

# Fairness is, apparently, no reason for council to act

## Councillors reject appeal for \$100,00 worth of promised tax breaks for restored building

BY DON CAYO, VANCOUVER SUN OCTOBER 20, 2012

Surprise, surprise - eight Vancouver councillors sitting as a Court of Revision have dismissed out of hand the appeal of a family business that lost nearly \$100,000 worth of promised tax breaks, a result of a series of errors. Mind you, most of the councillors who turned their thumbs down also effused sympathy for Nancy and Niels Bendtsen, owners of the marvellously restored building that houses their Inform Interiors showroom in Gas-town. But, this gnashing of teeth notwithstanding, I sat through much of the hearing and found it a sad joke.

The whole thrust of the Bendtsens' case is fairness - or rather, its lack. Yet the hearing was structured - and this point was rigorously enforced - to exclude any and all consideration of fairness. Indeed, the only legal point the councillors would consider was so incredibly narrow that the outcome was a foregone conclusion.

I've written before about the Bendts-ens' complex case, and I don't want to rehash all of it again. Suffice it to say that they struck a deal with the city to spend a minimum of \$5 million - in fact, they spent quite a lot more - to restore a near-derelict building at 50 Water Street into a splendid showcase for their wares. This is more than the finished building is worth, so in return they were promised a transferable credit for unused density plus a \$400,000 break on future property tax bills.

The unfairness is that because of a series of errors and some very arcane tax policy (see the box on this page for details), they got screwed out of nearly \$100,000 worth of the promised tax benefit.

I thought going into the hearing that the real issue was the urgent need for the city to create a fair and fast mechanism for correcting unfairness. This view was reinforced by the sad little exercise that unfolded - a waste of everybody's time, including the Bendtsens, their tax adviser, the councillors, the city staff and me.

Much as it pains me to say it, the councillors may have been right to focus on what they saw as the letter of the law.

But the real story here is about a business contract - a deal between the city and a family business. It's about finding a way to accomplish a worthy goal - the restoration and preservation of a wonderful little piece of Vancouver's history - that would not be possible without a partnership.

And worthy business dealings transcend mere law and concern them-elves with ethics as well. Good partners care about fairness, and they work together to produce mutually beneficial outcomes. If one side refuses to do this, they can't expect the relationship to blossom. And they risk word spreading that they're lousy people to deal with.

Brian Keenan, a partner at Burgess Cawley Sullivan and the Bendtsens' representative at the hearing, expressed astonishment that the city would risk its reputation as a reliable restoration partner over a

tax bill of less than \$100,000. The Bendtsens were the first Gastown owners to buy into the city's restoration program there and they did a truly superior job, which set the tone for work done by other property owners.

As well, Niels Bendtsen tells me, they're being closely watched by other developers. He said he was astonished at how many approached him, most with their own concerns about trust and City Hall, after I first told his story in The Vancouver Sun.

So I was pleased when councillor Adriane Carr told me after the hearing that she'll take this further. If councillors sitting as a Court of Revision can't fix it, maybe councillors sitting as council can.

I'm not sure whether other council members will take this seriously and, if so, what their options might be. It may be as simple as rewriting the contract with the Bendtsens to provide the full benefit as originally promised. Or may be as complicated as trying to pass a retroactive bylaw to cover this very unusual situation.

But whatever it turns out to be, council needs to do something effective if its preservation incentives are to have any credibility in the future.

And I think they also need to look beyond this case to find quick and readily accessible ways to address future fairness issues. No better model springs to mind than the provincial Taxpayer Fairness Code adopted in 2006 by former revenue minister Rick Thorpe.

This code was well enough conceived and implemented that it went a long way to correct serious fairness issues stemming from his department's often high-handed treatment of taxpayers.

The law is the law, and all that - but business relationships are about trust. And at the moment, my take-away message from fairly close observation of the Bendtsen case is that I wouldn't put up my hand to do business with these guys in City Hall.

#### HOW THE BENDTSENS LOST THEIR PROMISED BENEFIT

In 2007, with renovations finished and the building occupied for the first time in years, the assessment for 50 Water St. jumped, as expected, from \$3.2 million to \$7.6 million. The tax bill was nil, also as expected, thanks to the negotiated deal.

But there was a twist - one that, tax adviser Brian Keenan notes, wasn't evident from information the city provided on its tax bill.

Although the Bendtsens spent \$7.5 million on the building, its value barely budged from \$155,000 (what it was worth when derelict) to \$218,000. The rest of the increase, \$4.2 million, was incorrectly added to the land.

The province's assessment freeze in 2008 meant this error stayed on the books for two years. Once again, the problem wasn't obvious as the tax bill remained at zero.

In each of the next three years BC Assessment reduced the land assessment hugely - to where it should have been all along - and it dramatically jacked up the building's value, which is also justified by the restoration.

This shift matters because the tax rate is applied in two ways - to the actual value of buildings, as well as to the average of the last three years' value for land. With the 2007 and 2008 figures boosted by the error, the average value of the land in 2009 and 2010 shot up to roughly double what it should have been. This drove up Bendtsen's theoretical tax liability by almost \$100,000.

Although tax bills remained nil in 2009 and 2010, the error quickly eroded the total exemption the Bendtsens were promised. Now it's all used up. They'll get no more tax breaks, yet they're well short of the relief they were promised.

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