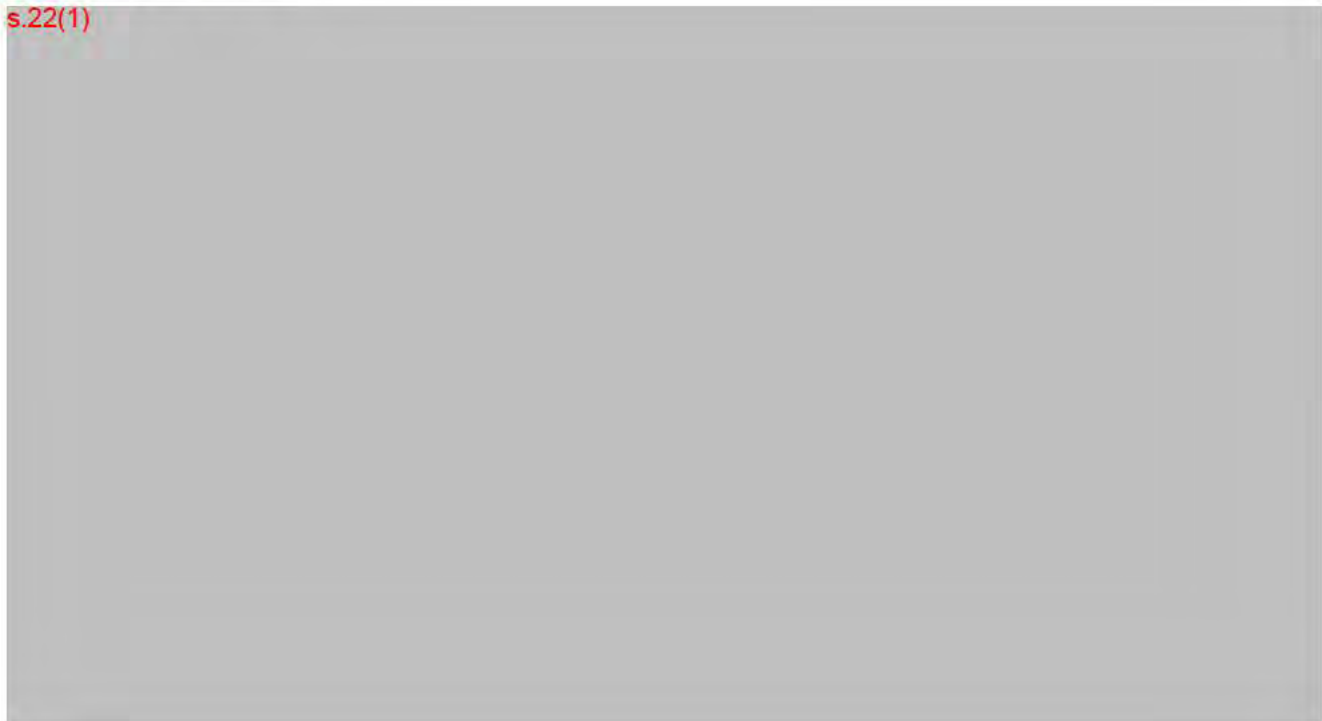
(a) **s.22(1)**



(b) **s.22(1)**



s.22(1)



The inadequacy of these materials is illustrated further by reviewing what the Vacancy Tax Bylaw says and what case law provides about who bears the burden of proof.

Vacancy Tax Bylaw

Section 3.2 of the Vacancy Tax Bylaw is the provision with which we are mainly concerned here. It reads thus:

A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City, and
 - ii. which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay, or;
- (b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:

- i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and
 - ii. which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay, or;
- (c) carry out either redevelopment or initial development of a parcel of residential property which is unimproved with any dwelling units and is part of a phased development which either:
 - i. has not been rezoned, where a complete rezoning enquiry or rezoning application for at least one of the parcels of residential property which comprise the phased development has been submitted by or on behalf of the registered owner and is under review by the City during the vacancy reference period, or
 - ii. has been rezoned, where either:
 - (A) a complete development permit application has been submitted for at least one parcel of residential property which is part of the phased development and is under review by the City during the vacancy reference period; or*
 - (B) a development permit has been issued by the City for at least one parcel of residential property which is part of the phased development and work under the development permit is, in the opinion of the Director of Development Services, being diligently pursued and without unnecessary delay.*

As the Review Officer stated in the determination letter, section 3.2(a) does not apply as no permit had been issued. In this context, permit means a building permit as that is required in order for actual construction to take place. The vacancy for more than 180 days in 2019 could not be justified based on redevelopment work where there were no permits issued by the City authorizing that work.

Also, there is no evidence that the Chief Building Officer was asked for an opinion on whether construction work was being diligently pursued, much less that it was. There was no such work going on. Instead, it appears there were ongoing efforts to come up with a design and plans for whatever work might eventually be the subject of a revised Development Permit application and then, once that was obtained, a Demolition Permit and Building Permit. None of those were in hand during the 2019 Reference year.

Next, section 3.2(b) is inapplicable as well. The Property was not “unimproved with any dwelling units.” As the Review Officer notes, in later years another provision was added to the bylaw such that sites that were hazardous or otherwise impossible to occupy for residential purposes could be deemed unimproved. But that law was not in effect in the bylaw in 2019. Even if it were or if an argument about habitability could otherwise be advanced on the language of the bylaw in 2019, there is no evidence presented by the Owner that the building on the Property was uninhabitable. Given that the evidence showed that it was a residential property and that up to December 2014 at least it was reported as being occupied as a residence, the Owner had a lot more to do in terms of evidence to establish that it was somehow “unimproved with any dwelling units” in 2019.

Presumably for that reason, the Review Officer added that letting a dwelling unit on a property go into disrepair is not a satisfactory basis for arguing that it is uninhabitable.

Simply put, there was no adequate evidentiary basis for the Owner’s assertion that section 3.2(b) applied.

Next, there is no evidence that this case falls within section 3.2(c). Although there is a brief mention in one of the emails of potential rezoning having to be considered by Council once a completed, revised Development Permit application was presented, the evidence does not disclose that that actually happened. So, the trigger for arguing applicability of section 3.2(c) was not pulled.

The Owner Bears the Burden of Proof to Show That an Exemption Applies

This matter concerns a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the comments by Estey, J., in *Stubart* at p. 577 about that part of legal history: “any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute.” But equally so, with claims for exemptions, taxpayers were accorded no favors:

“Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer's claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 DTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *WA. Sheaffer Pen Co. v. Minister of National Revenue*, 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule.”

In the result in the *Stubart* case, the Supreme Court rejected the strict or “literal” approach to construing tax statutes and shifted interpretation standards to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada*, 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle explained in a decision of the House of Lords:

[46] In *Commissioners of Inland Revenue v. Duke of Westminster*, [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that “[e]very man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be” (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart*, at p. 552; *Trustco*, at para. 11; *Copthorne*, at para. 65).

The law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that:

“The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

In this case, the Owner’s burden was to establish that one of the exemptions in section 3.2 applied and that explained why the Property was left vacant for more than 6 months in the 2019 Vacancy Reference Year. That has not been done.

In one sense, the Owner can be said to have failed to meet the applicable burden of proof. But when all of the evidence that was put forward is considered, a more direct conclusion can be stated. Based on the evidence, there was no factual basis for an exemption to be found.

Conclusion

s.22(3)(d)

After expiry of that period, s.22(3)(d)

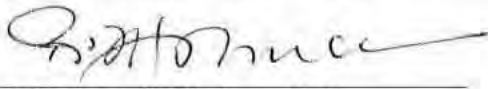
Even assuming that the complaint process was properly engaged and done in a timely manner, the Owner failed to meet the burden of proof they had and failed to provide evidence that established any of the bases for exemption that they apparently wanted to rely upon.

File Number: **RC-2024-00041**

Given all of that, the Owner's case for an exemption fails. Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel's final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under section 3.2 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted property.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: January 21, 2025

**The City of Vancouver Vacancy
Tax Review Panel Decision**

Decision Date: January 21, 2025

File Number: RC-2024-00042

Requestors: s.22(1)

Vacancy Reference Year: 2023

(the “Owners”)

Folio: s.22(1)

Civic Address s.22(1)

(the “Property”)

At the request of the Owners of the Property, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter.

In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owners claiming exemption for the Property for the 2023 Vacancy Reference Year.

In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Background

The Owners initially filed a declaration for the 2023 Vacancy Reference Year stating that the Property was vacant in that period. That was accurate as they had moved out 8 months prior to renovations being started. They did so s.22(1)

They got tenants into the Property effective March 1, 2024. So, the Property was vacant all 12 months of the Reference Year and a few more months on either side of that year.

The Owners had second thoughts about the declaration and filed a complaint about the Vacancy Tax being applied to their property for the 2023 Vacancy Reference Year. They said that the initial declaration of vacancy was their error and they wished to argue instead that certain exemption provisions of the Vacancy Tax Bylaw applied.

They provided the following explanation and submissions as to the grounds for exemption:

s.22(1)

s.22(1)

s.22(1)

These included a working shower, as one had a shattered shower door, and the other had a problem with the pressure to keep the tub shower flowing. There was condensation/leaking from the crushed dryer vent pipe, and condensation damage from the old windows had to be fixed.

s.22(1)

During the renovation all appliances were out of the kitchen, and there were no countertops or sink. The bathrooms had no countertops, shower or tub. It was not inhabitable as shared by our renovation company.

They completed the renovation early September of 2023.

After they were finished there was still a large clean up, trims and doors painting, closet doors to repair and blinds ordering and installation. s.22(1)

We squeezed in time when we had it. We were also under the impression that our renovation counted as an exemption, but it had appeared that the rules had changed. Should we have gotten tenants in for the 8 months that we were out before the physical renos began, then kicked them out to begin?

s.22(1)

The Owners provided as further evidence for consideration a letter dated April 3, 2024 from s.22(1) s.22(1) had been hired by the Owners around December 2022 to do certain work on the Property. s.22(1) described the work as follows:

s.22(1)

s.22(1)

s.22(1) did design and other planning and preparation work and started actual construction work in June 2023.

The letter from s.22(1) sets out that initially they had thought all the work could be started in May 2023 and completed within 18-44 days. Instead, it started in June 2023 and took until September 2023. Unexplained delays occurred. No explanation is given about the cause of the delay and why that impacted on the duration of vacancy and the reason for vacancy, so those remain key concerns.

s.22(1) acknowledges that: “s.22(1) did not obtain permits in relation to the Work since it was not in the scope of the work.”

Given that the nature of the work involved interior design, shower and toilet replacement, new countertops in the kitchen and bathrooms and new flooring in the entry and kitchen, some new tiling and other repairs, it does not appear that a Building Permit was required.

Unfortunately, for the Owners, that presents them with a problem in terms of fitting within section 3.2(a) of the Vacancy Tax Bylaw. That provision reads as follows:

A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City, and
 - ii. which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay,

This provision starts off with what may be termed a purpose clause. It says that the vacancy tax is not payable where residential property was unoccupied for more than six months in a calendar year “in order to do one of more of the following...”

Thus, the first thing that the Owner would have had to show is that the Property was vacant for more than 6 months “in order to” do a redevelopment or major renovations, as set out in subsection (a). This

was not a redevelopment (i.e., building a new residential property). It was a renovation. The question whether it was a “major renovation” is one of the issues here.

The City’s interpretation of “major renovation” is that it is something that, at a minimum, requires that a Building Permit be issued. Other kinds of renovations or home repairs are done without a permit and are conceptually considered to be minor.

The Owners seek to counter that by relying on this evidence from the CEO of s.22(1) :

During substantive renovations at the Property, the Property was not habitable. s.22(1) required that the Property be empty and available during the Project. As indicated above, given the nature of the Work, various areas of the Property, including the bathrooms and kitchen of the Property, could not be used by the Owners during the Project.

That does not come across so much as an expert opinion on habitability as it does an opinion on whether it was more convenient for the contractor to have no one else around. The contractor emphasizes that it “required that the Property be empty and available during the Project.”

Given that there were two bathrooms, questions arise why work could not be staged so as to have one usable at any given time. There is no suggestion of any work being done in bedrooms, so those would appear to be unaffected. Perhaps if the Owners had put forward more evidence and explanation there would be more substance to their arguments on the “uninhabitable” issue. But there is not.

Next, section 3.2(a)(ii) must be considered. It provides that with major renovations for which permits have been issued there is a further requirement. The “Chief Building Official” or their delegate must have the “opinion” that the work is “being carried out diligently and without unnecessary delay.”

Here, no one contacted the Building Department to seek such an opinion, presumably because no one applied for a Building Permit and no such permit was obtained. Unfortunately for the Owners, that leaves them without evidence to satisfy section 3.2(a)(ii).

Faced with what appeared to be an inability to fit within section 3.2, it appears that the Owners’ complaint shifted to section 3.10. That deals with uninhabitability due to disasters and hazardous materials. It reads thus:

A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because:

- (a) the residential property became uninhabitable because:
 - (i) it is substantially damaged or destroyed by a disaster, or

(ii) it is in a hazardous condition; and

(b) the disaster or hazardous condition was caused by circumstances beyond the reasonable control of a registered owner of the residential property,

except that this exemption shall not be allowed for more than two consecutive vacancy reference periods.

This case does not fall within that provision. What happened here was that the Owners decided to upgrade premises that s.22(1)

s.22(1)

s.22(1) So, the evidence of habitability prior to the start of the renovation work is against finding that the premises were uninhabitable.

The Owners appear to argue that the fact of renovation work, that they voluntarily chose to embark on, allows them to fit within the exemption set out in section 3.10. With respect, that is not what the section applies to.

That possibly leaves one basis for arguing that section 3.10 could apply. If during the course of what initially were contemplated as run-of-the-mill, minor renovations that did not require any permit from the City something was uncovered or discovered that was more serious and required that the premises be evacuated and vacant for a prolonged period while that was addressed, perhaps section 3.10 could be argued. Similarly, if something was done by the contractor that caused major electrical, plumbing or structural issues to arise, that may afford a basis for arguing the applicability of section 3.10 as well. But here, there is no evidence of such situations. So that possibility has not been shown to exist and can be put aside.

In passing, the Panel notes that this unit appears to be part of a strata complex. No evidence of any approval from the strata corporation for the work being undertaken or of any major issues with getting the work done or of any significant impact on neighboring units was presented. It seems a reasonable inference that none of that would have helped the Owners' case.

Review Officer Determination

By a letter dated October 16, 2024, the Vacancy Tax Review Officer determined that the complaint of the Owners should be dismissed and gave the following reasons:

Based on the evidence provided, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or major renovation with permits issued by the City.

As there were no building permits issued by the City in the vacancy reference period, it is

not eligible for the “Property undergoing redevelopment or major renovation” exemption in Section 3.2(a) of the Vacancy Tax By-Law.

Based on the evidence provided, the Vacancy Tax Review Officer determines that the property is not eligible for the “Hazardous or damaged residential property” exemption in Section 3.10 of the Vacancy Tax By-Law.

Section 3.10(b) states the disaster or hazardous condition was caused by circumstances beyond the reasonable control of a registered owner of the residential property. The renovation work was initiated by the owner and it did not require the home to be unoccupied for six months.

If the property is not the principal residence of an occupier or tenanted for at least six months of the vacancy reference period, and does not qualify for an exemption, it is considered vacant and the Vacancy Tax will apply.

The Owners were dissatisfied with this decision and sought review by the Panel.

The Owner Bears the Burden of Proof to Show That an Exemption Applies

This matter concerns a taxing provision in a bylaw. The law used to be that such provisions were construed strictly against the taxing authority when they involve the imposition of a tax. See, for example, the comments by Estey, J., in *Stuart* at p. 577 about that part of legal history: “any ambiguities in the charging provisions of a tax statute were to be resolved in favour of the taxpayer; the taxing statute was classified as a penal statute.” But equally so, with claims for exemptions, taxpayers were accorded no favors:

“Where the taxpayer sought to rely on a specific exemption or deduction provided in the statute, the strict rule required that the taxpayer's claim fall clearly within the exempting provision, and any doubt would there be resolved in favour of the Crown. See *Lumbers v. Minister of National Revenue* (1943), 2 DTC 631 (Ex.Ct.), affirmed 1944 CanLII 52 (SCC), [1944] S.C.R. 167; and *WA. Sheaffer Pen Co. v. Minister of National Revenue*, 1953 CanLII 758 (CA EXC), [1953] Ex. C.R. 251. Indeed, the introduction of exemptions and allowances was the beginning of the end of the reign of the strict rule.”

In the result in the *Stuart* case, the Supreme Court rejected the strict or “literal” approach to construing tax statutes and shifted interpretation standards to allow for a somewhat more liberal approach. That approach involved looking at the words in question in the total context of the taxing statute. The purpose of doing so was to ensure that the objective and spirit of the statute were applied.

In the recent case of *Deans Knight Income Corp. v. Canada*, 2023 SCC 16, however, the Supreme Court noted that what remained was a general principle explained in a decision of the House of Lords:

[46] In *Commissioners of Inland Revenue v. Duke of Westminster*, [1936] A.C. 1 (H.L.), Lord Tomlin recognized the foundational principle that “[e]very man is entitled if he can to order his affairs so as that the tax attaching under the appropriate Acts is less than it otherwise would be” (p. 19). The principle that taxpayers can order their affairs to minimize the amount of tax payable has been affirmed by this Court on numerous occasions (see, e.g., *Stubart*, at p. 552; *Trustco*, at para. 11; *Copthorne*, at para. 65).

The law provides that a taxpayer seeking an exemption from tax is usually deemed to have the burden of proving factual matters required to establish the exemption. Of course, that applies to factual matters and not to interpretation of the law. There is no burden on any party with respect to interpreting the law. That is the role of the adjudicator.

The Supreme Court of Canada confirmed those principles to be generally applicable in *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20. At para. 26, the court noted that:

“The fundamental rules on the allocation of evidentiary burden in this matter remain valid.... The taxpayer bears the burden of displacing the Minister’s factual assumptions, but the concept of burden of proof is not applicable to the interpretation of a statute, which is necessarily a question of law. At para. 29, the court added that: “the meaning of the relevant provision is a question of law, and there is no onus on either party in respect of it — the duty to ascertain the correct interpretation lies with the court.”

In this case, the Owner’s burden was to establish that one of the exemptions in section 3.2 or 3.10 applied and that explained why the Property was left vacant for more than 6 months in the 2023 Vacancy Reference Year. That has not been done.

In one sense, the Owner can be said to have failed to meet the applicable burden of proof. But when all of the evidence that was put forward is considered, a more direct conclusion can be stated. Based on the evidence, there was no factual basis for an exemption to be found.

The Owners’ Request for an Exemption Based on Compassion

The Panel notes that part of what the Owners’ statement set out falls not so much within the ambit of the Vacancy Tax Bylaw’s language and exemptions that it sets out, but rather within what may be termed a **s.22(1)** . Unfortunately, neither the Review Officer nor the Panel have any discretion to relieve against the imposition of the tax based **s.22(1)** .

The Panel notes that the Owners’ situation here highlights how section 3.3 of the Vacancy Tax Bylaw could be argued to cover only one side of the “person in care” coin. Section 3.3. reads thus:

A vacancy tax is not payable under this By-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period because all occupiers who were previously occupying the residential property as a

principal residence or all tenants or subtenants who were previously occupying the residential property for residential purposes are residing in a hospital, long term or supportive care facility, except that this exemption shall not be allowed for more than two consecutive vacancy reference periods unless there is a reasonable expectation that the occupiers, or tenants or subtenants, may be able to return to the residential property, in which case this exemption may be allowed for up to an additional two consecutive vacancy reference periods.

The ambit of section 3.3 is narrow. It does not cover situations s.22(1) s.22(1). Instead, it limits who the caregiver may be and covers where they have to reside “in a hospital, long term or supportive care facility.” Also, it does not deal with situations where the s.22(1) s.22(1) and fall afoul of the Vacancy Tax Bylaw as they try to juggle that move and what to do with their own home.

Page 9 of 70 of the draft Seniors Housing Strategy report¹ of the City of Vancouver comments on the need for the City to consider new laws, policies and initiatives to help seniors remain in their home and familiar surroundings as long as practicable:

Growing and aging older adult populations means a higher need for buildings with supports, such as assisted living and long-term care, **as well as at-home supports**. The number of older adults on the social housing waitlist points to the need for more social and non-profit co-op housing, **as well as a greater amount of subsidized assisted living and long-term care or low-cost home supports to allow people to remain in their homes as they age.**

Pages 21-22 of the draft Seniors Housing Strategy report identifies as an action described in para. 1.4 of Key Strategies such supports, refers to a “campus of care” model discussed by BC Housing and says this about the “campus of care” model in footnote 2: “It also allows couples, family members and friends to remain on the same site when their levels of care are different.”

¹ Found as a link on <https://www.shapeyourcity.ca/seniors-housing>. The draft report is found here: chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://syc.vancouver.ca/projects/seniors-housing-strategy/draft-seniors-housing-strategy.pdf.

File Number: RC-2024-00042

Vancouver Coastal Health Authority has similar encouragement² for supporting elderly persons remain in their own homes and familiar surroundings as long as possible, saying that “Home support services support independence, health, and wellness in your own home as long as possible.”

While there is nothing that the Panel can do to change the law so as to afford an exemption for the Owners in this case, the facts here highlight something that calls out for consideration by appropriate City planners and Council in relation to Seniors Housing Strategy where adult children of a senior find themselves in the circumstance set out here and then feel penalized by the Vacancy Tax Bylaw for having done the right thing for their family.

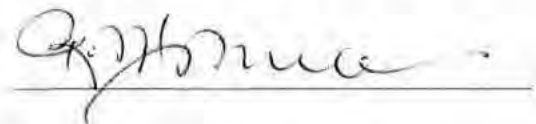
Panel’s Review and Decision

The Panel has already set out its analysis of the evidence above. The Vacancy Tax Review Officer’s findings of fact and interpretation of the bylaw all appear correct. There is no basis under the Bylaw as it stands now for finding otherwise.

Having reviewed and considered all evidence put before it in this case, and having weighed and measured that evidence on a balance of probabilities, it is the Panel’s final determination that the evidence in its totality is neither compelling nor effective in leading the Panel to a reasoned determination that the property owner is entitled to an exemption from taxation under sections 3.2 or 3.10 of the Bylaw.

The Panel has further considered the intention of the Bylaw, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver. Based on that consideration, alongside its above-referenced analysis of the evidence, the Panel has arrived at a final determination that Vacancy Tax should be imposed on the above noted Property for the 2023 Vacancy Reference Year.

Review Determination: DENIED



Panel: Robert D. Holmes, K.C.

Date: January 21, 2025

² <https://www.vch.ca/en/service/home-support#short-description-5901>

The City of Vancouver Vacancy Tax Review Panel Decision

Date: March 3, 2025

File Number: RC-2024-00043

Requestors: s.22(1)

Vacancy Reference Year: 2022

Civic Address: s.22(1)

Folio: s.22(1)

The requestors seek an independent adjudicative review of an October 8, 2024 decision of the Vacancy Tax Review Officer which found that the Property was subject to the Vacancy Tax.

The Review Officer determined that, based on the evidence provided, the reason the property was unoccupied for more than six months in the vacancy reference period was not solely because a court order, court proceedings or order of governmental authority prohibited its occupancy. The Review Officer found that the exemption in section 3.7 of the *Vacancy Tax By-Law* (the *By-Law*) does not apply.

In accordance with the Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the *By-Law*.

Background

The documentation before me indicates that the previous property owner declared the Property exempt from the vacancy tax for the 2022 under section 3.7 of the *By-Law*. s.22(1)

s.22(1)

s.22(1)

s.22(1)

The previous owner indicated they were unsure whether the owner of the property in 2022 had filed a declaration for the 2022 vacancy reference year as attempts to contact s.22(1) were unsuccessful. The previous owner contended that they should not be required to pay the empty homes tax for the 2022 year when they did not acquire the property until s.22(1). Attached as evidence to the declaration were the s.22(1), the contract of purchase and sale, the buyer's statement of adjustments, property transfer tax form and copies of the title.

The Tax Review Office suggested that the previous owner contact their conveyancing lawyer to obtain the necessary evidence to support a declaration, stating that they could not submit a complaint solely on the basis that they were not the owner during the vacancy reference period.

The Tax Review Office found that the documentation submitted on review did not support the declaration, as there was nothing in the documentation that prohibited residential occupancy. The Review Office noted that there was nothing in the s.22(1)

File Number: RC-2024-00043

The Tax Review Office noted that the City of Vancouver Tax Certificate showed the EHT balance owing for 2022 so that the purchasers were aware of the amount owing at the time of sale.

In denying the claimed exemption, the Vacancy Tax Office wrote, in part, as follows:

Vacancy Tax is assessed on a property and therefore any unpaid Vacancy Tax and late payment penalty remains as a liability on the Vacancy Tax account or, if left unpaid, in subsequent years on the property account. A change in ownership does not relieve the new owner of this liability.

Analysis

The *By-Law* imposes a vacancy tax on every parcel of taxable property in accordance with the provisions of the *By-Law* (section 2.1). Section 3 of the *By-law* sets out the exemptions to the tax.

Taxpayers seeking an exemption from tax have the burden of providing clear and cogent evidence that the Property is entitled to an exemption. (see, for example, *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.*, 2006 SCC 20)

The Panel's task is to ensure that the Vacancy Tax Review Officer has correctly interpreted the *By-Law* considering the facts before them. (*Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67)

The Panel has considered the intention of the *By-Law*, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Section 3.7 of the *By-Law* provides that a vacancy tax is not payable for a parcel of residential property:

...if the residential property was unoccupied for more than six months during the vacancy reference period solely because a court order, court proceedings or order of a governmental authority prohibits its occupancy, provided that the court proceedings or any conditions or requirements set out in any court order or order of a governmental authority are being diligently pursued without unnecessary delay by the registered owner and within any stated timelines. (emphasis added)

I am not persuaded that the Vacancy Tax Review Officer improperly interpreted the *By-Law*.

There is nothing in the documentation provided by the property owners that supports the claimed exemption. While I appreciate the requestors did not own the property during the vacancy reference period, there is no evidence that the property was unoccupied for six months in 2022 s.22(1)

s.22(1)

File Number: RC-2024-00043

As the Vacancy Tax Department noted, any unpaid vacancy taxes and late payment penalties remain as a liability on the tax account of a property and a change in ownership does not relieve a new owner of this liability. The property owner apparently did not account for potential vacancy tax assessments in the adjustments or arrange for a holdback of funds to account for any possible tax liability. That apparent oversight, while unfortunate for the current owners, does not render the Tax Review Officer's determination incorrect.

Decision

Having reviewed the evidence and submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owners are entitled to an exemption from taxation under section 3.7 of the *By-law*.

Review Determination: DENIED



Panel: C. L. Roberts
Date: March 3, 2025

City of Vancouver Vacancy Tax Review Panel Decision

Date: January 29, 2025

File Number RC-2024-00044

Requestor (Registered Owner):
s.22(1) ("Owner")

Vacancy Reference Period: 2022

Civic Address: s.22(1)
s.22(1) ("Property")

Folio: s.22(1)

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax ("Vacancy Tax").

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the Bylaw. The Property is not exempt from taxation under the Charter, and so the issue is whether it is exempt under the Bylaw.

3. S.2.2 of the Bylaw provides that residential property is considered to be unoccupied if it is not the principal residence of an occupier, and, is not occupied for residential purposes by an arm's length tenant or subtenant under an agreement, for a term of at least 30 consecutive days.

4. S.2.3 of the Bylaw provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period, or is deemed to be vacant in accordance with the Bylaw. Under the Bylaw residential property means property classified only as class 1 property (residential) on an assessment roll for the vacancy reference period under the British Columbia *Assessment Act* and its regulations.

5. Accordingly, a Vacancy Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. The Property is a live/work zoned property classified as Class 1-residential by the BC

s.22(1)

business. Live/work zoned properties that are Class 1-residential properties that are not used for residential purposes as a principal residence or tenanted for residential purposes to an arm's length tenant for at least 6 months of the vacancy reference period are subject to the Vacancy Tax.

7. The Property was purchased by the Owner on s.22(1), and a property status declaration for 2022 was made on behalf of the Owner for the vacancy reference period that declared the Property was vacant. After receiving a Vacancy Tax bill, the Owner submitted a Notice of Complaint which stated that the Property was exempt from taxation under the s.22(1)

s.22(1) which provides that a vacancy tax is not payable if the residential property was unoccupied for more than six months solely because s.22(1)

s.22(1)

8. s.22(1) appears to be due to the contention that the Property should not be considered taxable property due to a proposed re-classification of the Property from Class 1 - residential to Class 6 - business. In December, 2021, the Owner received the advance tax notice from the City of Vancouver advising that a Vacancy Tax declaration was required. In early December, s.22(1) as representative of the Owner contacted the Assessment Authority and was told that it was out of their authority to address this issue. s.22(1) then requested that the Assessment Authority change the Property from Class 1 to Class 6, but was informed that it would be too late to have the Property reclassified for 2022, as inspections took place in September/October, 2021, for 2022. s.22(1) states that s.22(1) was also informed that as long as the Property was inspected by the Assessment Authority by October, 2022, and if its business usage was confirmed, the property would be classified as Class 6 for the entire 2022 tax year, negating the requirement to pay the Vacancy Tax for the 2022 tax year. The Owner was under the impression that the Property would be classified as Class 6 at that time.

9. In its request for review by the review officer, the Owner states that when s.22(1) contacted the City of Vancouver on October 22, 2021, s.22(1) was told that the Vacancy Tax would not apply to the Property due to zoning, rather than its BC Assessment Authority classification. As a result s.22(1) took no further action until s.22(1) received the 2022 advance tax notice in December, 2021, and upon contacting the City again s.22(1) was told that s.22(1) previously received erroneous information when it informed s.22(1) that the basis for assessing the Vacancy Tax was its zoning classification rather than its assessment class.

10. On February 1, 2023, the Owner requested that the Assessor issue a supplemental assessment for the 2022 roll year, but the Assessor states that the Owner failed to file a complaint by the statutorily mandated date of January 31, 2022, or an appeal by April 30, 2022, and that there were no circumstances beyond the Owner's control preventing s.22(1) from doing so. On appeal to the Property Assessment Appeal Board, the Board found that the *Assessment Act* provides clear deadlines for completing a new assessment roll, filing a notice of complaint and filing a notice of appeal, and that the Owner did not file an appeal by the prescribed date. The Board concluded that there is no provision in the *Assessment Act* that affords the Board discretion to extend the time limited for filing an appeal, and dismissed the complaint on the basis that the Board had no jurisdiction to hear the appeal.

11. As the classification of the Property was not changed from Class 1 to Class 6 during the 2022 tax year, and there was no other evidence provided to support any other exemption, on August 24, 2024, the review officer found the 2022 declaration to be non-compliant, made it clear that it is an owner's responsibility for ensuring the property is properly classified under the *Assessment Act* based on the actual use of the Property, and concluded that the Property was subject to the Vacancy Tax.

12. s.22(1)

s.22(1)

Analysis of Legal Issues Governing Review

13. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

14. The complaint was made to the review officer on the basis of s.6.2(a) of the Bylaw which provides that an owner who has received a Vacancy Tax notice may submit a complaint regarding the decision to impose the Vacancy Tax to the vacancy tax review officer on the grounds that an error or omission on the part of the City resulted in the imposition of the tax. Specifically,

s.22(1)

s.22(1)

s.22(1) The Property's zoning classification is HA-2 within the Gastown Historic Area of Vancouver, and the City representative told s.22(1) if the zoning is HA-2 then it is not

residentially zoned and that unless it is residentially zoned, the Vacancy Tax would not be applicable. The Owner relied on this communication and admits [s.22(1)] took no further action until [s.22(1)] received the 2023 advance tax notice which included the requirement to complete the vacancy tax declaration. When [s.22(1)] contacted the City again [s.22(1)] was informed that the City had previously provided erroneous information. The Owner states that it was [s.22(1)] understanding that the Property had been classified as Class 6 by the fall of 2022, but provides no explanation or evidentiary support for this understanding. There is no evidence that the Owner took responsibility for ensuring that the Property was inspected in September/October, 2022, notwithstanding the advice given to [s.22(1)] by the Assessment Authority in December, 2021.

15. Without any other relevant events, it is the Owner's responsibility to determine a property's zoning and assessment classifications, and to make filings within the time limited by statute or regulation. One of the ways an owner does this is by communicating with the appropriate bureaucracy to inquire, because these bureaucracies are put in place in part to provide advice and assistance in the operation of the bylaws or statutes, as the case may be. Having done so, without any intervening events, it would be reasonable to conclude that an owner is entitled to rely on that information, and if the information is incorrect and the owner relies on it to [s.22(1)] detriment then [s.22(1)] is entitled to relief.

16. It is clear that by the time the Owner [s.22(1)] [s.22(1)]
[s.22(1)]
However, at that point the Owner was in a position to resolve the problem by ensuring that the assessment inspection to be completed in the fall of 2022 would result in a change in classification which would have negated the 2022 Vacancy Tax. However, there is no evidence that the Owner took any steps to communicate with the Assessment Authority to ensure an inspection in September/October of 2022 to change its classification for either 2022 or 2023, and it is this failure, in the context of [s.22(1)] discussion with the Assessment Authority in December, 2021, that ultimately was the cause of the Property not being reclassified to negate the 2022 Vacancy Tax, not the incorrect information given to [s.22(1)] by the City in October, 2021.

17. It is fair to say that the incorrect information given to the Owner by the City in October, 2021, impacted [s.22(1)] recognition that [s.22(1)] needed to have the Assessment Authority change [s.22(1)] classification in order to avoid the Vacancy Tax. However, [s.22(1)] did nothing about that until after the next inspection opportunity in September/October, 2022, when he could have avoided the consequences of the City's misinformation. By that point the responsibility clearly shifted from the City providing erroneous information to the Owner to contact the BC Assessment Authority to ensure

that an inspection would take place that would have confirmed his business use. Accordingly, I cannot conclude that the error of the City was the ultimate cause of the Owner missing an opportunity to have the Property classified as commercial and thereby avoiding the Vacancy Tax.

Decision

18. In conclusion, having considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Bylaw, the Panel determines that the reason the Property was subject to the Vacancy Tax was not due to an error on the part of the City, and that there is no other applicable exemption from the Vacancy Tax.

Review Determination: DENIED



Panel: Leslie E. Maerov

Date: January 29, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

File Number: RC-2024-00047

Decision Date: January 24, 2024

Vacancy Reference Year: 2022

Requestor: s.22(1)

Folio: s.22(1)

Civic Address: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of a November 27, 2024, decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

The Review Officer determined that, based on the evidence provided, the Property was not eligible for an exemption under section 3.5 of the *Vacancy Tax By-Law* (the *By-Law*). The Review Officer found that because the Property was purchased by the current owner in s.22(1) the transfer exemption was not applicable to the 2022 reference period.

In accordance with the Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the *By-Law*.

Background

The Property was owned by a corporate entity, s.22(1). The principal of the corporate entity was s.22(1). The estate declared the Property exempt from taxation for the 2022 vacancy reference period under section 3.1 of the *By-Law*, which provides for an exemption where the registered owner is deceased. On June 21, 2023, the Vacancy Tax Review Officer notified the property owner that the Property had been selected for an audit and sought additional information to support the declaration.

The current property owner purchased the property with a transfer date of s.22(1). After receiving the June 21, 2023, correspondence from the Review Officer, s.22(1) sought an exemption from the vacancy tax on the basis s.22(1) did not own the property until s.22(1) and claimed that s.22(1) should not be responsible for the outstanding taxes owed by a previous owner.

On September 28, 2023, the Review Officer informed the property owner that that, because the Property was owned by a corporate entity, the death of the registered owner exemption did not apply for the 2022 vacancy reference period and denied the exemption.

The Review Officer noted that there appeared to be some confusion about the property owner's request for an exemption. The Review Officer's notes indicate that although a claimed exemption for the 2022 vacancy reference period under section 3.1 of the *By-Law* had been denied, the vacancy tax for that reference period had been paid by the estate of the previous owner.

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The property owner appears to have received a copy of the Review Officer's decision denying the previous owner's claimed exemption after ^{s.22(1)} purchased the property. Despite being asked for additional information to support ^{s.22(1)} claim for an exemption for the 2022 vacancy tax, the property owner provided no further evidence. Because of the lack of information and clarity about the exemption sought, the Review Officer assessed the property owner's claim for an exemption under both sections 3.1 and 3.5 of the *By-Law*.

Analysis

The Panel's task is to apply the relevant provisions of the *By-Law* and apply it to the facts of this request.

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67). (see also *Placer Dome Canada Ltd. v. Ontario (Minister of Finance)*, 2006 SCC 20)

The Panel has considered the intention of the *By-Law*, which is to return vacant and under-utilized properties to the long-term rental market for use by individuals living and working in the City of Vancouver.

Section 3.1 of the *By-Law* provides that a vacancy tax is not payable

...if the residential property was unoccupied for more than six months during the vacancy reference period because of the death of the registered owner of the residential property in the applicable vacancy reference period, and this exemption also applies to the following vacancy reference period.

Section 3.5 of the *By-Law* provides that a vacancy tax is not payable

...if, during the vacancy tax period, the transfer of 100 percent of the legal interest in the property was registered in the Land Title Office and either the property transfer tax was paid or the registered owner qualified for an allowable property transfer tax exemption.

I am not persuaded that the Vacancy Tax Review Officer improperly interpreted the *By-Law*.

Based on all the evidence, I find no error in the Review Officer's determination that the Property was not eligible for an exemption from the vacancy tax for the 2022 vacancy reference period. The Property was not eligible for an exemption under section 3.1 of the *By-Law* because the Property was owned by a corporate entity. However, it also appears that the vacancy tax had been paid by the estate of the previous owner and that this fact had not been communicated to the property owner, perhaps in part due to a delay in assessing the claimed exemption.

I am also not persuaded that the Vacancy Tax Review Officer improperly denied an exemption under section 3.5 for the 2022 reference period, as the Property was not transferred until ^{s.22(1)}

File Number: RC-2024-00047

Decision

Having reviewed the property owner's submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owner is entitled to an exemption from taxation under section 3.1 or section 3.5 of the *By-law*.

Review Determination: DENIED

A handwritten signature in black ink, appearing to read "C. L. Roberts", is written over a horizontal line.

Panel: C. L. Roberts
Date: January 25, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

Decision Date: March 28, 2025

File Number: RC-2025-00003

Requestor: s.22(1)

Vacancy Reference Year: 2022

Civic Address: s.22(1)

Folio: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of a November 6, 2024 decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

The property owner declared the Property exempt from the Vacancy Tax on the basis that it was unoccupied for more than 180 days during the vacancy reference period in order to redevelop the Property, under section 3.2 of the *Vacancy Tax By-Law*. (the "*By-Law*")

The Review Officer's determination is as follows:

Based on the evidence provided and the opinion of the General Manager of Development, Buildings, and Licensing or the General Manager's delegates, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or initial development for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or behalf of the registered owner and is under review by the City, which, in the opinion of the General Manager of Development, Buildings, and Licensing or the General Manager's delegates, were being carried out diligently and without unnecessary delay.

The General Manager of Development, Buildings, and Licensing or the General Manager's delegates (sic) opinion is that the development permit s.22(1) was not being carried out diligently and without unnecessary delay during the 2022 vacancy reference period.

The provisions of section 3.2(b)(ii) have not been met and the property is not entitled to an exemption from taxation under section 3.2 of the Vacancy Tax By-Law.

If the property continues to be under redevelopment and/or renovation in future vacancy tax reference years, the property may be subject to audit and vacancy tax may be payable, if, in the opinion of the Chief Building Official or General Manager of Development, Buildings, and Licensing, the redevelopment or renovations are not being carried out diligently and without unnecessary delay.

The property owner requests a review of the Review Officer's decision under section 6.11 of the *By-Law*.

In accordance with Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the relevant provision of the *By-Law*.

Background

File Number: RC-2025-00003

The property owner first declared the property, along with s.22(1), exempt from taxation under the redevelopment or renovation exemption (section 3.2 of the *By-law*) in 2017. The declaration was found to be compliant, as the property owner had made application for a permit to s.22(1). The permit application was granted, and work was undertaken by the property owner to pursue the permit in 2017 and 2018 including, among other things, consulting, archaeological impact assessment and engineering services. The property was found to be exempt from taxation for the 2017 and 2018 as the Vacancy Tax Officer determined that the property owner took reasonable steps to pursue the application in those years.

The permit application lapsed on September 19, 2022 and was withdrawn as no construction work was ever conducted on the property.

On January 19, 2023, the property owner declared the property exempt from taxation for the 2022 reference year. The declaration was selected for an audit on September 7, 2023.

The vacancy tax department reviewed documents that had been provided on this property (along with the other three properties) including invoices or contracts for such things as consulting services, archaeological impact, engineering services and tree protection services. The invoices were dated between 2014 and September 2020.

On September 22, 2023, the vacancy tax analyst sought an opinion from the Supervisor of the Building Review Branch on the diligence exercised by the property owner on the permits in 2021 and 2022.

The Supervisor's notes state that "it appears there was no significant effort from the applicant's side to move these applications forward in 2021 or 2022" and the permits lapsed in October 2022 due to inactivity for over six months.

The Supervisor further noted that the s.22(1) which included s.22(1) and as a result, "any future application for any of these vacant lots will very likely take more than average processing time."

On November 9, 2023, the Vacancy Tax office determined that the property was subject to the vacancy tax for the 2022 reference year.

On February 12, 2024, counsel for the property owner filed a notice of complaint. Counsel provided evidence that the City was reviewing the permit application before they lapsed, and argued that, on that basis, the property was exempt from taxation under section 3.2(b) of the *By-Law*.

On February 15, 2024, the Vacancy Tax Review officer wrote to the property owner stating that, "as per a review by the General Manager's delegates, there was no significant effort from the applicant's side to move forward with the applications in 2022" and invited the property owner to submit any additional information to support the declared exemption.

The Complaint Determination decision issued November 6, 2024 stated that, based on a review of the information supporting the complaint, the property remained subject to the vacancy tax.

Counsel for the property owner says that, according to the June 28, 2023 version of the *By-Law*, the Collector of Taxes has no jurisdiction to form an opinion on due diligence, that only the General Manager or the delegates may do so. Counsel submits that, at the time the Collector of Taxes issued the assessment, the only basis for doing so was that "insufficient evidence" had been submitted to show that the property owner qualified for the exemption. Counsel argues that there was no evidence the General Manager or delegate had formed an opinion at the time the assessment was issued, or if they had, that the assessments were based on any such opinion.

Counsel further argues that the Review Decisions denied the Complaint on a completely different basis from that stated by the Tax Collector, namely, that the General manager or a delegate was of the opinion that the property was not being developed diligently and without undue delay. Counsel contends that while section 6.8 of the *By-Law* enables the Review office to take into account supplementary information, that supplementary information does not extend to considering an opinion of the General Manager formed after the assessment was issued.

Finally, counsel also argues that there is no evidence that the General Manager or a delegate in fact ever formed the opinion referred to in the Review Decisions, whether the person who formed the opinion was truly a delegate of the General Manager, or what evidence the opinion-maker relied upon in offering the opinion. He contends that this constitutes a breach of the *audi alteram partem* rule.

Analysis

The Panel's task is to ensure that the Vacancy Tax Review Officer has correctly interpreted the *By-Law* in light of the facts before them. (*Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67).

The *By-Law* imposes a vacancy tax on every parcel of taxable property in accordance with the provisions of the *By-Law* (section 2.1). Registered owners must complete a property status declaration to the City on or before the 2nd business day of the February following the receipt of the property status declaration form (section 4.5).

The property owner declared the property exempt under section 3.2 of the *By-Law*. As of June 28, 2023, that section read as follows:

A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) *Redevelop or safely carry out major renovations to the property:*
 - i. *for which permits have been issued by the City in the vacancy reference period, and*
 - ii. *which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay, or;*

- (b) *carry out either redevelopment or initial development of residential property that is unimproved with any dwelling permits, or the rehabilitation and conservation of heritage property;*
 - i. *for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period, and*
 - ii. *which, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates, is being diligently pursued and without unnecessary delay, or*
- ...

The Collector of Taxes is obliged to review each completed property status declaration and determine whether the information provided is sufficient to establish the status of a property (section 4.6). The Collector of Taxes then

...must review the property status declaration and all information and evidence collected in regards to a parcel of residential property and must determine whether or not the parcel is taxable property that is subject to the vacancy tax, except that a parcel of residential property deemed to be vacant under this by-law, the Collector of Taxes must consider the parcel to be vacant property and subject to the vacancy tax (section 4.12)

Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption, both to the Vacancy Tax office as well as to this Panel.

I am not persuaded that the Review Officer incorrectly interpreted the *By-Law*.

The evidence is that on September 7, 2023, the property owner was informed that the exemption declaration had been selected for an audit and was invited to provide documentation supporting the exemption. The evidence also demonstrates that on September 22, 2023, a vacancy tax compliance analyst sought a "diligence opinion" of the Supervisor, Building Review Branch on the property given that the building permit had lapsed and had been withdrawn because there had been little construction activity. The "diligence opinion" is dated October 6, 2023.

At the time the Vacancy Tax Officer issued the November 9, 2023 determination that the property status declaration was non-compliant and that the property was subject to the Vacancy tax, ^{s.22(1)} ad before ^{s.22(1)} invoices demonstrating that little work had been done after 2020, a lapsed building permit and the "diligence opinion" of the Supervisor. Although the *By-Law* does not define the term 'delegate' of the General Manager of Development, Buildings and Licensing, I am satisfied that one such delegate was Supervisor of the Building Review Branch. The February 15, 2024 letter to the property owner, the Vacancy Tax Review officer referred to the Supervisor as one of the General Manager's delegates.

The property owner disagreed with the November 9, 2023 determination and on February 12, 2024, submitted a complaint to the vacancy tax review officer under section 6.3.

Section 6.8 of the *By-Law* provides that the vacancy tax review officer must "within a reasonable time, consider the notice of complaint and any supplementary information and evidence" and make a determination on the complaint.

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The evidence demonstrates that upon receipt of the complaint, the vacancy tax review officer considered the evidence submitted by the property owner as well as evidence showing that the property owner failed to take steps to complete a number of items identified in the permits, including a failure by the property owner to respond to the City's October 2021 inquiries regarding outstanding items for permit issuance, as well as the "diligence opinion."

I am not persuaded that the Vacancy Tax Review officer improperly interpreted section 3.2 of the By-Law. I am also not persuaded that the reasons for the November 9, 2023 decision were "completely different" than the reasons for the November 6, 2024 decision. Both determinations were based on the property owner's failure to demonstrate that it was diligently pursuing the development of the property without unnecessary delay.

Did the Vacancy Tax Office breach the audi alteram partem rule?

I find, on the evidence, that the individual who formed the "diligence opinion" was either a General Manager or a delegate of the General Manager. As such, I am not persuaded that the Vacancy Tax review officer improperly interpreted section 3.2 of the *By-Law* in seeking or relying on that opinion, and that there was no breach of the *audi alteram partem* rule.

Decision

Having reviewed the property owner's submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owner is entitled to an exemption from taxation under section 3.2 of the *By-Law*.

Review Determination: DENIED



Panel: C. L. Roberts
Date: March 28, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

Decision Date: March 27, 2025

File Number: RC-2025-00004

Requestor: s.22(1)

Vacancy Reference Year: 2022

Civic Address: s.22(1)

Folio: s.22(1)

The requestor ("property owner") seeks an independent adjudicative review of a November 6, 2024 decision of the Vacancy Tax Review Officer which determined that the Property was subject to the Vacancy Tax.

The property owner declared the Property exempt from the Vacancy Tax on the basis that it was unoccupied for more than 180 days during the vacancy reference period in order to redevelop the Property, under section 3.2 of the *Vacancy Tax By-Law*. (the "By-Law")

The Review Officer's determination is as follows:

Based on the evidence provided and the opinion of the General Manager of Development, Buildings, and Licensing or the General Manager's delegates, the Vacancy Tax Review Officer determines that the reason the property was unoccupied for more than six months in the vacancy reference period was not because it was undergoing redevelopment or initial development for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or behalf of the registered owner and is under review by the City, which, in the opinion of the General Manager of Development, Buildings, and Licensing or the General Manager's delegates, were being carried out diligently and without unnecessary delay.

The General Manager of Development, Buildings and Licensing or the General Manager's delegates (sic) opinion is that the development permit s.22(1) was not being carried out diligently and without unnecessary delay during the 2022 vacancy reference period.

The provisions of section 3.2(b)(ii) have not been met and the property is not entitled to an exemption from taxation under section 3.2 of the Vacancy Tax By-Law.

If the property continues to be under redevelopment and/or renovation in future vacancy tax reference years, the property may be subject to audit and vacancy tax may be payable, if, in the opinion of the Chief Building Official or General Manager of Development, Buildings, and Licensing, the redevelopment or renovations are not being carried out diligently and without unnecessary delay.

The property owner requests a review of the Review Officer's decision under section 6.11 of the *By-Law*.

In accordance with Vacancy Tax Review Adjudication process, the Panel has reviewed all the evidence submitted by both the City and the property owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an exemption under the relevant provision of the *By-Law*.

Background

File Number: RC-2025-00004

The property owner first declared the property, along s.22(1), exempt from taxation under the redevelopment or renovation exemption (section 3.2 of the *By-law*) in 2017. The declaration was found to be compliant, as the property owner had made application for a permit to s.22(1) s.22(1). The permit application was granted, and work was undertaken by the property owner to pursue the permit in 2017 and 2018 including, among other things, consulting, archaeological impact assessment and engineering services. The property was found to be exempt from taxation for the 2017 and 2018 as the Vacancy Tax Officer determined that the property owner took reasonable steps to pursue the application in those years.

The permit application lapsed on September 19, 2022 and was withdrawn as no construction work was ever conducted on the property.

On January 19, 2023, the property owner declared the property exempt from taxation for the 2022 reference year. The declaration was selected for an audit in September 2023.

The vacancy tax department reviewed documents that had been provided on this property (along with the other three properties) including invoices or contracts for such things as consulting services, archaeological impact, engineering services and tree protection services. The invoices were dated between 2014 and September 2020.

On September 22, 2023, the vacancy tax analyst sought an opinion from the Supervisor of the Building Review Branch on the diligence exercised by the property owner on the permits in 2021 and 2022.

The Supervisor's notes state that "it appears there was no significant effort from the applicant's side to move these applications forward in 2021 or 2022" and the permits lapsed in October 2022 due to inactivity for over six months.

The Supervisor further noted that the s.22(1) "which included a s.22(1) and as a result, "any future application for any of these vacant lots will very likely take more than average processing time."

On November 9, 2023, the Vacancy Tax office determined that the property was subject to the vacancy tax for the 2022 reference year.

On February 12, 2024, counsel for the property owner filed a notice of complaint. Counsel provided evidence that the City was reviewing the permit application before they lapsed, and argued that, on that basis, the property was exempt from taxation under section 3.2(b) of the *By-Law*.

On February 15, 2024, the Vacancy Tax Review officer wrote to the property owner stating that, "as per a review by the General Manager's delegates, there was no significant effort from the applicant's side to move forward with the applications in 2022" and invited the property owner to submit any additional information to support the declared exemption.

The Complaint Determination decision issued November 6, 2024 stated that, based on a review of the information supporting the complaint, the property remained subject to the vacancy tax.

Counsel for the property owner says that, according to the June 28, 2023 version of the *By-Law*, the Collector of Taxes has no jurisdiction to form an opinion on due diligence, that only the General Manager or the delegates may do so. Counsel submits that, at the time the Collector of Taxes issued the assessment, the only basis for doing so was that "insufficient evidence" had been submitted to show that the property owner qualified for the exemption. Counsel argues that there was no evidence the General Manager or delegate had formed an opinion at the time the assessment was issued, or if they had, that the assessments were based on any such opinion.

Counsel further argues that the Review Decisions denied the Complaint on a completely different basis from that stated by the Tax Collector, namely, that the General manager or a delegate was of the opinion that the property was not being developed diligently and without undue delay. Counsel contends that while section 6.8 of the *By-Law* enables the Review office to take into account supplementary information, that supplementary information does not extend to considering an opinion of the General Manager formed after the assessment was issued.

Finally, counsel also argues that there is no evidence that the General Manager or a delegate in fact ever formed the opinion referred to in the Review Decisions, whether the person who formed the opinion was truly a delegate of the General Manager, or what evidence the opinion-maker relied upon in offering the opinion. He contends that this constitutes a breach of the *audi alteram partem* rule.

Analysis

The Panel's task is to ensure that the Vacancy Tax Review Officer has correctly interpreted the *By-Law* in light of the facts before them. (*Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).

The *By-Law*, like all legislation, is to be interpreted according to the following principle:

Words are to be read in their entire context in their grammatical and ordinary sense harmoniously with the scheme of the Act, and object of the Act and the intention of [the lawmaker] (E. A. Driedger *The Construction of Statutes*, 1974, p. 67).

The *By-Law* imposes a vacancy tax on every parcel of taxable property in accordance with the provisions of the *By-Law* (section 2.1). Registered owners must complete a property status declaration to the City on or before the 2nd business day of the February following the receipt of the property status declaration form (section 4.5).

The property owner declared the property exempt under section 3.2 of the *By-Law*. As of June 28, 2023, that section read as follows:

A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) *Redevelop or safely carry out major renovations to the property:*
 - i. *for which permits have been issued by the City in the vacancy reference period, and*
 - ii. *which, in the opinion of the Chief Building Official or the Chief Building Officer's delegates, are being carried out diligently and without unnecessary delay, or;*

- (b) *carry out either redevelopment or initial development of residential property that is unimproved with any dwelling permits, or the rehabilitation and conservation of heritage property;*
 - i. *for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City in the vacancy reference period, and*
 - ii. *which, in the opinion of the General Manager of Development, Buildings and Licensing or the General Manager's delegates, is being diligently pursued and without unnecessary delay, or*
- ...

The Collector of Taxes is obliged to review each completed property status declaration and determine whether the information provided is sufficient to establish the status of a property (section 4.6). The Collector of Taxes then

...must review the property status declaration and all information and evidence collected in regards to a parcel of residential property and must determine whether or not the parcel is taxable property that is subject to the vacancy tax, except that a parcel of residential property deemed to be vacant under this by-law, the Collector of Taxes must consider the parcel to be vacant property and subject to the vacancy tax (section 4.12)

Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption, both to the Vacancy Tax office as well as to this Panel.

I am not persuaded that the Review Officer incorrectly interpreted the *By-Law*.

The evidence is that on September 7, 2023, the property owner was informed that the exemption declaration had been selected for an audit and was invited to provide documentation supporting the exemption. The evidence also demonstrates that on September 22, 2023, a vacancy tax compliance analyst sought a "diligence opinion" of the Supervisor, Building Review Branch on the property given that the building permit had lapsed and had been withdrawn because there had been little construction activity. The "diligence opinion" is dated October 6, 2023.

At the time the Vacancy Tax Officer issued the November 9, 2023 determination that the property status declaration was non-compliant and that the property was subject to the Vacancy tax, ^{s.22(1)} had before ^{s.22(1)} invoices demonstrating that little work had been done after 2020, a lapsed building permit and the "diligence opinion" of the Supervisor. Although the *By-Law* does not define the term 'delegate' of the General Manager of Development, Buildings and Licensing, I am satisfied that one such delegate was Supervisor of the Building Review Branch. The February 15, 2024 letter to the property owner, the Vacancy Tax Review officer referred to the Supervisor as one of the General Manager's delegates.

The property owner disagreed with the November 9, 2023 determination and on February 12, 2024, submitted a complaint to the vacancy tax review officer under section 6.3.

Section 6.8 of the *By-Law* provides that the vacancy tax review officer must "within a reasonable time, consider the notice of complaint and any supplementary information and evidence" and make a determination on the complaint.

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The evidence demonstrates that upon receipt of the complaint, the vacancy tax review officer considered the evidence submitted by the property owner as well as evidence showing that the property owner failed to take steps to complete a number of items identified in the permits, including a failure by the property owner to respond to the City's October 2021 inquiries regarding outstanding items for permit issuance, as well as the "diligence opinion."

I am not persuaded that the Vacancy Tax Review officer improperly interpreted section 3.2 of the By-Law. I am also not persuaded that the reasons for the November 9, 2023 decision were "completely different" than the reasons for the November 6, 2024 decision. Both determinations were based on the property owner's failure to demonstrate that it was diligently pursuing the development of the property without unnecessary delay.

Did the Vacancy Tax Office breach the audi alteram partem rule?

I find, on the evidence, that the individual who formed the "diligence opinion" was either a General Manager or a delegate of the General Manager. As such, I am not persuaded that the Vacancy Tax review officer improperly interpreted section 3.2 of the *By-Law* in seeking or relying on that opinion, and that there was no breach of the *audi alteram partem* rule.

Decision

Having reviewed the property owner's submissions as well as the relevant sections of the *By-Law*, the Panel is not persuaded that the property owner is entitled to an exemption from taxation under section 3.2 of the *By-Law*.

Review Determination: DENIED



Panel: C. L. Roberts
Date: March 27, 2025

City of Vancouver Vacancy Tax Review Panel Decision

Date: April 4, 2025

File Number RC-2025-00005

Requestor (Registered Owner):

Vacancy Reference Period: 2022

s.22(1) ("Owner")

Folio: s.22(1)

Civic Address: s.22(1)

s.22(1) ("Property")

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax Review Officer that the Property is subject to the Vacancy Tax ("Tax").

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Tax under the Bylaw. The Property is not exempt from taxation under the Charter, and so the issue is whether it is exempt under the Bylaw.

3. S.2.2 of the Bylaw provides that residential property is considered to be unoccupied if it is not the principal residence of an occupier, and, is not occupied for residential purposes by an arm's length tenant or subtenant under an agreement, for a term of at least 30 consecutive days.

4. S.2.3 of the Bylaw provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period, or is deemed to be vacant in accordance with the Bylaw. Under the Bylaw residential property means property classified only as class 1 property (residential) on an assessment roll for the vacancy reference period under the British Columbia *Assessment Act* and its regulations. During the vacancy reference period, prior to an amendment to the Bylaw, residential property was defined as real property classified only as class 1 property (residential) under the British Columbia *Assessment Act* and its Regulations.

5. Accordingly, a Tax is imposed on every parcel of taxable property unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. A property status declaration was made on behalf of the Owner for the vacancy reference period that declared the Property was unoccupied but exempt from taxation because it was undergoing development or major renovations. After receiving a Tax bill, the owner submitted a Notice of Complaint stating that this property was exempt for redevelopment or renovation.

7. The Owner has owned the Property since s.22(1). The Property was declared to be undergoing development or major renovations since 2017, and was found to be non-compliant with declarations in relation to the previous years in audits in 2018, 2019 and 2020. The Property was found to be compliant with declarations in 2020 and 2021 and exempt from taxation. The Property was declared exempt from taxation in 2022 and was selected for audit for that year. Permits previously in effect lapsed in October, 2022, due to inactivity for more than 6 months. A substantial amount of evidence was filed by the Owner to support its declaration for 2022, which is discussed below.

8. The Property is unimproved with any dwelling units and accordingly s.3.2(b) applies to the consideration of the exemption. The City notified the Owner on November 9, 2023, that based on the information and documents submitted, the audit determined that the property status declaration was non-compliant because the Property did not qualify for the exemption contained in s.3.2 of the Bylaw and that it was subject to the Tax. No further explanation was provided.

9. The Owner submitted a complaint pursuant to s. 6.3 of the Bylaw and on February 15, 2024, the City notified the Owner that a Vacancy Tax Review Officer concluded that work pursuant to issued permits was not being pursued diligently, as required by s.3.2 of the Bylaw.

10. The Property has a number of challenging features making the site difficult to develop, including s.22(1)

s.22(1)

s.22(1)

s.22(1) As a result, the approval process could be expected to take longer than normal, and the City made allowances for this in processing the completion of the permits.

Analysis of Legal Issues Governing Review

11. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as

submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

12. S.3.2 of the By-law provides as follows:

Property undergoing redevelopment or major renovations

3.2 A vacancy tax is not payable under this by-law for a parcel of residential property if the residential property was unoccupied for more than six months during the vacancy reference period in order to do one or more of the following:

- (a) redevelop or safely carry out major renovations to the property:
 - i. for which permits have been issued by the City, and
 - ii. which, in the opinion of the Chief Building Official, are being carried out diligently and without unnecessary delay, or;
- (b) carry out either redevelopment or initial development of residential property that is unimproved with any dwelling units, or the rehabilitation and conservation of heritage property:
 - i. for which a complete rezoning enquiry or application, development permit application or heritage alteration permit application has been submitted by or on behalf of the registered owner and is under review by the City, and
 - ii. which, in the opinion of the Director of Development Services, is being diligently pursued and without unnecessary delay.

13. To be eligible for an exemption under s.3.2(b) of the By-Law, the property must be unoccupied for more than six months during the vacancy reference period in order to redevelop or conduct major renovations, for which permits have been issued to perform this work, and which, in the option of the Director of Development Services, is being diligently pursued and without unnecessary delays. The title of the Director has been changed to General Manager of Development, Buildings and Licensing, whose office and duties in substance are the same, and that person's current title is reflected in later versions of the Bylaw. The General Manager of Development, Buildings and Licensing is entitled to perform the duties of that office through delegates who are responsible to the General Manager.

14. The Owner provided a substantial amount of evidence, including contracts and letters of engagement with designers, geological, energy and engineering consultants and arborists, but this evidence was determined to not be in support of the complaint because they were in respect of services provided or to be provided in periods before the Vacancy Reference Period, or were in relation to adjacent properties connected to the Owner.

15. The City's February 15, 2024, letter specifically set out the reasons for the Review Officer's conclusion that the evidence is not sufficient to support the claim that the Owner is entitled to an exemption with respect to the Property. Ultimately the conclusion of the director's delegates was that there was no significant effort from the applicant to move forward with the applications in effect prior to the lapse of the development permit in October, 2022, and explained that this was because there was not a response from the applicant to a letter issued January 30, 2020, in respect of the conditions required to be met under the issued permits, there were no inspections called in relation to tree barrier memos sent in June 2021, there was no response to a request from the Project Coordinator regarding outstanding items required for the issuance of further permits before the end of 2021, and finally, that the permits lapsed due to inactivity in October, 2022.

16. On the same day as the City's letter, on February 15, 2024, legal counsel on behalf of the Owner wrote to the City to say that the official letter from the City denying the exemption made no mention of the reason for the denial of the exemption being a lack of progress on the development. Counsel stated that it was his position that the Review Officer has no jurisdiction under the Bylaw to raise a new issue that was not previously raised by the City. He states that the Review Officer is an independent, neutral, third party whose only role is to adjudicate disputes between the City and the Owner.

17. The Owner's counsel has confused the role of the Review Officer with the role of the Vacancy Tax Review Panel. The Review Officer is a City official to whom an objection to the results of the imposition of the Tax may be sent. The letter dated November 9, 2023, is a letter from the Vacancy Tax Department notifying the Owner of the results of the audit, and which invited a Notice of Complaint to the Review Officer if the Owner disagreed with the City's conclusion to impose the Tax. It is unclear whether any further submissions were made by the Owner to the Review Officer, but it appears that they were not. The Review Officer is not constrained in his or her investigation of the evidence by the wording of the letter from the City informing the Owner that the Property was subject to the Tax. The Review Officer is required and entitled to reconsider the entire factual situation and evidence submitted, and interpret the Bylaw, and reach an independent conclusion from that of the auditor.

18. The letter dated February 15, 2024, was a letter from the Review Officer which set out the detailed reasons for the conclusions made during the audit, and invited the Owner to submit any additional information to show why the Property should be exempt from the Tax. It appears that no new information was submitted by the Owner. The Review Officer reviewed all of the information and evidence submitted to support the complaint, and determined that the

Property remains subject to the Tax. The Owner was notified of this finding in a letter dated November 6, 2024, and gave its reason for the determination that the development permit was not being carried out diligently and without unnecessary delay during 2022. It is this finding that is before the Vacancy Tax Review Panel, which has in turn considered all of the evidence and has interpreted the Bylaw in order to reach its conclusions as to whether or not the Review Officer correctly interpreted the Bylaw and evidence and the decision was correct.

19. I am not persuaded that the Review Officer has erred in the interpretation of the Bylaw, and am of the opinion that the evidence does not support the submission that the Property is exempt from the Tax.

Decision

20. Having considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Bylaw, the Panel determines that the reason the Property was unoccupied for more than six months in 2022 was not because it was undergoing redevelopment or major renovation with permits issued by the City, which, in the opinion of the General Manager of Development, Buildings, and Licensing, or the General Manager's delegates, were being carried out diligently and without unnecessary delay. Accordingly the Property is not eligible for an exemption under s.3.2 of the Bylaw.

Review Determination: DENIED

A handwritten signature in blue ink, appearing to read "Leslie E. Maerov", is written over a horizontal line.

Panel: Leslie E. Maerov

Date: April 4, 2025

City of Vancouver Vacancy Tax Review Panel Decision

Date: March 31, 2025

File Number RC-2025-00017

Requestor (Registered Owners):

s.22(1) ("Owner")

Vacancy Reference Period: 2021

Folio: s.22(1)

Civic Address: s.22(1)

s.22(1) ("Property")

Introduction

1. This is a decision of a Vacancy Tax Review Panel of a review requested by a registered owner of real property in the City of Vancouver, who has received a determination of a Vacancy Tax review officer that the Property is subject to the Vacancy Tax ("Vacancy Tax").

Authority to Assess Tax

2. The Vacancy Tax By-Law No. 11674 ("Bylaw") of the City of Vancouver imposes a Vacancy Tax on every parcel of taxable property in accordance with the Bylaw. Taxable property is defined to mean residential property that is vacant, not exempt from taxation under the Vancouver Charter ("Charter"), and not exempt from the Vacancy Tax under the Bylaw. The Property is not exempt from taxation under the Charter, and so the issue is whether it is not vacant or otherwise exempt under the Bylaw.

3. S.2.2 of the Bylaw provides that residential property is considered to be unoccupied if it is not the principal residence of an occupier; and, is not occupied for residential purposes by an arm's length tenant or subtenant under an agreement, for a term of at least 30 consecutive days.

4. S.2.3 of the Bylaw provides that residential property is considered to be vacant property if it has been unoccupied for more than six months during the vacancy reference period, or is deemed to be vacant in accordance with the Bylaw. Under the Bylaw residential property means property classified only as class 1 property (residential) on an assessment roll for the vacancy reference period under the British Columbia *Assessment Act* and its regulations.

5. Accordingly, a Vacancy Tax is imposed on every parcel of property that is not the principal residence of an occupier unless exempt or unoccupied for six months or less during the vacancy reference period.

Background Facts

6. The Property was declared to be occupied by s.22(1) during the Vacancy Reference Period. The Property was selected for audit and the Owner notified that evidence that the Property was occupied as a principal residence was required to be submitted by a certain deadline. Despite repeated requests and communications between City staff and the Owner, appropriate evidence was never produced, and the City declared that the Vacancy Tax was payable.

7. The Owner appealed the assessment to an internal review officer, who reached the same conclusion as the original auditor. The Owner has submitted a Notice of Complaint requesting this review to determine if the decision of the review officer was correct.

Analysis of Legal Issues Governing Review

8. In accordance with Vacancy Tax Review Adjudication processes, the Vacancy Tax Review Panel conducted a detailed, independent adjudicative review of all available evidence as submitted by both the City and the Property Owner claiming exemption. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

9. The Notice of Complaint was made to the review officer on the basis of s.6.2(a) of the Bylaw which provides that an owner who has received a Vacancy Tax notice may submit a complaint regarding the decision to impose the Vacancy Tax to the vacancy tax review officer on the grounds that an error or omission on the part of the City or the Owner resulted in the imposition of the tax. The Owner states that the grounds for requesting a review are that the owner committed an error or omission which resulted in the imposition of the tax.

10. The definition of principal residence has three components:

- (a) The usual place where a person lives;
- (b) The usual place where an individual makes his or her home;
- (c) The usual place where an individual conducts his or her daily affairs, including without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes.

11. Documents required by the City are intended to illustrate whether these requirements have been met.

12. The property has s.22(1) .
During the audit, s.22(1)
s.22(1)
s.22(1) but
not submitted by the owner. The first page of an income tax return was submitted for the 2021 tax year, that listed s.22(1) . The entire tax return and corresponding Notice of Assessment was not submitted so it cannot be determined if this was produced for the purpose of the audit or the actual filed tax return.

13. Several letters and emails were sent to s.22(1) setting out the many different documents that were considered acceptable to establish that the Property was occupied by a person as their principal residence. These included copies of a BC driver's licence, ICBC insurance records, B.C. Hydro bills and cable television invoices, which are typically addressed to a principal resident at the address of the Property because that is where the person is likely to be found, and typically wishes to receive the documents because that is where a person lives, makes his or her home, and conducts his or her daily affairs. s.22(1) provided a copy of a homeowner's insurance policy which supported the declaration. An ICBC vehicle insurance document was provided but it did not support the declaration as it was issued to a different address than the Property. A cable TV bill was provided but it did not support the declaration because it was issued in 2023.

14. A list of secondary supporting documents was provided by the City listing 9 different documents that could be used to support the declaration. Despite notifying the Owner several separate times which documents could be used to support the declaration, and in some cases with instructions on how to procure these, none of these documents were provided. Failure to provide ordinary documents is an indication that they do not exist, and therefore increase the likelihood that the Property is not being used as a principal residence. There may in certain cases be a satisfactory explanation, but none was provided in this case.

15. s.22(1) informed the City that s.22(1) ,
s.22(1) ,
s.22(1) . I am not satisfied that
the s.22(1) .
s.22(1) For example,
while a cable television bill may be sent to a different address, it would normally disclose where the service address was, because that is the basis of the bill. The same holds true for a hydro bill.

There is no explanation as to why an employer-issued T4 for 2020 or paystubs issued during 2021 were not provided.

16. s.22(1) All of the evidence submitted during the audit was either not addressed to the Property or in the 2021 vacancy reference period. Documentation pertaining to the 2021 reference period for s.22(1) were all mailed to another address. This includes the ICBC vehicle insurance policy, and driver's license, which were mailed to s.22(1). The mailing address of a person is an indication that the person is there to receive the mail, and not somewhere else.

17. Ultimately a final pre-determination email was sent out requesting a s.22(1) s.22(1) any other recurring bills, statements and utility bills to demonstrate usage at the Property, but none of the documents requested were provided. During the audit period, s.22(1) s.22(1) submitted credit card statements for the months of August, September, October, and November 2021, and indicating that it showed purchases made by s.22(1) Purchases made in s.22(1) were highlighted in each month. s.22(1) submitted that this showed a pattern of purchases near the Property. This is not acceptable evidence as the credit card statements did not show any mailing address, the individual charges did not show any address of the vendor, or where the charge was incurred, and there were also purchases from other municipalities. The Review Officer noted there are also s.22(1) were sometimes made on the same day s.22(1). For example, the Owner highlighted a purchase made in s.22(1) on s.22(1) but there were also five charges made on the s.22(1)

18. s.22(1) submitted a notarized affidavit which stated that during the period from s.22(1). This affidavit does not state that the Property was s.22(1) or at any other time, and accordingly it is not satisfactory evidence that s.22(1) satisfied the requirement of the Bylaw that the Property was occupied by a person as a principal residence.

19. Based on the submissions provided by s.22(1), who stated s.22(1) occupied the s.22(1) but did not provide sufficient evidence to that effect, s.22(1) may have occupied the property during the 2021 vacancy reference year. However, a usage graph from the April, 2022, BC Hydro invoice indicates there was limited usage from May-October 2021. From November, 2021, onwards there was a significant increase in electricity usage, nearly double the average kWh per day. This would indicate the Property was not occupied until November, 2021, which is less than the required 6 months during that year.

20. I am satisfied that City staff did as much as they possibly could to assist ^{s.22(1)} to provide the documentation necessary to support ^{s.22(1)} declaration, if it existed. In this case it is entirely reasonable to conclude that the Property was occupied for some period of time in 2021 as a principal residence, but unfortunately the evidence has not been provided to warrant reaching that conclusion on a balance of probabilities, or that it was occupied for more than 6 months during that year.

21. The duty of the tribunal is to evaluate the process followed by the administrative personnel, evaluate the evidence, and reach a conclusion whether or not the requirements of the Bylaw have been met. The burden is on the Owner to establish that the Property was not vacant in accordance with the terms of the Bylaw, and in this case that burden has not been met.

Decision

22. In conclusion, having considered all documents, evidence and submissions of the Owner and the City, as well as having considered the relevant provisions of the Bylaw, the Panel determines that the reason the Property was subject to the Vacancy Tax was not due to an error but was due to insufficient and inappropriate evidence being provided to support the declaration that the Property was occupied as a principal residence for at least 6 months during the Vacancy Reference Period.

Review Determination: DENIED



Panel: Leslie E. Maerov

Date: March 31, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

Date: April 13, 2025

File Number: RC-2025-00018

Requestor: s.22(1)

Vacancy Reference Year: 2022

Civic Address: s.22(1)

Folio: s.22(1)

OVERVIEW OF ISSUES:

- [1] The owner claimed an exemption from tax based on the subject property being the principal residence of a permitted occupant for at least six months in the 2022 vacancy reference period. The s.22(1) When asked for evidence confirming the occupation during 2022 the owner was not able to provide any documentation showing the property was occupied s.22(1) did provide documents from 2020 and 2023 showing it s.22(1) s.22(1) delivered to the address. The issue is whether the evidence as a whole is sufficient to establish s.22(1) occupied the subject property for at least six months in 2022.

FACTS:

- [2] The owner does not live at the subject s.22(1). s.22(1) states that it was occupied for s.22(1). The owner states s.22(1) s.22(1) s.22(1) but s.22(1) property.
- [3] According to the owner, s.22(1) s.22(1)
- [4] At the audit stage the owner was asked to provide documentary evidence to substantiate that s.22(1), including identification with the address, shopping and other receipts, and any other type of document that could link s.22(1) to the property. The owner advised that s.22(1) s.22(1)

- [5] The owner asked if he could provide witness statements from neighbours confirming that s.22(1) but was told that witness statements, while they could be submitted, would not be sufficient evidence alone. In the end, none were provided.
- [6] At the audit stage the owner provided a letter dated November 15, 2023, from the s.22(1) addressed to s.22(1) address. That letter informed s.22(1) s.22(1) It says nothing about the matter of whether the s.22(1)
- [7] s.22(1) s.22(1) s.22(1) return address.
- [8] Following the audit decision, s.22(1) was provided to the Vacancy Tax Review Officer (VTRO). It contains a letter from the s.22(1) s.22(1) s.22(1). The address on the letter for s.22(1) s.22(1)
- [9] s.22(1) wrote a second letter dated November 23, 2020, s.22(1) s.22(1) property address, saying s.22(1) s.22(1)
- [10] The file also records contact s.22(1) s.22(1). Nothing is stated about his address in those years or if it changed. The reviews noted in the file show s.22(1) s.22(1) s.22(1), although no other details are provided.
- [11] The file also contains s.22(1) that were sent to the s.22(1)

- [12] Also relevant is the s.22(1) [REDACTED], that
s.22(1) [REDACTED]
s.22(1) [REDACTED]
- [13] The owner also provided BC Hydro billings and Fortis billings for the property in 2022 and the property insurance for that year. The billings are all addressed to the owner. The address for s.22(1) on the insurance is s.22(1) [REDACTED]. The address for the Hydro and Fortis billings is that of the s.22(1) [REDACTED]
- [14] s.22(1) [REDACTED]
- [15] The final piece of documentary evidence provided by the owner is a Canada Post delivery slip for an expedited parcel from s.22(1) [REDACTED] that is addressed to s.22(1) [REDACTED]. It has no date on it.

AUDIT AND VACANCY TAX REVIEW OFFICER DECISIONS:

- [16] At audit, with only the s.22(1) [REDACTED] and the owner's submission that s.22(1) [REDACTED], the property was found subject to the vacancy tax.
- [17] At the VTRO stage, with all the evidence noted earlier, the audit decision was upheld. The principal reason given was that the property did not meet the definition of a "principal residence" under the by-law, referencing that it the usual place where a person lives, makes his or her home and conducts daily affairs, including paying bills and receiving mail, and that it is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes.

ANALYSIS:

- [18] In accordance with the Vacancy Tax Review Adjudication process, the Panel has independently reviewed all the evidence submitted by both the City and the owner. The Panel finds, on a balance of probabilities, that the Property does not qualify for an

exemption under the relevant provision of the *Vacancy Tax By-law* for the following reasons.

- [19] Taxpayers seeking an exemption from tax have the burden of establishing the necessary facts to justify the exemption. The Panel's task is to ensure that the Vacancy Tax Review Officer made reasonable factual findings and interpreted the By-Law in light of those facts. (see *Ontario (Minister of Finance) v. Placer Dome Canada Ltd.* 2006 SCC 20).
- [20] In this case, when asked for documentary evidence confirming s.22(1) [REDACTED] s.22(1) [REDACTED] the owner did not provide what might be expected, namely photo identification like a driver's licence or BC Care Card or passport. s.22(1) [REDACTED] could not provide bank statements or other mailed records as they went to the owner's s.22(1) [REDACTED] s.22(1) [REDACTED]
- [21] Unfortunately, s.22(1) [REDACTED] s.22(1) [REDACTED]
- [22] Again, unfortunately for the owner, it appears that no written tenancy agreement was made, likely s.22(1) [REDACTED] did advise the City that when s.22(1) [REDACTED] was the s.22(1) [REDACTED]
- [23] s.22(1) [REDACTED] did provide evidence that s.22(1) [REDACTED] s.22(1) [REDACTED] The Fortis billings (although not the BC Hydro billings) also give some indication that someone was occupying the dwelling on the property as heat was being used proportionally to expectations during the seasons of the year.
- [24] In s.22(1) [REDACTED] submission to the Panel the owner states:

s.22(1) [REDACTED]

[25] The by-law had the following definition of “principal residence” in 2022:

A “principal residence” means the usual place where an individual lives, makes his or her home and conducts his or her daily affairs, including, without limitation, paying bills and receiving mail, and is generally the residential address used on documentation related to billing, identification, taxation and insurance purposes, including, without limitation, income tax returns, Medical Services Plan documentation, driver’s licenses, personal identification, vehicle registration and utility bills and, for the purposes of this by-law, a person may only have one principal residence.

[26] As the VTRO noted in this case, the parts of the definition relating to residential address are not directly supported by the evidence, s.22(1) [REDACTED], and in fact, some evidence is contrary in the sense that s.22(1) [REDACTED] s.22(1) [REDACTED]

[27] The owner’s submission is that in the 2022 vacancy reference period, s.22(1) [REDACTED] and on that basis the definition is met.

[28] s.22(1) [REDACTED]
s.22(1) [REDACTED]

[29] The by-law states:

Unoccupied property

2.2 Residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; and
- (b) the residential property is not occupied for residential purposes by an arm’s length tenant under a tenancy agreement, or by an arm’s length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

[30] “Occupier” is defined as follows: “‘occupier’ means a registered owner or a person who occupies residential property with the permission of the registered owner but is not a tenant or subtenant”

- [31] I understand the owner's point that s.22(1) [REDACTED]
s.22(1) [REDACTED]. I also recognize that s.22(1) [REDACTED]
s.22(1) [REDACTED] is not uncommon.
- [32] However, the onus remains on the owner to show that the property was occupied in 2022, and other than s.22(1) [REDACTED] submission that this is so, and some inferential evidence from the documents s.22(1) [REDACTED]
s.22(1) [REDACTED]
s.22(1) [REDACTED], I must find that the claimed basis for the property not being taxable is not made out.

FINAL DETERMINATION:

- [33] My final determination is that Vacancy Tax should be imposed on the subject property. The review is denied.



Panel: Michael F. Welsh, K. C.

Date: April 13, 2025

The City of Vancouver Vacancy Tax Review Panel Decision

Decision Date: April 2, 2025

File Number: RC-2025-00019

Requestor: s.22(1)
s.22(1) (the "Owners")

Vacancy Reference Year: 2022

Civic Address: s.22(1)
(the "Property")

Folio: s.22(1)

Introduction

At the request of the Owners, the Vacancy Tax Review Panel conducted an independent adjudicative review of this matter. In accordance with Vacancy Tax Review Adjudication processes, the case has been subject to a detailed review, involving all available evidence as submitted by both the City and the Owners claiming an exemption from the Vacancy Tax for the 2022 Vacancy Reference Year for the Property. In conducting its review, the Panel has considered and weighed all evidence, predicated on a balance of probabilities.

Background

The Owners s.22(1)

For the 2022 Vacancy Reference Year, the Owners filed a declaration with the City claiming exemption from the Vacancy Tax for the Property on grounds that it was tenanted for residential purposes for more than 6 months in that period.

Audit Process and Determination

The City of Vancouver Vacancy Tax Office, through the Collector of Taxes, assigned an Auditor to audit the declaration and the status of the Property for the 2022 Vacancy Reference Year.

By a letter dated August 29, 2023, the Auditor wrote to the Owners, advised that the declaration was being audited and invited the Owners to go online, fill in answers to a questionnaire and upload relevant documents relating to the alleged tenancy. The Auditor set out a deadline of October, 2 2023 for the Owners to comply with these requests.

Relevant documents are described in the Vacancy Tax Bylaw and referred to in the online reference that the Auditor gave. Section 4.9 of the Bylaw provides as follows:

4.9 The information or evidence required by the Collector of Taxes pursuant to this by-law may include but is not limited to:

(a) copies or certified copies of:

- i. ICBC vehicle insurance and registration,
- ii. government-issued personal identification, including, without limitation, driver's license, BCID card, British Columbia Services Card,
- iii. utility bills,
- iv. income tax returns and notices of assessment,
- v. tenancy agreements,
- vi. wills, grants of probate, or grants of administration,
- vii. employment contracts, pay statements or records of employment,
- viii. verification of residence in long term or supportive care,
- ix. verification of educational enrolment form,
- x. separation agreements,
- xi. court orders,
- xii. insurance certificates for homeowners or tenants insurance,
- xiii. strata by-laws, minutes of strata meetings or records prepared or maintained by the strata; and

(b) statutory declarations or affidavits regarding the status of the property.

The fact that the Owners were alerted to the importance of providing these documents is notable given how this matter developed. For example, one would have expected that the tenancy agreements mentioned would have been among the first things that the Owners would have located and produced for the Auditor.

In their response, the Owners set out that the Property was “occupied by s.22(1) for residential purposes.” They added that the tenancy’s term was from s.22(1) s.22(1). They advised that they included rental income from the Property in their tax filings in Canada.

In passing, the Panel notes that the Vacancy Tax Bylaw provides in section 2.1 as follows:

2.2 Residential property is considered to be unoccupied in the following circumstances:

- (a) the residential property is not the principal residence of an occupier; and
- (b) the residential property is not occupied for residential purposes by an arm’s length tenant under a tenancy agreement, or by an arm’s length subtenant under a sublease agreement, for a term of at least 30 consecutive days.

The Owners aimed at showing that the Property was occupied for 6 months or more during 2022 for residential purposes by an arm’s length tenant under a tenancy agreement.

The 6 month requirement is set out in section 2.3:

2.3 Residential property is considered to be vacant property if:

- (a) it has been unoccupied for more than six months during the vacancy reference period;
- or
- (b) it is deemed to be vacant property in accordance with this by-law.

The definition section of the bylaw defines “tenancy agreement” thus:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

The Owners supplied certain documents for the Auditor’s review in relation to the Property and the alleged tenancy.

One of the documents provided was a form of lease dated March 16, 2021. It was stated to be between s.22(1) The lease was signed on behalf of the s.22(1)

At the outset, it is safe to say that this lease was based on a commercial lease, not a residential one. The lease is not in a standard form typically used in British Columbia as suggested by the Residential Tenancies Branch. That does not affect its legal validity, but it does indicate that careful scrutiny of its terms is required to determine if it is a residential lease.

If the Owners’ position was that the lease should properly be regarded as a residential lease and not a commercial one, it was for them to explain why the wrong form was used and what should be considered the proper one. They did not do so in response to the Auditor.

Note as well, given how this case developed, that the Owners proffered the March 16, 2021 s.22(1) lease as the only lease that existed. Their subsequent efforts before the Review Officer to argue that it was terminated on March 19, 2021 and a Residential Tenancy Agreement entered into with s.22(1) s.22(1) is obviously inconsistent with that position.

With regard to the s.22(1) as the Auditor remarked upon, para. 4(m) of the lease sets out the following as a covenant by the tenant as to the “Permitted Use” of the Property:

(m) Permitted Use

The Tenant shall use the Premises for a office and for no other purposes without the prior written consent of the Landlord and the Tenant shall keep the Premises open for business during the common business hours in the trade.

Having the premises used for office purposes and no other purposes does not fit with the Property being used for residential purposes. Also, the phrase “and for no other purposes without the prior written consent of the Landlord” does not allow for residential use. No such written consent from the Landlord has been produced. The clause reinforces the business nature of the lease saying the “Tenant shall keep the Premises open for business during the common business hours in the trade.” Even if the Landlord had purported to consent in writing to use of the Property for residential purposes on top of “office purposes”, it seems incongruous to do so and have to keep the Property open for business each business day.

Other provisions of the Lease also make the notion that it was residential in nature unsupportable. For example, para. 4(b) refers to the tenant having to pay “Business Taxes.”

Further, para. 4(d) of the Lease says that “The Tenant shall not assign, sublet or otherwise part with possession of the Premises or allow any part thereof to become vested in or occupied by any person other than the Tenant for the whole or any part of the term without the prior consent in writing of the Landlord, which consent may be arbitrarily withheld by the Landlord.” There was no documentary evidence provided that the Owner had indeed consented in writing to anyone other than s.22(1) s.22(1)

If the Owners had wished to argue that the Property could be used by s.22(1)

Also, the notion that s.22(1), does not jibe with this provision. It says that where anyone other than s.22(1) occupies the Property, the written consent of the Owners is required. No such written consent was produced.

Para. 4(j) refers to parking stalls and says that only “employees and customers” of s.22(1) s.22(1) are allowed to use them. “Customers” is a business concept, not one that fits well with residential tenancies.

The Lease also requires the tenant to pay GST. That is a feature of commercial leases, not residential ones. The rent cheques from s.22(1) confirm that GST was paid on top of the base rent here.

The Owners did provide a copy of Wawanesa Insurance coverage for 2021-2022 that spoke of the property being a “residence”. They also provided a copy of a Strata Form K for 2021-2022 for the name of s.22(1). That name is not the name appearing on the lease agreement. Nor is it the name appearing on the audit response of the Owners (which said the persons using the Property for residential purposes were s.22(1)). It turns out that s.22(1) does

not assert that s.22(1) was ever a residential occupant of the Property. No Strata Form K for s.22(1) s.22(1) has been produced.

The Owners also provided copies of some cheques drawn on a s.22(1) s.22(1) They were made payable to s.22(1) s.22(1) They are apparently for the rent required under the s.22(1) The Owners provided corresponding bank account statements showing deposits of those cheques.

The Owners also provided copies of BC Hydro accounts in the name of s.22(1) for electric power service at the Property address, but those noted the mailing address as follows:

s.22(1)

That is the same address as appears as s.22(1). It is also the address on the cheques for s.22(1). It is curious that the BC Hydro statements were addressed to s.22(1) not at its address, but at s.22(1)

Shaw Cable accounts for 2022 for cablevision service to the Property were also provided by the Owners. The first couple (for January-February 2022) have the name s.22(1) at the top of the page and are addressed as follows:

s.22(1)

That would seem to support s.22(1) being the person who contracted with Shaw Cable for the service. No such contract was produced and neither was any correspondence between Shaw Cable and s.22(1). Without more, these Shaw statements are not really confirmation of residential use by s.22(1) s.22(1)

The rest of the Shaw Cable accounts for 2022 have the name s.22(1) at the top and are addressed to s.22(1) Since there was nothing else provided the Auditor to show that s.22(1) s.22(1) made use of the Property as a tenant for residential purposes, this does not really assist at this stage.

Also, given that there s.22(1) in the Shaw accounts from February 2022 onwards, this evidence undercuts the assertion of the Owners to the Auditor that s.22(1) was in occupation of the Property for all of 2022. Standing alone, the Shaw bills do not provide substantial support for s.22(1) being a tenant making residential use of the Property either.

After reviewing the response from the Owners, the Auditor called and spoke with s.22(1). The Auditor noted that given that the tenancy s.22(1) there had to be proof that it was being used for residential purposes. s.22(1) advised that s.22(1) used the s.22(1). The Auditor advised that there had to be proof of residential use and set October 31, 2023 for that to be provided.

The Auditor followed up with a pre-determination letter dated October 13, 2023 that said this:

Pursuant to our telephone conversation of October 13, 2023, we write in regards to the Vacancy Tax audit being conducted at s.22(1). This property was declared as occupied by a tenant or subtenant for at least six months in 2022 for terms of at least 30 consecutive days.

The Vacancy Tax Bylaw applies to real property classified only as Class 1 Residential property under the BC Assessment Act. To meet the residential component of the Vacancy Tax Bylaw, a rented property must be occupied by a/an arm's length tenant or subtenant for residential purposes. If a property is being used solely or primarily for commercial purposes, the property will be subject to the vacancy tax.

Based on the evidence provided to date, we do not consider that this property was occupied by a tenant or subtenant for residential purposes for at least six months in 2022 for terms of at least 30 consecutive days.

In order to demonstrate that the property was occupied by a person(s) for residential purposes, please provide the following documents:

- Documents from a long term tenant proving occupancy in 2022, accompanied by an appropriately signed Third Party Consent Form, available here: <https://vancouver.ca/home-property-development/empty-homes-tax-evidence-forms.aspx>. Appropriate items on behalf of a tenant may include, but are not limited to:
 - Tenant's BC Driver's License, BC Identity Card, or BC Services Card
 - ICBC Residential Address History Report (available here: <https://onlinebusiness.icbc.com/clio/>)

Please let us know if you have additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw.

The letter set out the October 31, 2023 deadline for responding to these requests.

By a letter dated November 8, 2023, the Auditor advised the Owners that the declared exemption based on an alleged tenancy was not established and that the Property was thus subject to the tax.

Based on the information and documents you submitted, we have determined that your property status declaration is non-compliant and your property is subject to the Vacancy Tax.

The reason(s) for our non-compliant conclusion are as follows:

· Inappropriate Evidence

Based on the evidence provided, the City determines that this property was not occupied by a residential tenant or a subtenant for at least six months in the applicable vacancy reference period, for a term of at least 30 consecutive days, per Section 2 of the Vacancy Tax By-Law (No.11674).

The Owners were dissatisfied with that determination and filed a Notice of Complaint seeking a review by the Review Officer.

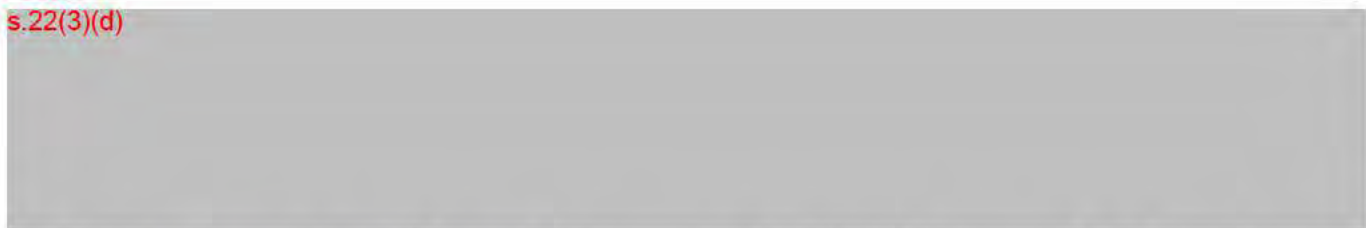
Notice of Complaint and Review Officer Determination

s.22(3)(d)

A large rectangular area of the document is redacted with a light gray background. The text 's.22(3)(d)' is written in red at the top left of this redacted area.

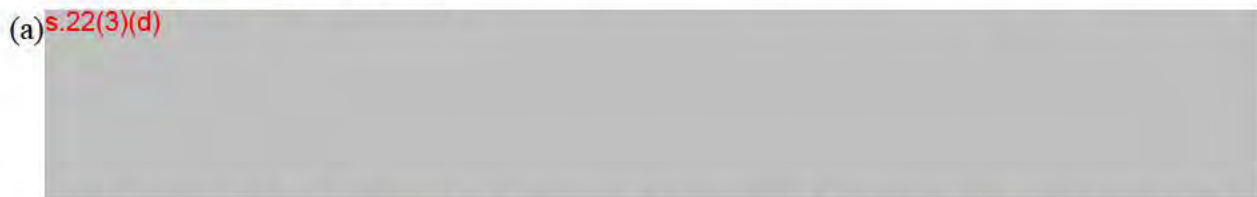
s.22(3)(d)

s.22(3)(d)

A second large rectangular area of the document is redacted with a light gray background. The text 's.22(3)(d)' is written in red at the top left of this redacted area.

The Panel will now set out and discuss the documents produced by the Owners to the Review Officer in the period leading up to November 1, 2024:

(a) s.22(3)(d)

A rectangular area of the document is redacted with a light gray background. The text '(a) s.22(3)(d)' is written in red at the top left of this redacted area.

(b) The Owners did not produce any documents to support a suggestion that this termination agreement was actually entered into on March 19, 2021. Presumably, if it had been entered into on that date, there would be correspondence, emails or text messages at that time that

confirmed that just 3 days after signing the s.22(1) lease they wanted to terminate it and enter into some other legal relationship with others.

- (c) Also, the Owners do not say who signed the termination agreement for s.22(1). It does not appear to be s.22(1) when compared with the Residential Tenancy Agreement purportedly signed by s.22(1) the same date and his letter dated October 30, 2024.
- (d) The Owners produced two Residential Tenancy Agreements. The Residential Tenancy Agreement that appears likely to be the one referred to as “attached” to the termination agreement is on a form that is customarily used for residential tenancies in British Columbia and bears the Residential Tenancies Branch name. It is made between s.22(1) as Landlord and s.22(3)(d) as tenants. It purports to be signed by them all on s.22(1) s.22(3)(d)
- (e) What was produced as the Residential Tenancy Agreement with s.22(1) and s.22(1) s.22(1) is incomplete. Page 6 has a box checked confirming that there is an Addendum. It notes that the Addendum is 2 pages long and has 4 terms. The Owners produced the Residential Tenancy Agreement, but not the Addendum. Thus, it appears they have a copy of what was signed. The failure to produce the whole agreement is not explained.
- (f) Similarly to the observation about the creation and execution of the termination agreement, no correspondence, emails, text messages or other communications relating to this Residential Tenancy Agreement have been put forward. It is probable that something exists, but it has been withheld by the Owners.
- (g) The Panel notes that in such circumstances an adverse inference that the document not produced likely does not support, but instead may detract from the Owners’ position may be drawn: see *Singh v. Reddy*, 2019 BCCA 79 at paras. 19-22 and *1104318 B.C. Ltd. v. Dr. Paul Wittenberg, Inc.*, 2025 BCCA 68 at paras. 76-78 and 98-99. It is appropriate, in the Panel’s view, given the overall context and circumstances here, that such an inference be drawn.
- (h) Next, the Owners produced for the Review Officer, as they had for the Auditor, copies of a Strata Form K, Hydro bills, rent cheques, and Shaw bills.
- (i) Next, the Owners produced a copy of another Residential Tenancy Agreement provided. It has s.22(1) is no longer included. s.22(1) The (2023/06 footer) is at the bottom of the first page. The signature page purports to set out that s.22(1) all signed on

February 28, 2022. Plainly, that is not possible on a form that did not exist until June 2023. The term of the lease runs to March 2024, just as the original lease with s.22(1) did. The rent is the same as well.

The Owners also provided the Review Officer with a letter dated October 30, 2024 from s.22(1) s.22(1).” It is not a sworn or affirmed statement (unlike the Affidavits of s.22(1) and s.22(1) produced with the Owners’ counsel’s letter to the Review Officer dated December 16, 2024, noted below). s.22(3)(d)

s.22(1) describes s.22(1) business as follows:

s.22(1)

The Review Officer conducted an online search of s.22(1) and noted that it had changed its name to s.22(1). It is a publicly listed company. The name change occurred in May 2023, prior to the notification of the audit process herein. Neither s.22(1) mention the name change or when it occurred. Given the execution of documents in the “summer of 2023”, one would have expected some kind of explanation. But none was provided. The Review Officer searched s.22(1) online as well and found that it had the Property’s address as its Vancouver business address. s.22(3)(d)

s.22(1) turns s.22(1) attention in the next paragraph to the lease of the Property that s.22(1) had entered with s.22(1)

s.22(1)

The suggestion that the provision in the s.22(1) is not adequately explained. s.22(1) says that the parties intended the Property to be used “for residential purposes by s.22(1)

Further, the statement that “on March 19, 2021, s.22(1) signed a further agreement cancelling the agreement signed three days earlier” is inconsistent with the Owner’s position before the Auditor. The termination agreement is dated “as of March 19, 2021.” There is no evidence, aside from s.22(1) unsworn assertion, that it was actually signed at that time. The same goes with the assertion that s.22(1) “signed a residential tenancy agreement for the Property” on “that same day.” Notably, s.22(1) October 30, 2024 letter predates the Review Officer’s letter requiring an explanation for the use of a June 2023 form of Residential Tenancy Agreement. No explanation from s.22(1) is provided. No correction of that evidence is offered. The Owners chose instead to have their lawyer set out their position in s.22(1) December 16, 2024 letter to the Review Officer. That letter refers to the Residential Tenancy Agreements, but says nothing about the termination agreement and when it was actually prepared and signed. The Panel is not persuaded by s.22(1) assertions, made at a time when the Owners were apparently trying to mislead the Review Officer as to the execution of the Residential Tenancy Agreements.

In the next paragraph, s.22(1) appears to identify s.22(1)

s.22(1)

Presumably, s.22(1) that the Owners referred to in their responses to the Auditor as occupying the Property s.22(1)

There is no Residential Tenancy Agreement with s.22(1) as tenants at the same time. The two agreements provided have s.22(1) as a tenant, first with s.22(1) and then with s.22(1) But even though s.22(1)

No explanation for the inconsistency between the Owners’ statement to the Auditor and s.22(1) letter suggesting that the only occupant was s.22(1) is provided. And no statement from s.22(1) provided confirming her occupation there and whether it was for residential or business use.

s.22(1) also does not explain what happened to the Residential Tenancy Agreement that he says s.22(1) s.22(1). s.22(1) was told by someone that it was “misplaced.” The Owners’ counsel says it was “lost” along with the later one supposedly made with s.22(1)

What was produced by the Owners to the Review Officer is not a document actually signed March 19, 2021, as was drawn to the Owners attention with the November 1, 2024 Review Officer's letter noted below. Instead, what was produced was a June 2023 version that was passed off as being the one from March 19, 2021.

s.22(1) also does not explain how it was possible to get s.22(1) to sign a replacement version of the Residential Tenancy Agreement in or around June 2023 given that s.22(1) according to the Owners, for purposes of providing a statement.

s.22(1) goes on to explain in his letter that at the end of February 2022, s.22(1) arrived at the Property.

s.22(1)

Given that s.22(1) was, according to this story, only in the Property s.22(1), one would have expected there to be some document confirming that s.22(1) was released from the Residential Tenancy Agreement that s.22(1) refers to. But no such document was produced.

s.22(1) adds this s.22(1)

s.22(1)

s.22(3)(d)

s.22(1)

And no explanation was offered why in the s.22(1) s.22(1) .

s.22(3)(d)

In a letter dated November 1, 2024, the Review Officer wrote to s.22(1) and advised as follows:

We have received your Notice of Complaint regarding the Vacancy Tax for the property at s.22(1) s.22(1) . We have completed an initial review of your file and do not consider that the information provided to date is sufficient and appropriate to establish that the residential property was occupied by a tenant or subtenant for at least six months in 2022 for residential purposes (for a term of at least 30 consecutive days).

The lease agreements were signed after it commenced as indicated by the print date of the form. Please explain why the lease agreements with the tenants were signed in 2023 when the tenancy was stated to commence in 2021 and 2022. Additionally, as it was indicated that s.22(1) resided at the property for residential purposes for six months of the 2022 reference period, please have s.22(1) complete a third party consent form, and provide one primary and two supporting documents covering six months of the 2022 reference period.

Please let us know if you consider that you have additional information that you can provide to show that your property is exempt under the Vacancy Tax Bylaw.

Any one of the following primary documents from the occupant:

- BC driver's licence (include an ICBC residential address history search if the license was issued after July 1st 2022 or modified by a sticker - <https://onlinebusiness.icbc.com/clio/>)
- BCID Card
- BC Services Card

Any two of the following 2022 documents from the occupant:

- Official certificate of homeowners insurance effective for six months of the 2022 period
- Valid ICBC vehicle insurance and registration effective for six months of the 2022 period (include the first and second page)
- Correspondence from a government authority regarding the receipt of benefits such as a pension, unemployment benefits, housing benefits, etc. (ex CRA notice of assessment with date issued in 2022 – normally for the 2021 tax year)