

False Creek South Leasehold Strata Issues

Meeting 2

Wednesday, September 13th, 2017, 1900 to 2100

City Studio Vancouver

Present:

Strata Leasehold Delegates: Marie-Claude Collins (Harbour Terrace), Tom Gibbons, Linda Lytle (Fountain Terrace), Rosalie Hawrylko, Ralph Skinner (666 Leg in Boot Square), Trevor Kaatz, Jim Taggart (commercial and residential Stamps Landing), Cory Lake (Mariner Point), Marta Hutton, Richard Marchant (Vice-Chair of Strata Leasehold Subcommittee (SLS) of *RePlan) (Creek Village), Jim Woodward, Doug Ramsey (Market Hill), Robert Renger (658 Leg in Boot Square), Jerry Roy, Mats Tholin (Heather Point), Josef Skala, Sharon Yandle (Marine Mews), George Stratis (commercial Leg In Boot Square), Monty Wood (Spruce Village), Marta Hutton, Anne Kaye (Chair of Strata Leasehold Subcommittee (SLS) of *RePlan) (Alder Bay Place), Tom Beechinor (Lagoons)

***RePlan:** Richard Evans, Nathan Edelson, Norma Jean McLaren, Daniel Ward, Nancy Hannum (Co-op Observer), Wendy Herdin (Co-op Observer), Mike Walker (legal counsel)

City of Vancouver Staff: Bill Aujla (Chair, General Manager, Real Estate and Facilities Management), Greg Hamilton (Manager, Property Endowment Fund), Mario Ramos (Manager, Strategic Business Advisory), Chris Baas (Project Manager, Business Planning and Project Support), Heidi Granger (Assistant Director, Legal Department)

Meeting Minutes

1. Introduction

Bill Aujla, the Chair, started the meeting by asking any newcomers who had not attended the first meeting to introduce themselves to the group. Mike Walker and Heidi Granger also gave a brief introduction.

Adoption of Minutes from Meeting #1

Robert Renger noted that he had raised a concern that delegates and strata leaseholders will not know if their views, aspirations and position regarding changes to the leases are being fully articulated by staff during in camera meetings to Council and asked that a reference be added to the minutes.

Vote to adopt the minutes from meeting #1: UNANIMOUS, if the above addition is made.

Call to adopt agenda: UNANIMOUS, No additions made

Bill Aujla reminded delegates that the series of meetings have been called to address end of lease issues and that no changes to leases can be made unless mutually agreed upon. Legal Counsel, for the City and the delegates, will discuss the Strata Property Act and the Model Strata Lot Lease so that everyone understands what the possible outcomes can be and what barriers they might face. He added that the aim of these meetings is to develop options that will ultimately result in a win-win situation for all parties involved.

Nathan Edelson stated that he believes that the current leases are operating counter to the City's goals such as affordable housing and greening. Response from City Staff was that binding agreements are functioning as planned and that the city is open to discussing changes to the leases.

2. Strata Property Act and the Model Strata Lot Lease

Heidi Granger handed out a summary of lease information as per actions from the previous meeting. Mike Walker explained that the Model Strata Lot Lease is now the Lease. Heidi Granger noted that the current leases require that the City notify Lessee's of its intent to renew at least 12 months prior to lease expiry and the renewal term must be at least five (5) years. If the City, as Landlord, does nothing then the leases will automatically renew for a period of 5 years. In either case (either notification or no notification) then the annual rent is to be agreed upon between the Lessor and the Lessee and if agreement is not reached, arbitration. The lease includes arbitration provisions.

Heidi Granger stated that under the existing leases, both parties are to negotiate rent as part of any renewal. Most leases have rent for renewal terms being payable annually. If the City gives notice of its intent to not renew a lease, and the lease expires then there is obligation on the City to purchase each lessee's interest in the strata lot.

End of lease value must be arrived at as of the date the lease ends and calculated either as set out in any existing schedule filed with the leasehold strata plan setting out basis for calculating purchase price, or fair market value of the leasehold tenant's interest in the strata lot, evaluated as if the lease did not expire. However, in the FCS leases, most leases did not have schedules filed.

ACTION ITEM COV to identify FCS leases that have a schedule attached.

Robert Renger (delegate) stated that there is a valid enforceable contract between Lessor and Lessee, but that the City has approached the Province in the past to request changes to the Strata Property Act. One view of the City's request is that the City was and may seek to change the terms of the contract without involving lessees. Heidi Granger made reference to the original strata titles act not including the reference to a regulation - this is in the Strata Property Act - but no regulation has been enacted yet.

Bill Aujla stated that the City has carried out research into valuing a Lessee's Interest in their strata lot. The City first investigated approaches to valuation

in 2013 and commissioned appraisers to suggest methods, which were then shared with members of *RePlan in 2015.

ACTION ITEM: The City will share this information with delegates at a future meeting.

Mike Walker stated that currently there is no provision (or regulations) in the Act for the purchase price at termination to be fixed. Bill Aujla stated that the Province has suggested that all parties agree to any changes prior to the Province acting to amend the Act. The goal of these meetings are to develop options that lessees will see as acceptable. This issue is not only relevant to FCS, as there are over 12000 strata leasehold units in BC.

Heidi Granger discussed the missing calculation methodology, how research has been done with respect to different approaches.

Mike Walker was interested to see what methodology will work and how it could be included in lease modifications.

Bill Aujla emphasized the fact that the City does not have unlimited cash and it views this issue as a potential contingent liability of the City. The City has an obligation to plan for future liabilities. The usual method is to create a sinking fund that will be properly funded when it is needed. A common understanding of LISL is needed to forecast how much money would be required if the leases are not extended.

Robert Renger posed the question of whether the New South Wales (NSW) method has ever been applied in NSW.

ACTION: Heidi to research whether the NSW method has been applied in NSW.

Legal Counsel from both sides agreed that there is currently no prescribed or mutually accepted means for calculating the purchase price of the Lessee's Interest in the Strata Lot.

Jerry Roy observed that the rent review process between 2006 and 2010 took 5 years and that likely millions of dollars was spent. At the end of that process, the City offered residents who were facing the rent review a pre-payment option, which almost everyone who was eligible choose to exercise. So, the time and effort involved in determining rent under the lease was totally irrelevant except for the 10 or so stratas lot that did not exercise their option.
- If there is a way that we can avoid a similar lengthy and expensive process?

Mike Walker discussed contingent liability and how there may be a value to the City in a modification. The lower the lease-end payment is, the lower the renewal rent is.

Regarding rent determination, Heidi made reference to section 206 and 153 of the Charter that limits Council's ability to provide grants to individuals. Generally speaking any instance of a grant being made to an organization requires council 2/3 affirmative vote.

Mike Walker referred to two aspects, 1) that under the current accounting structure of the Property Endowment Fund (PEF), the city has to buy PEF land

from “itself” and use its current cash to make the PEF whole if a non-market housing operator or co-op cannot afford the fair market rent that the land is required. Given the number of co-ops and non-profits leases expiring in future, can the City afford to continue to “top up” discounted leases of co-ops and non-profits? The second aspect is that the City’s pilot Affordable Home Ownership program requires an amendment to the Vancouver Charter. Heidi Granger stated that the City has several charter amendment requests that are outstanding - these were put forward to the Provincial Government for consideration prior to the spring election.

3. Q&A

Mike Walker spoke about end of life of a building and how that currently, there is no end of life mechanism in the lease - i.e. no way for tenants or the Landlord to end the lease prior to lease expiry. For freehold strata, a mechanism exists: an 80% affirmative vote of strata unitholders. However, leasehold strata plans can only be cancelled and strata corporations dissolved when leases expire. This limitation creates a serious impasse with respect to potential redevelopment of a particular building during the term of a lease. If the City intends to add a lease modification agreement to existing leases that specify how the Lessee’s Interest in the Strata Lot (LISL) is to be valued, then is the City interested in also introducing some kind of mechanism that allows tenants and the Landlord to determine early redevelopment of a site?

Bill Aujla explained that the leases don’t give the lessees rights to redevelop, if that scenario was to play out, the lease would need to end/be terminated.

Mike Walker made a hypothetical observation that if you’ve got 100 owners in an old building and the vast majority of them would rather not put money into the constant maintenance of the building they may wish rather to redevelop their old building into a new building. However, here is no mechanism in the current leases to get beyond that and therefore, any redevelopment a site likely means residents living in a slum for the last 10 years of the lease term.

Greg Hamilton stated that if every strata lessee in a strata collectively decided they wanted an early termination of lease, the City could likely consider ending a lease early.

Chris Baas agreed that the City could approach the Pprovince with this and seek the addition of a rule that allows early termination of a leasehold strata.

Mike Walker referred to designing a collaborative process to resolve this issue of early termination.

George Stratis spoke about three issues: 1) lease renewal, 2) methodology of calculating rent for renewal terms and 3) retaining the structure of this co-operative discussion process. He thinks the solution is that the City should be forward looking on lease renewal today and have provisions that the sea wall could be raised as required in future. It is important that the City vote on the premise that a form of lease is offered to everybody.

Bill Aujla referred to the delegates representing all leaseholders, but how there may be various viewpoints within any strata and these views must be brought forward by delegates as best as possible even if the views are not the delegates. This will result in better options being developed by this group

Mike Walker spoke again about end of life and how those decisions should be made. Mike isn't satisfied that the current lease framework will work since there is no way of dealing with end of (building) life without dealing with the payment that goes along with it. What is the compensation to the leaseholders if redevelopment is decided collectively between the City and lessees?

Including a termination clause in the leases means having to deal with a lease-end valuation methodology with more certainty. How long should extended lease terms be? Would the City offer 60 year leases? Without a democratic termination provision, lease-end problems are vexing. If the leases are extended and the City gets an agreeable valuation there are incentives to maintain building to term end. Mike asked the City think of a regime where none of the leases ever run down but rather leases are quasi-perpetual with a democratic termination of lease clause that allows for regular redevelopment as buildings age.

Bill Aujla stated that the City is likely to set initial 60-year lease terms, based upon the expected life of the building constructed on the land. Any building can be kept in good shape, how much maintenance money will be put forward to keep an old building liveable? Mike Walker spoke of an example where leaseholders don't want to pay for maintenance, but rather they may want to cash out and end their lease. Is there a different way such as an equity co-op

Mario Ramos stated that there were flaws with the current model strata lot lease, and the City acknowledges this, but even with internal analysis the City sees pros and cons in changing the lease. There are distinct advantages to making a decision early on and coming up with a mechanism to value LISL.

Bill Aujla wants to solve LISL now, so everyone had certainty regarding their interest when the leases end in future. Rather than simply extending leases and leaving the LISL problem for the next expiry period.

Greg Hamilton referred to the term Last Period Problem - being the problems experienced by lessees and the lessor during the final years of a land lease. Mitigating the last period problem is important when considering what to do today so as to avoid a repeat of today's problems at the end of any renewal period in future.

A delegate spoke about there being a need for the creation of a mechanism in the leases in which that discussion happened, collectively or with developer, then the developer could build a new building and move the leaseholders in to that building whilst their building was being redeveloped.

4. Q &A

Bill Aujla suggested further discussion occur around LISL and rent calculation methodology. The City and delegates, as a collective team, need to come up with options to take to Council which then delegates would be able to relay to all lessees in each strata and get feedback to move forward.

The determination of exact LISL value for each strata unit might not be possible, but at least a formula should be determined and it must be collectively agreed upon. The main challenge in moving this requirement forward will be that there are 717 individuals and they will not all share the same opinion of how value is to be determined.

A delegate asked whether staff needs to take all options to council Bill Aujla responded that any potential amendment to lease or terminating into a new lease, must have council authority. Work streams are happening in parallel with the community planning process, and involve working with other stakeholders of the community. Co-ops and non-market housing lease renewal is being worked on. There are legal issue that are preventing it from moving forward, how the legal language is addressed, need to understand in context. Lease extension will preserve community for a certain period of time. Guidance and feedback will help, if we educate ourselves, we want to make sure everyone understands.

Chris Baas referenced the City's current policy strategy and plans, and the need to accommodate many objectives such as creating greener communities.

It would build trust if the group could prepare a submission as part of the City's in camera report, or it could go at the same time, but in the words of the delegates. Bill Aujla noted the delegates suggestion and would like to talk further about that when it is brought to Council. Planning and discussions taking place but the end of lease and legal document is creating issues, so this must be addressed first.

Richard Marchant wanted LISL, rent payments and term to be on the agenda for next meeting, but noted that all the issues the SLS have already put forward to the City should be the subject of one of the meetings. Chris Baas spoke about mechanisms that can enable those conversations, value, money issues, differences of opinion. Leases need modification and continuity through change.

Mike Walker raised the issue of differences of interest, different approaches to problems in different departments within the City. The City and leaseholders will have a number of shared interests. His opinion is that the problem with the PEF is that City is constrained by it. An evaluation methodology must be adopted and it could have major implications to the City as landowner and the community.

Bill Aujla stated that the City have to be able to defend the decision using how the financials were determined. In recent cases, the public was very interested in fully understanding the financial terms of real estate transactions and that it is certain that similar interest in FCS would occur.

5. Next Meeting Topics

Agenda items for next meeting - LISL, rent calculation methodology, term.

6. Next Steps

Action Items

ACTION ITEMS		RESPONSIBLE
1	The minutes from the last meeting must be corrected to show that delegates identified a concern regarding the how information if presented by staff to council during In-Camera meetings.	Greg Hamilton
2	The City will present the valuation methods for LISL.	Greg Hamilton
3	Copy of legislation to be provided to Mike Walker	Heidi Granger
4	Find out whether the NSW method has been applied.	Heidi Granger
5	Microphone for next meeting	Greg Hamilton
6		

Decision Log

DECISION LOG

1	Vote to adopt the minutes from meeting #1: UNANIMOUS, if Action 1, above, is completed.
2	Call to adopt agenda: UNANIMOUS, no additions made.
3	Add "TERM" to the agenda for third meeting

DRAFT