Developers win big in ruling

By Allen Garr

The city's senior staff was doubtless doing cartwheels last summer. In an in-camera meeting, the NPA council, with a little help from Vision, followed staff's lead and fired the Board of Variance.

Staff believe the board was making decisions beyond its jurisdiction and that the resulting court challenges were costing enormous amounts in legal fees.

But with last week's Supreme Court ruling, both staff and their political masters may have gotten more than they wished for. Citizens' rights to appeal development decisions to the board that may affect their property have been obliterated; staff's power over development decisions has increased and the board's oversight role has been diminished.

The particular issue that caused this eruption concerns property commonly referred to as "Salsbury Gardens," two adjacent privately held lots on the East Side of town, which for years has been taken over by some of the neighbours as a community garden.

When developers wanted to tear down the existing buildings to put up two duplexes, the neighbourhood protested mightily. It's third-party appeal to the Board of Variance to stop the development succeeded, which landed the whole matter before Supreme Court Justice Richard Goepel.

During the course of the trial the judge specifically directed the lawyers to address the issue of third party appeals of planning department decisions. The lawyers for the board argued third parties have that right. Lawyers for both the city and the developers argued the board's jurisdiction does not extend to third-party appeals. And they won the day.

For decades property owners have been afforded the right to

appeal to the Board of Variance when city staff planning decisions were made that affected their properties. Whenever the city planning department has made a decision about a piece of property, it has sent out hundreds of letters to neighbours advising them they can appeal the decision to the board.

It made sense in a way, given the fact that the discretion given the Vancouver planning department is extremely broad, much more than other municipalities, and effectively amounts to changing zoning in some cases.

As the lawyer for the board pointed out, denying third-party appeals means planners, "unelected officials, making up zoning as they go along, without public hearing."

But on looking at the legislation-the Vancouver Charter, which sets out the role of the board-Justice Goepel concluded that when it comes to the board's jurisdiction, that right does not exist. Just because it has always been the case doesn't mean it is legal.

He also says it is beyond the board's jurisdiction to block a development decision by the director of planning: "The legislature did not give the board, a lay panel with no professional training, the power to veto developments approved by the director of planning."

Now here is the great irony of this decision. As the judge reads the legislation he concludes developers who have been turned down by the director of planning can appeal to that same "lay panel with no professional training" and have that decision overturned.

Neighbours have no right to appeal a planning decision or a decision by the Board of Variance but developers get two kicks at the can.

That's not the judge's fault, that's the law.

As a result, any third party appeal simply disappears; none can be considered in the future. Developers should rejoice.

The city may choose to appeal Goepel's judgment, but why would they? Their lawyers have just spent time and money defending it.

If there is truly political will to give third parties rights we assumed they had, the only solution is to re-draft the Vancouver Charter so it more clearly supports those rights and the obligations of the Board of Variance.

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