



File No. Court File No. VLC-S-S-228818  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

IN THE MATTER OF THE *JUDICIAL REVIEW PROCEDURE ACT*,  
RSBC 1996, C. 241

**BETWEEN:**

**CITY OF BURNABY**

**PETITIONER**

**AND**

**BRITISH COLUMBIA INFORMATION AND PRIVACY COMMISSIONER  
and DAVID HAYRE**

**RESPONDENTS**

**PETITION TO THE COURT**

**ON NOTICE TO:**

British Columbia Information and Privacy Commissioner  
4<sup>th</sup> Floor, 947 Fort Street  
Victoria, BC V8V 3K3

David Hayre  
maxx1hayre@yahoo.com

Deputy Attorney General of British Columbia  
Ministry of Attorney General  
PO Box 9290 Stn Prov Govt  
Victoria, BC V8W 9J7 (by registered mail)

**This proceeding is brought by the Petitioner for the relief set out in Part 1 below.**

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioner(s)

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner(s),

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:  800 Smithe Street, Vancouver, B.C. V6Z 2E1
(2)	The ADDRESS FOR DELIVERY is:  Suite 12 – 2544 Dunlevy Street Victoria, British Columbia V8R 5Z2  Fax number for delivery (if any): 250.480.7455 Email address for delivery: <a href="mailto:dl@lw-law.ca">dl@lw-law.ca</a>
(3)	The name and office address of the petitioner's solicitor is:  Deborah K. Lovett, K.C.

	Lovett Westmacott Suite 12 – 2544 Dunlevy Street Victoria, B.C. V8R 5Z2
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### Claim of the Petitioner

#### Part 1: ORDERS SOUGHT

1. An order in the nature of *certiorari* pursuant to section 2 of the *Judicial Review Procedure Act*, RSBC 1996, c. 241, quashing Order F22-44 made by Adjudicator Elizabeth Vranjkovic dated September 20, 2022.

#### PART 2: FACTUAL BASIS

##### Introduction

2. The petitioner City of Burnaby (the City), as a “local public body” under the *Freedom of Information and Protection of Privacy Act* (FIPPA), is a “public body” for purposes of that Act.

3. The respondent David Hayre (the Applicant) is a resident of the City who made a request to the City for access to information in the custody of the City under FIPPA. Specifically, the Applicant requested a “list of all properties owned by the City of Burnaby and any properties it may own in the Province of BC”. The City provided the Applicant with a list of 2,314 properties. Information was redacted on 10 pages of that list under FIPPA disclosure exception section 17(1) on the basis that its disclosure would reasonably be expected to harm the City’s financial and economic interests. The redacted information consists of street addresses and associated Parcel IDs and relates to properties that are currently the subject of land acquisition projects where the City has targeted adjacent or proximate properties for acquisition and land assembly. If this information is disclosed, given the City’s past experiences, there is a reasonable

expectation that the City will suffer economic, financial, and other harms, as well as harm to its ability to negotiate the purchase of these targeted properties at fair market value.

4. The Applicant asked for a review of the City's withholding decision and an inquiry was scheduled under section 56 of FIPPA.

5. The respondent Information and Privacy Commissioner of British Columbia (the IPC) is an Officer of the Legislature who oversees the administration of the *Freedom of Information and Protection of Privacy Act*, RSBC 1996 c. 165 (FIPPA).

6. The IPC delegated the power to conduct and decide the inquiry to Adjudicator Elizabeth Vranjkovic (the Adjudicator) under authority of section 49 of FIPPA.

7. On September 20, 2022, the Adjudicator issued Order F22-44 (the Order) requiring the City to disclose the withheld information.

8. This judicial review application seeks to quash the Order on the basis that it is unreasonable in the face of the uncontroverted evidence before her. By operation of section 59 of FIPPA, this judicial review application stays the Order pending a decision by this Court.

### **Background context**

9. The City has an Official Community Plan (Bylaw Number 10709 adopted by City Council and updated and revised in May 2014).<sup>1</sup> Unless otherwise stated, the information that follows in setting the background context has been obtained from that Plan. A PDF copy of that Plan is accessible here: <https://www.burnaby.ca/our-city/strategies-and-plans/official-community-plan>.

10. The City lies in the heart of the Greater Vancouver Regional District (the District) and is recognized for its major park spaces, vibrant economy, diversity of neighborhoods

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<sup>1</sup> The Plan is currently undergoing an OCP review, a process which is expected to take about two years: <https://burnabybcacon.com/article/ocp-review-official-community-plan/>. The current Plan was approved in 1998. Since that time, there have been numerous changes in the City and the District.

and overall quality of life. The District is the third largest metropolitan area in Canada and the City is the third largest city in British Columbia. The latest Census data<sup>2</sup> shows that the City's population grew by 7% during the period 2016 to 2021.

11. Managing future growth to meet the needs of this ever-growing City is a challenge. The Plan seeks to lay out a path forward for managing that growth to meet its anticipated needs and creating a more complete and affordable place to live, work and invest.

12. The City has four town centres. The Metrotown area has been designated as its primary town centre. It has seen exponential growth, particularly since the introduction of Sky Train in 1986. The other three town centres (Brentwood, Lougheed and Edmonds) have grown into more mixed-use core areas with a focus on community. There are presently 11 urban villages, seven suburban multi-family areas, eight mixed-use areas and six parks and conservation areas.<sup>3</sup>

13. The City's current population is 249,123, up from 193,954 in 2001. The median household income is \$64,737 and the median age demographic is 40.3 years. From 2011 to 2016, the City's employment rates grew at a rate of 0.06 per year, which indicates positive economic conditions within the community.<sup>4</sup> Overall, the City has 107,046 private dwelling units and a population density per square kilometer of 2,750.7.<sup>5</sup>

14. One of the Plan's strategic directions is to develop a more complete community, the characteristics of which: (1) create a better balance between residents and jobs within a community (supporting more opportunities to work closer to home or live closer to work with more affordable housing closer to the job concentrations); (2) provide a greater mix of housing types to enable more diversity of age groups and household sizes; (3) provide adequate and well located community services and facilities; (4) improve transportation services to commercial, educational and other activity centres, including local transit, and

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<sup>2</sup> <https://www.burnabynow.com/local-news/burnaby-sees-surge-in-new-residents-in-latest-census-data-5044319>

<sup>3</sup> <https://burnabybeacon.com/article/ocp-review-official-community-plan/>

<sup>4</sup> <https://townfolio.co/bc/burnaby/demographics>

<sup>5</sup> <https://www.burnabynow.com/local-news/burnaby-sees-surge-in-new-residents-in-latest-census-data-5044319>

more opportunities to cycle or walk; and (5) introducing additional community service uses in established and developing residential areas.

11. Another strategic direction is the creation of an environmentally aware community and a sustainable environment through, for example, incorporating environmental considerations when assessing growth management options, land use plans, transportation plans and development proposals, and providing, maintaining, and protecting a comprehensive mix of park and open space opportunities sufficient to meet the community's changing needs. Other strategic directions include provision of economic opportunity and increased transportation choice.

12. Consistent with the Plan, a recent focus of the City has been on increasing the supply of affordable housing, especially by adding density. As of last fall, and for the first time in the City's history, non-market housing was outpacing the development of market rental housing. A total of 9,600 units of rental housing – both market and non-market – are in development or awaiting review by City Council.<sup>6</sup>

13. The City has driven the creation of non-market housing in three ways: (1) by introducing the Rental Use Zoning Policy (which requires a minimum of 20 percent of the total market units in new multi-family developments to have rental rates that are 20 percent below the CMHC market median rental rates to increase affordability); (2) utilizing City-owned lands to develop non-market rental housing; and (3) facilitating the development of non-profit-led housing projects. Its Rental Use Zoning Policy also encourages the development of market rental units, which increases the availability of rental housing. Since the adoption of this Policy, 12 market rental units have been approved and 1,242 units are under review.<sup>7</sup>

14. As new units are created and old purpose-built buildings are renovated, the Rental Use Zoning Policy requires developers to provide replacement units for displaced tenants.<sup>8</sup>

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<sup>6</sup> <https://www.burnabynow.com/local-news/burnaby-sees-surge-in-new-residents-in-latest-census-data-5044319>

<sup>7</sup> <https://www.burnabynow.com/local-news/burnaby-sees-surge-in-new-residents-in-latest-census-data-5044319>

<sup>8</sup> <https://www.burnabynow.com/local-news/burnaby-sees-surge-in-new-residents-in-latest-census-data-5044319>

**The City's Affidavit evidence adduced in support of withholding the information in dispute under section 17 of FIPPA.**

15. In support of its submissions in the inquiry, the City relied on the Affidavits of: (1) David Critchley, the City's General Manager Community Safety; (2) Ed Kozak, the City's General Manager, Planning and Development; and (3) Johannes Schumann, City Approving Officer and Director of Development and Urban Design. The Applicant did not adduce any Affidavit evidence. The following summarizes the evidence of the Affiants that was before the Adjudicator supporting the City's application of section 17 of FIPPA to withhold the information now in dispute.

16. The City differs from many other provincial municipalities because, relative to its size, it owns more properties (a total of 2,735). As well, unlike many other provincial municipalities, the City has an exceptionally active land assembly and development program. The City continuously and proactively engages in land acquisition negotiations with homeowners, developers, and others within the municipality.

17. The City's Planning and Development Department is responsible for identifying the locations of properties that are part of the City's parkland acquisition or land assembly and development plans based on the Official Community Plan and development strategy.

18. The City's Lands and Facilities Department is responsible for the provision of property-related services to the City, including planning, acquiring, selling, leasing, building, maintaining, and managing the City's lands, properties, facilities, and civic projects.

19. The Realty and Lands Division provides real estate services to the City and is responsible for negotiating the purchase or sale of these properties based on market comparisons and appropriate Council approval. The Division is actively engaged in land assembly projects as part of the City's planning process in consultation with the Planning and Development Department.

20. The City's four town centres have been targeted for higher density development within its borders. The City has identified certain properties in reasonable proximity to these areas for assembly and acquisition. The goal is either to create higher density housing or to expand existing parkland. Such parkland expansion may be required in areas closer to higher density developments requiring additional greenspace or because the land is located in ecologically sensitive riparian areas.

21. Given its accountability to its taxpayers, the City is committed to paying fair market value for any properties it acquires, absent some compelling justification for doing otherwise.

22. The City does not want to disclose to the Applicant the identities of some of the properties it has purchased for land assembly and development because such disclosure would reasonably result in financial or other harm to the City. All of the withheld property descriptions are ones associated with active land assembly sites; i.e., sites where there are other properties associated with and identified for the assembly that have not yet been purchased by the City. If the withheld information is disclosed, it can be discerned from the groupings of these properties that properties adjacent or in close proximity to them are likely targeted or identified for land acquisition by the City.

23. For example, there are large assembly projects where the City's goal is to rezone to higher density and redevelop in support of the Official Community Plan once all identified properties associated with the project have been purchased. Disclosure of the identity of properties already purchased by the City could reasonably be expected to impact (and has in the past negatively impacted) the City's ability to assemble all of the lots necessary to complete the site or to purchase those lots for fair market value. If the City is unable to achieve the higher density rezoning for a land assembly area as a result, there is a direct and negative impact on the City's tax base and the Official Community Plan.

24. Another example is where the City has identified a number of lots to be acquired to be assembled to become a dedicated park site but not all lots have yet been purchased



by the City. Disclosure of some of the lots associated with the as yet incomplete assembly package could hamper the City's ability to assemble all of the lots necessary to complete the site or to purchase those lots for fair market value.

25. The City identified several types of harm that would reasonably result from the disclosure of the properties that the City has acquired for land assembly purposes where other adjacent or neighboring properties are ones the City would still like to purchase as part of a planned assembly for higher density housing or for the creation of needed greenspace.

26. There is financial harm to the City (and its taxpayers) when the City is required to pay more than fair market value for properties identified for acquisition when justified, for example, because it is the last property within a targeted area and the property owner is aware of the City's intentions.

27. There is social harm where property owners actively impede the City's ability to complete land assembly projects to create higher density housing because the City cannot provide needed additional non-market rentals (required as a component of most development applications under the City's new rental use zoning bylaws). This Bylaw requires developers to provide more rental units, including non-market rental units, in their developments which provide rental options for low and moderate income households. Property owners that block City land purchases leads to less low-rental housing in the City.

28. There is economic harm to the workforce because workers are not able to afford to live in the City without adequate or low-rental housing.

29. There is economic harm caused by lowering the City's tax base from what it would otherwise be by property owners frustrating higher density development by refusing to sell their property or by demanding prices far in excess of fair market value. In addition to the adverse impact on the City's tax base, impeding such development prevents the City from realizing Density Bonus funds that would have been contributed had the higher density development proceeded. Under the City's Community Benefit Bonus Policy,

developers can apply for a higher level of density for their development site through the development approval process by paying a Density Bonus Contribution. Density Bonus funds (80%) are used to acquire community amenities such as recreational facilities, fire halls, community centres and other public amenities. In addition, 20% of Density Bonus Funds are allocated for affordable housing projects in the City. The lack of Density Bonus funds that result when land assembly is stalled or delayed, results in turn to fewer available community amenities and affordable housing.

30. There is an adverse harm that arises when the community is not able to realize high paying construction jobs when high density housing projects are delayed by years or even decades due to the City's inability to assemble targeted development sites. Construction work results in a positive impact on the local economy and businesses within the City.

31. The frustration of land assembly projects also adversely affects Burnaby's ability to expand parkland for social and/or environmental reasons. This in turn negatively impacts the City's ability to achieve its climate change targets because the City is not able to concentrate growth in areas in close proximity to transit or alternative active transportation modes. Such growth is a key component of the City's Official Community Plan and land development strategy. The inability to complete land assembly projects, or complete but only at inflated prices (when its intentions became known to property owners in targeted areas), impedes the City's ability to ensure proper municipal development in an economically and environmentally sustainable manner in the public interest.

32. The City's concerns are not speculative. It has suffered economic and other harm in the past when property owners became aware that their properties had been identified for land assembly acquisition by the City. These property owners refused to sell their property, redeveloped their property, or demanded excessive prices for their sale. When this happens, the City is unable to proceed with land assembly acquisitions in the area for years, and in some instances decades, unless there is some accountably justified reason for paying over market value.

34. In the past, the City has been unable to complete land assembly projects because its efforts have been frustrated by homeowners who refuse to sell, even for higher than market value.

35. In 2020, a property in the vicinity of those properties listed in the withheld information as numbers 2563 and 2564 is one of the last remaining homes located within an area designated by the City for future parkland. When the property owners learned it was targeted for City acquisition, they demanded a price that was significantly over the fair market value of their home.

36. Those same property owners approached the City again in January 2022. The City said that it was still interested in purchasing the property, but the value had to be based on a comparable transaction in the neighborhood (market comparable). The City has been unable to complete the park site assembly and dedication because of the property owners' demands for a price that is considerably over fair market value. This significantly impacts the City's ability to provide public open spaces and recreational sites in the City's growing community or, if there are compelling reasons to purchase at a price well above fair market value, this results in financial harm to the City and to the taxpayer.

37. In 2018, the City targeted properties as part of a three lot assembly intended for low-density housing in the Rayside Community Plan. The City owns two of these properties (identified in the withheld information at lines 2433 and 2434). When the remaining property owner learned of the City's plans to purchase his property, he demanded more than \$1M over the property's market value of \$3M, indefinitely frustrating the City's planned assembly and the City's planned affordable housing project.

38. The City currently holds nine parcels of land within a targeted area, two of which were purchased within the last two years. Those properties are identified in the withheld information and listed at lines 2483 to 2491. There are three remaining privately owned properties within the block that would, once assembled, make it the best site suitable for a multi-family residential development. One of those property owners has refused to consider any City offers at the current fair market value and is demanding a significant

premium for the property's sale. Later in 2020, there was a private sale of this property, but the City has been unable to verify that it was an arms-length transaction. The property owner's actions have prevented the consolidation and redevelopment of this site to provide much needed affordable housing and market rental housing.

39. In another transaction, the targeted property had a fair market value of between \$1,120,000 and \$1,250,000. When the property owner became aware that the City wanted to buy his property, he sought \$1.9M for its sale. After months of negotiation, the property owner offered to sell the property for \$1.6M. With Council approval, the City agreed to pay the \$350,000 over fair market value given the unique set of circumstances and the social benefits associated with that acquisition. That property is identified in the withheld information and is listed as property 2643 and is one of a number of properties (listed as properties 2643 to 2648) on that street that have been purchased by the City. The City designated these properties to be a non-market housing site so failing to acquire this property would have left the parcel orphaned and significantly reduced the size of the site designated for affordable housing.

40. There are approximately 22 other recent examples of properties that have been targeted for acquisition by the City where, when the property owners learned of the City's acquisition objectives, they sought compensation that is considerably higher (over \$300,000 to over \$1M) than fair market value. In the result, the City ceased negotiations with the property owners given its commitment to fair market value.

41. With respect to the Applicant's access request in this inquiry, the redacted information all relates to properties that have been assembled by the City for parkland expansion or development where some of the targeted adjacent properties have not yet been purchased. The withheld information consists of the property street address as well as the Parcel ID. The Parcel ID has been withheld because a search can be made on the BC Assessment Authority website using the Parcel ID to obtain a street address associated with that Parcel.

## The Adjudicator's Order

42. The Adjudicator's analysis is brief. Of the City's evidence she finds:

[31] The City's evidence shows that when a property owner learns that the City wants to buy their property, that knowledge can reasonably be expected to cause them to sell unless they get more than fair market value. *I can see how some property owners may simply not want to sell their property to the City regardless of the price. However, the City has not established a direct link between that type of response by property owners and disclosure of the municipal addresses and PIDs at issue in this inquiry.*

[32] Disclosing the municipal addresses and PIDs would allow a property owner advance notice of the City's interest in their property. *In my view, it is reasonable to conclude that a property owner may seek prices above market value or refuse to sell regardless of when the property owner learns of the City's interest in their property.* The City has not satisfactorily explained how the timing of when the property owner learns of the City interest would alter the property owner's refusal to sell or desire to seek more than fair market value when the negotiation begins. In fact, the City's evidence demonstrates that even without the kind of advance knowledge that the information in dispute conveys, *property owners often demand more than fair market value once they learn of the City's interest in their property.* I do not see, and the City does not explain, how advance notice of the City's interest would alter the negotiations between the City and the property owner. In my view, *the risk of property owners seeking prices above fair market value or refusing to sell is inevitable* and would not result from disclosure in response to the applicant's FIPPA access request.

42. The Adjudicator's decision rests on her speculation about how some property owners may react regardless of knowledge about and purpose for the City's interests. It is not based on the evidence that was actually before her, which she accepted established that such knowledge can reasonably be expected to cause property owners to sell only if they get more than fair market value. In other words, to establish harm, the City would need to disprove her speculative observations about what might be in a property owner's mind before and after the City's interests become known, which is something incapable of disproving. Put somewhat differently, the approach taken by the Adjudicator would require the City to disprove the idea that all property owners who are approached by the City either want more than market value or just don't want to sell to the City.

43. The City seeks to have the Order overturned on the basis that it is unreasonable.

### **Part 3: Legal Basis**

#### **Standard of Review**

10. The presumptive standard of review of the Adjudicator's decision is reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paragraphs 58-62, 99-104 ("Vavilov"). Vavilov holds that review for reasonableness is concerned with the justification, transparency and intelligibility of a decision, and whether it is justified in relation to relevant factual and legal constraints. While reasonableness review is not a "line by line treasure hunt for error", the reviewing court must be satisfied that there is a line of analysis in the reasons that could reasonably lead the tribunal from the evidence before it to the reasons arrived at. Any alleged flaws must be sufficiently central or significant to the reasoning process to render the decision unreasonable. Reasons should be read holistically and with due sensitivity to the administrative regime within which they were given: *Vancouver Whitecaps FC LP. British Columbia (Information and Privacy Commissioner)*, 2020 BCSC 2035 at paragraph 33.

11. As well, a decision must be consistent with the overall scope and purposes of the statutory scheme, and any specific constraints imposed within the statute. Past precedents may act as a constraint on what a decision maker can reasonably decide. The decision must be based on the evidence that was before the tribunal and must meaningfully account for the central issues and concerns raised by the parties: *Vancouver Whitecaps*, paragraph 34.

#### **The Adjudicator's decision is unreasonable**

12. The only issue before the Adjudicator was whether the City properly withheld the identities of certain City properties under section 17(1) of FIPPA. Section 17(1) provides:

**17** (1) The head of a public body may refuse to disclose to an applicant information the disclosure of which could reasonably be expected to harm the financial or economic interests of a public body or the government of British

Columbia or the ability of that government to manage the economy, including the following information:

- (a) trade secrets of a public body or the government of British Columbia;
- (b) financial, commercial, scientific or technical information that belongs to a public body or to the government of British Columbia and that has, or is reasonably likely to have, monetary value;
- (c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;
- (d) information the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in undue financial loss or gain to a third party;
- (e) information about negotiations carried on by or for a public body or the government of British Columbia;
- (f) information the disclosure of which could reasonably be expected to harm the negotiating position of a public body or the government of British Columbia.

13. Section 17(1)(e) specifically lists information the disclosure of which could reasonably be expected to harm the negotiating position of a public body like the City. Categories (a) to (f) are illustrations or examples of the types of economic or financial harm covered by section 17(1): see, for example, Order F16-06, *Capital Regional District (Re)*, 2016 BCIPC 6 at paragraph 17. The “reasonable expectation of harm” standard is well-established. It was described by the Supreme Court of Canada as a “middle ground between that which is probable and that which is merely possible”: *Merrk Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3 at paragraphs 201, 94 (i.e., something less than probable but more than merely possible); Order F22-01; *Langford (City) (Re)*, 2022 BCIPC 1 at paragraph 12 (“there is no need to show on a balance of probabilities that harm will occur if the information is disclosed, but the public body must show that the risk of harm is well beyond the merely possible or speculative”); Order F22-46, *British Columbia (Office of the Premier) (Re)*, 2022 BCIPC 52 at paragraph 23; Order MO-4262; *Ottawa (City) Police Service (Re)*, 2022 OIPC 231 at para. 37.

14. Past FIPPA Orders have held that a public body needs to provide, on the basis of “detailed and convincing” evidence, a “confident, objective basis for concluding disclosure

could be reasonably be expected to" result in financial harm. There must be a clear and direct connection between the harm and disclosure and general speculative or subjective evidence will not suffice: Order 02-50; *Vancouver (City) (Re)*, Order F15-37, 2015 BCIPC 40 at paragraph 45.

15. The evidence adduced by the City provided recent concrete examples of where actual financial harm was directly associated with disclosure of properties targeted by the City for planned acquisition and development. Given this evidence, disclosure of the withheld information would undoubtedly compromise the ability of the City's Realty and Lands Division to negotiate market comparable purchase prices and prevent realization of Density Bonus funds associated with high density development. While the onus is not on the City to establish that, on a balance of probabilities, harm will occur, the City's evidence demonstrates that actual harm is inevitable and would be a direct consequence of disclosure of the withheld information. The evidence goes well beyond or considerably above a mere possibility or even probability of financial or economic harm.

16. The City also provided examples of where important City development or parkland acquisitions were thwarted by property owners refusing to sell when they learned of the City's intentions. The harm is the frustration of planned higher density development which in turn, adversely affects the City's tax base and prevents the City from realizing Density Bonus funds that would have been contributed had the higher density development proceeded.

17. If the withheld information is disclosed, then property owners adjacent to those assembled areas would be able to discern that their properties have likely been identified by the City for land assembly. Given the City's past experiences where such information is disclosed, there is a reasonable expectation that the City will suffer economic financial and other harm, as well as harm to its ability to negotiate the purchase of these properties at fair market value, should the withheld information be disclosed. The evidence is clear that the identification of properties targeted by the City for acquisition as part of a planned land assembly has in the past resulted in the property owners either refusing to sell or seeking purchase prices that are well beyond fair market value and the City having to pay



those prices because of the property's importance to planned high-density development or expansion of greenspace.

18. As noted, the Adjudicator's decision rests on her speculation about how some property owners may react regardless of knowledge about the City's interests. It is not based on the evidence that was actually before her, which she accepted established that such knowledge can reasonably be expected to cause property owners to sell only if they get more than fair market value. In other words, the evidentiary threshold established by the Adjudicator based on her speculation would require the City to prove that, but for that knowledge, the property owner would not seek more than market value. What might be in a property owner's mind before and after the City's interests become known is something incapable of proving or disproving. Put somewhat differently, the approach taken by the Adjudicator would require the City to disprove the idea that all property owners who are approached by the City either want more than market value or just don't want to sell to the City. The Adjudicator's conclusion is unreasonable and is not aligned with the requirements of section 17 or the City's actual experiences in the past.

19. For these reasons, the City respectfully submits that the Adjudicator's decision should be quashed as unreasonable.

**PART 4: Material to be relied on**

1. *Judicial Review Procedure Act*, RSBC 1996, c. 241;
2. *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c. 165;
3. The inherent jurisdiction of this Court; and,
4. Affidavit No. 1 of Kaitlyn Chewka.

The petitioner estimates that the application will take **1 day**. This application is not within the jurisdiction of a Master.

Date: October 31, 2022



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Deborah K. Lovett, KC  
Counsel for the Petitioner  
City of Burnaby

**To be completed by the court only:**

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

.....  
Signature of  Judge  Master

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