



## CASE COMMENT

### ***Dragonwood Enterprises Ltd. v. Burnaby (City) 2009 BCSC 1236***

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On September 10, 2009 the BC Supreme Court made an order in the nature of mandamus requiring the City of Burnaby (the “City”) to consider certain business license applications on their merits without requiring the applicants to obtain preliminary plan approval.

The petitioners in the case were the landlords of various tenants whose business licence applications had not been accepted by the City. The City had taken the position that the applications should not be considered until the tenants had obtained a Preliminary Plan Approval (‘PPA’) from the City’s Planning Department, accompanied by a site plan for the entire property upon which all the tenants were collectively located.

In considering the petitioners’ standing, the court applied a liberal approach and held that as landlords, the petitioners had specific proprietary and pecuniary interest in the ability of their tenants to obtain business licenses. Accordingly, the petitioners had a sufficient interest for the purposes of standing and were entitled to challenge the City’s position.

The court went on to review, on a standard of correctness, the City’s decision to require PPA. Relying on the Supreme Court of Canada decision in *Prince George (City) v. Payne*,<sup>1</sup> the court stated that the City could only impose an obstacle upon businesses and upon the use of land by doing so in plain language or by necessary implication. The court found that under the zoning bylaw the City was relying on, a PPA was only expressly required before the issuance of a building permit. In the circumstances of the case, the tenants were not seeking the issuance of building permits, and hence they did not need PPA.

Further, the court stated that while zoning of the premises is certainly a relevant factor for consideration in granting or refusing a business license, the authority to grant business licenses should not, however, be used as a tool to effect zoning. By requiring tenants to address apparently longstanding inadequacies in the planning and zoning of the property, the City was using its power to regulate business to achieve a purpose for which that power was not intended. The court held that it was unreasonable of the City to require a few tenants to prepare and submit preliminary plans for the property as a whole (which included several other tenancies) before their applications for business licenses would be considered.

The discretionary power to issue or refuse a business license must be exercised judicially and within the limits imposed by the legislation. This decision serves as a reminder that local governments should ensure that their exercise of regulatory powers is carried out reasonably and in accordance with the intended purposes of the regulation.

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<sup>1</sup> [1978] 1 S.C.R. 458