

WEST KELOWNA (CITY) V. THE OWNERS, STRATA PLAN EPS2459 2022 BCSC 1020

Reasons in [*West Kelowna \(City\) v. The Owners, Strata Plan EPS2459 2022 BCSC 1020*](#) were published by the British Columbia Supreme Court today in which the City of West Kelowna was successful in obtaining an interlocutory injunction against a strata corporation that had erected gates with no trespass signage on a public walkway next to Lake Okanagan. The walkway ran across the strata property pursuant to an agreement that the property developer had entered with the City for the approval of a re-zoning application that permitted the development of this property into a townhome complex. The walkway was conceived as part of the City's waterfront plan, adopted in 2011, which envisioned the construction and dedication of a public walkway along the entire beach fronting Lake Okanagan. As part of this plan, the City had come to an agreement with the property developer in which they were required to execute a walkway covenant in favour of the City and construct the walkway. Initially, the walkway had minimal public foot traffic due to the walkway not being connected to other paths and trails. Following the re-development of lots neighboring the strata property, the City secured and constructed additional walkways along Lake Okanagan that resulted in a notable increase in foot traffic. Sometime thereafter the Strata erected a gate to prevent public access to the walkway and the City approached the Strata to have a statutory

right of way for the walkway registered on title to the property, which the Strata refused to execute.

In obtaining the injunction, the court dismissed arguments advanced by the Strata in which it was raised that the walkway covenant was not enforceable because it was negotiated between the City and the developer before the Strata was incorporated in 2015 and further argued that it was expired because the City had not sought registration of the statutory right of way until 2020. As noted by Justice Weatherill, the Strata would have had knowledge of the walkway covenant since its incorporation and the continued denial of public access to the walkway property following its development. could negatively interfere with the City's waterfront plan.

This case serves as a reminder that public amenities granted in the course of negotiations for the re-zoning and development of property must be honoured not only by the developer but also by strata corporations and other parties that assume an interest in the property following its development.

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David is an associate lawyer of the firm. His practice is focused on municipal, land development and construction matters. Prior to working at Civic Legal LLP, David worked as a litigator and represented insurance corporations, local governments, construction managers and local and national companies in a variety of legal actions and disputes. David has developed a unique perspective on risk management, negotiation, and strategy from his litigation experience, which he draws on to advise his clients on a variety of legal and regulatory issues. In his solicitors practice David routinely advises clients on local government issues, procurement processes and land use planning and development regulatory matters. He has further drafted construction contracts and municipal service agreements on varied construction projects and contractual matters.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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