IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Este v. District of West Vancouver,* 2022 BCSC 584

Date: 20220413
Docket: S218022
Registry: Vancouver

Between:

Rosa Donna Este

Petitioner

And

District of West Vancouver and Kevin Spooner in his capacity as Director of Building Approvals

Respondents

- and -

Docket: E131501
Registry: Vancouver

Between:

Mehran Taherkhani

Claimant

And

Rosa Donna Este also known as Rosa Donna Taherkhani also known as Donna Este, Mina Esteghamat-Ardakani also known as Mina Estegahmat-Ardakani, Francis Amir Este, 08311295 BC Ltd., Vitality Holdings Corp., and John/Jane Doe as Trustee of the Mina Esteghamat-Ardakani Alter Ego Trust No.1

Respondents

Before: The Honourable Madam Justice Burke

On judicial review from: An order of the District of West Vancouver, dated March 29, 2021 and September 6, 2021.

Reasons for Judgment

The Petitioner, appearing on her own behalf:	R. Este
Counsel for Respondents District of West Vancouver and Kevin Spooner in his capacity as Director of Building Approvals:	E. Anderson
Counsel for Respondent Mina Estegahmat-Ardakani:	K. Thompson
Counsel for Mehran Taherkhani:	J. Shewfelt
Place and Date of Hearing:	Vancouver, B.C. January 20-21, 2022 February 9, 2022 March 25, 2022
Place and Date of Judgment:	Vancouver, B.C. April 13, 2022

I. INTRODUCTION

[1] The petitioner, Rosa Donna Este, seeks judicial review of two decisions by the District of West Vancouver (the "District") in respect of a property located at 2668 Bellevue Avenue (the "Property"):

1. The District's decisions in March, June, and September 2021 refusing to grant a building permit for the Property (collectively, the "Permit Decision"); and

2. The District Council's March 29, 2021 resolution (the "Demolition Decision") affirming its December 14, 2020 decision that the derelict structure on the Property must be demolished (the "Initial Decision").

II. BACKGROUND

[2] The Property has been the subject of much litigation, making the history of this matter long and complex. In *Este v. Esteghamat-Ardakani*, 2020 BCCA 202 [*Este CA*], the Court summarized the background of the Property as follows:

> [3] In 2003, Mina and Donna purchased the property. Donna resided in the residence on the property until 2015, when a fire caused such extensive damage to the residence that it must be demolished.
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> [4] An insurance policy taken out by Donna covered the residence and its contents. The policy is said to allow for two possible options of insurance benefits: either "extended replacement cost and rebuilding-to-code" coverage, which the judge said had a value of $5.6 million, or "verified replacement-cost" coverage, said to have a value of $1.6 million.
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> [5] The insurance company has extended the time limit for Donna to elect the extended replacement cost and building option, and the appeal proceeded on the basis that such was still available. There is no evidence, however, that the insurance company has irrevocably committed to a payout on the basis of extended replacement cost.
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> [6] The property has been the subject of litigation in family law proceedings between Donna and her former husband, in addition to these proceedings. In that family litigation, Donna's former husband claimed an interest in the property. In filed documents Donna swore that Mina was the sole beneficial owner of the property, and she gave evidence to that effect. The family claim was resolved by a consent order made in May 2014 in which the former husband's claim of an interest in the property was effectively dismissed.
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> [7] This action was commenced by Donna in February 2015. In it she claims interests in several properties and funds, including that she is the sole

> beneficial owner of the property in dispute before us. Donna alleges that Mina suggested to her that both she and Mina be registered as owners of the property in joint tenancy, that Mina wrongly severed the joint tenancy with the result the title records ownership as tenants in common, and that Mina's entire registered interest in the property is held for her benefit. That is, Donna alleges in the amended notice of civil claim that she is the sole beneficial owner of the property.
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> [8] Mina filed a response to the notice of civil claim as well as a counterclaim. In it Mina alleges that she and Donna each hold a 50% interest in the property. In relation to the property, Mina seeks partition and sale pursuant to the *Partition of Property Act*, R.S.B.C. 1996, c. 347, damages, and an accounting.
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> [9] At the trial in May 2017, Mina applied for dismissal of the action on the basis of abuse of process. In particular, Mina contended that Donna's position concerning the property in this action was inconsistent with the ownership interests she had advanced in the family proceedings, and an abuse of the judicial process. The judge agreed and dismissed Donna's claim against Mina in its entirety. The counterclaim remains outstanding.
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> [10] Donna appealed from the order dismissing her action. By reasons for judgment indexed as 2018 BCCA 290, leave to appeal ref'd [2018] S.C.C.A. No. 477, this court dismissed the appeal, upholding the judge's conclusions that Donna had engaged in deceitful conduct that amounted to abuse of process warranting dismissal of her claim.
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> [11] After Donna's claim was dismissed, the consent order in the family claim was set aside and the family claim was reopened. Donna's former husband again asserts an interest in the property, by way of a contended interest in "family property" under the *Family Law Act*, S.B.C. 2011, c. 25.
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> [12] In the context of the dispute before us, Donna and Mina do not agree that the residence should be rebuilt. Donna wishes to rebuild it using insurance proceeds and has requested Mina to sign an authorization to secure demolition and building permits; Mina has refused, preferring that her application for partition and sale proceed without rebuilding the residence.

[3] While complex factually, the issue at the centre of this proceeding distills to the question: were the District's decisions reasonable? The petitioner also argues that the Demolition Decision was procedurally unfair.

[4] The petitioner says the Permit Decision was unreasonable and the Demolition Decision was unreasonable and procedurally unfair. Ms. Este submits the Permit Decision was unreasonable because: (i) the District misinterpreted the relevant bylaws as requiring that building permit applications include signatures from both co-owners; (ii) the District had previously issued a building permit for the Property

without both co-owners' signatures; and (iii) the District was unlawfully impeding her use of the Property.

[5] Ms. Este submits the Demolition Decision was unreasonable because it relied on the District's unreasonable interpretation of the relevant bylaw and that demolishing the structure on the Property without issuing a building permit would create a health and safety hazard, thus undermining the purpose of the Decision itself. Finally, the petitioner says the Demolition Decision was procedurally unfair because the District refused to adjourn the Council meeting until such a time that her legal counsel could attend and the Council failed to consider the evidence she adduced as part of her written submissions.

[6] Counsel for the District submits the Permit Decision and Demolition Decision were reasonable and procedurally fair. With respect to the Permit Decision, the District argues that it reasonably interpreted the relevant bylaws as prohibiting the issuance of building permits where it was known to the District that one of the joint owners of the Property did not consent. The District also says the Demolition Decision was reasonable, as the evidence and submissions provided to Council demonstrated the structure on the Property presented a risk to health and safety. The District says the purpose of the impugned bylaws is to promote these objectives.

[7] The District also submits the Demolition Decision was procedurally fair. The District says the petitioner made repeated requests to delay the reconsideration hearing—two of which were granted. However, after the second adjournment, the District denied further requests. The District says it offered the petitioner the opportunity to appear at the reconsideration hearing remotely, but would not delay the hearing indefinitely so that her legal counsel could attend. The District submits these steps satisfied the duty to provide the petitioner with a fair process.

[8] Mina Esteghamat-Ardakani ("Mina" as referred to in *Este CA*), the petitioner's mother, argues the petition is an abuse of process. She submits that the petitioner has taken inconsistent positions with respect to her interest in the Property in various

proceedings. Moreover, she says that the present petition is a collateral attack on the Court of Appeal's decision in *Este CA*, insofar as the petitioner is attempting to obtain a building permit for the Property over the objections of her tenant in common, which was the issue in question in that case.

[9] For the reasons discussed below, I find that the District's Decisions were reasonable and procedurally fair. Accordingly, the petition should be dismissed.

III. ISSUES

[10] The issues on this petition are as follows:

1. Was the Permit Decision reasonable?
2. Was the Demolition Decision reasonable?
3. Was the Demolition Decision procedurally fair?
4. Is the petition an abuse of process?

IV. STANDARD OF REVIEW

[11] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], the Court established reasonableness as the presumptive standard of review for administrative decisions. The Court held that this presumption may be rebutted where "the rule of law requires that the standard of correctness be applied": *Vavilov* at para. 17.

[12] Without pleading which exception she relies upon; the petitioner argues that the District's decisions should be reviewed for correctness. Instead, the petitioner refers to *Windset v. Delta*, 2002 BCCA 70 at para. 21 [*Windset*], where the Court held that the municipality made a jurisdictional error when it interpreted the scope of its statutory powers, and this decision should be reviewed on a correctness standard. I do not find that this case is applicable or persuasive. *Windset* was decided before both *Dunsmuir v. New Brunswick*, 2008 SCC 9, and *Vavilov*, and does not accurately reflect the state of the law any longer. As the Court noted in

Vavilov, the reasonableness standard applies where the question relates to the tribunal's interpretation of the scope of their own statutory authority: para. 109.

[13] In any event, I find that the petitioner has not rebutted the presumptive standard of reasonableness. None of the exceptions listed in *Vavilov* apply. In particular, I find that resolution of this matter does not require consideration of a "general question of law of central importance of the legal system as a whole", insofar as the District's decision relates to the interpretation of the doctrine of tenancy in common: *Vavilov* at para. 17. Indeed, the District's decisions do not directly relate to or effect the development or interpretation of this common law principle.

[14] Accordingly, the standard of review is reasonableness. Since *Vavilov*, the courts have consistently applied the reasonableness standard with respect to judicial reviews of building permit decisions: see *e.g.*, *English v. Richmond (City)*, 2021 BCCA 442 [*English*]; *Yu v. Richmond (City)*, 2021 BCCA 226.

[15] In *English*, the Court considered the application of the reasonableness standard in the issuing of building permits:

> [56] Having regard to the Supreme Court of Canada's judgment in *Vavilov*, the parties agree the reasonableness standard applies to the review of Mr. Cooper's decision. That is the standard this Court recently applied in *Yu*, a case involving judicial review of a decision by Richmond that building permits had expired under its bylaws (at para. 47).
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> [57] … In this Court's recent decision in *Yu*, Justice MacKenzie described that framework as follows:
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> > [53] While administrative decision makers may have considerable discretion in making a particular decision, the decision must ultimately comply with the language, rationale, and purview of the statutory scheme under which it is made: *Vavilov* at paras. 108, 110. For questions of statutory interpretation, the "modern principle"—that the words of a statute must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act and the intention of the legislative body—applies. In some circumstances, this may lead to a conclusion that there is only one reasonable interpretation of the provision: *Vavilov* at para. 124. However, courts should not undertake a *de novo* analysis or measure the decision maker's interpretation against the one the court would have reached: *Vavilov* at paras. 116–118, 120–121,

> 124; [*1120732 B.C. Ltd. v. Whistler (Resort Municipality)*, 2020 BCCA 101] at para. 39. *Where an administrative decision maker has not provided explicit reasons for interpreting a provision in a particular way, the reviewing court should attempt to discern the interpretation adopted from the record and determine whether it is reasonable: Vavilov at para. 123.*
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> [54] In all cases, regardless of whether or not reasons are available, the challenging party has the onus of demonstrating the decision is unreasonable: *Vavilov* at para. 100.
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> [55] To summarize the applicable *Vavilov* principles:
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> - Reasonableness review is concerned with both the process of arriving at the decision and the outcome.
> - The burden is on the party seeking judicial review of the decision to demonstrate that it is unreasonable.
> - In circumstances where procedural fairness does not require reasons be provided, the reviewing court should review the record to attempt to discern the rationale for the decision. If it is possible to determine the rationale, the reviewing court should consider, among other potentially relevant factors, whether the reasoning is internally rational and whether it is justifiable in light of the relevant factual and legal constraints.
> - If reasons are not required and it is not possible to determine the rationale for the decision from the record, the reviewing court should consider whether the outcome of the decision is defensible in light of the facts and the law.
> - *For questions of statutory interpretation, reviewing courts should consider whether the decision maker's interpretation is reasonable in light of the words of the provision in their context, the scheme and object of the enactment, and the intention of the legislative body.* Reviewing courts should refrain from conducting a *de novo* interpretation and measuring the decision maker's interpretation against it, even when the decision maker has not provided reasons for its interpretation. Instead, the focus should be on whether the decision maker's interpretation has been shown to be unreasonable.
>
> [Emphasis added.]

[…]

[59] *Vavilov* tells us that in judicial review cases, "what is reasonable in a given situation will always depend on the *constraints imposed by the legal and factual context of the particular decision under review"* (at paras. 90, 105,

emphasis added). Contextual constraints will "dictate the limits and contours of the space in which the decision maker may act and the types of solutions it may adopt" (at para. 90). See also, *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at para. 60.

[60] A decision's legal and factual context includes:

> … the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. …
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> [Emphasis added.]
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> *Vavilov* at para. 106. See also, *Yu* at paras. 51–52.

[61] Because administrative decision makers "receive their powers by statute, the governing statutory scheme is likely to be the most salient aspect of the legal context relevant to a particular decision": *Vavilov* at para. 108 (emphasis added). Decision makers are not "permitted to disregard or rewrite the law as enacted by Parliament and the provincial legislatures" (at para. 108). While they "may have considerable discretion in making a particular decision, that decision must ultimately comply 'with the rationale and purview of the statutory scheme under which it is adopted'" (at para. 108, citing *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 at paras. 15, 25–28, [2012] 1 S.C.R. 5).

[62] Consequently, an exercise of discretion "must accord with the purposes for which it was given" and "comport with any … specific constraints imposed by the governing legislative scheme, such as the statutory definitions, principles or formulas that prescribe the exercise of a discretion": *Vavilov* at para. 108. Administrative decision makers must not "interpret the scope of [their] own authority beyond what the legislature intended" (at para. 109). They cannot "arrogate powers to themselves that they were never intended to have" (at para. 109). Nor are they entitled to issue a decision that "strays beyond the limits set by the statutory language [they are] interpreting" (at para. 110).

[63] Given these limitations, administrative decision makers that are "constrained by specifically worded statutory provisions … may find their decisions set aside if they ignore [those] constraints": *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para. 33, leave to appeal granted, [2020] S.C.C.A. No. 392. Paying "mere lip service to text, context and purpose rather than conducting a genuine analysis" may lead to a quashing of the decision (at para. 42). "The same fate will befall an analysis that is expedient, result-oriented or skewed to advance a policy extraneous to the legislation" (at para. 42).

[16] In the present case, the District did not provide formal reasons for the Permit Decision. However, the Demolition Decision is accompanied by a resolution which outlines the underlying rationale. Counsel for the District notes the Supreme Court of Canada's guidance on applying the reasonableness standard in the absence of reasons from an administrative decision-maker in *Vavilov*:

> [137] … [A]pplying an approach to judicial review that prior to rises the decision makers justification for decisions can be challenging in cases in which formal reasons have not been provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote… [E]ven in such circumstances, the reasoning process that underlines this decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision. …

[17] With respect to issues of procedural fairness, the standard of review is correctness. When it is alleged a decision-maker's process was procedurally unfair, the question for the court is "whether the rules of procedural fairness or natural justice have been adhered to": *Beedie (Keefer Street) Holdings Ltd. v. Vancouver (City)*, 2021 BCCA 160 at para. 3. Accordingly, the court should not take a deferential posture, as the question is necessarily a "yes" or "no" proposition.

V. PRINCIPLES OF STATUTORY INTERPRETATION

[18] In *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271, Chief Justice Bauman set out the principles of statutory interpretation as they apply to municipal bylaws:

> [12] Counsel, of course, cited the Supreme Court of Canada's decision in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, and then noted Tysoe J.A.'s reformulation of the direction in the context of a municipal law case in *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at para. 13:
>
> > ... the words of an [enactment] are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the [enactment], the object of the [enactment], and the intention of [the legislative body that passed the enactment].
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> [13] Again, in the context of municipal empowering legislation and bylaws enacted pursuant thereto, this Court said in *Neilson v. Langley (Township)* (1982), 134 D.L.R. (3d) 550 (at 554 per Hinkson J.A.):

> In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

[14] In *United Taxi Drivers'Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, Mr. Justice Bastarache stated for the Court (at paras. 6 and 8):

> 6 The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. ... The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced...
>
> ...
>
> 8 A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally. ...

[15] These common law rules must be married with the expressions of intent by the Legislative Assembly.

[16] Generally, in s. 8 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 we are told that:

> 8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[17] Specifically, under s. 4(1) of the *Community Charter*, S.B.C. 2003, c. 26, we are directed so:

> 4(1) The powers conferred on municipalities and their councils under this Act or the *Local Government Act* must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[18] Frankly, the Court can take the hint – municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in *Neilson*, "with a view to giving effect to the intention of the Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose".

[19] This case is ultimately a matter of statutory interpretation. The question for the Court is whether the District's interpretation and application of the bylaws were reasonable, with respect to the principles of statutory interpretation and the factual and legal constraints applicable to the District at the time the decisions were made.

VI. THE STATUTORY SCHEME

[20] The District is a municipal corporation continued under the *Community Charter*, S.B.C. 2003, c. 26. The impugned bylaws in the present case, *District of West Vancouver, Bylaw No. 4400*, *Building Bylaw* (2004) [*Building Bylaw*], were enacted pursuant to the *Community Charter*.

[21] The preamble to the *Building Bylaw* provides that its purpose is "to provide for health, safety and protection of persons and property".

[22] Section 5.1 of the *Building Bylaw* provides that no construction of any building or structure, or part thereof, is permitted without a building permit issued by the District.

[23] Section 8.1.1 of the *Building Bylaw* provides as follows:

> 8.1 Every Owner of a property or their Agent shall:
>
> > 8.1.1 Obtain from the Building Inspector prior to commencement of work Permits relating to Construction of Buildings or Structures, or change in classification of occupancy…

[24] For the purposes of the *Building Bylaw*, "owner" is defined in the *Community Charter* as follows:

> "owner" means, in respect of real property,
>
> > (a) the registered owner of an estate in fee simple….

[25] "Agent" is defined in the *Building Bylaw* as follows:

> "Agent" includes a person, firm, or corporation representing the Owner, by written designation or contract….

[26] To obtain a building permit, owners must submit a complete application pursuant to Part 9 of the *Building Bylaw*, which provides, in relevant part, as follows:

> 9.1 The Permit application shall include:
>
> > 9.1.1 A completed application form signed by the Owner or Agent to include location, description, Construction Value, use, Owner name, contractor and designer;
> >
> > […]

> 9.1.17 Other information as determined by the Building Inspector which may be required in order to confirm that the work is in accordance with this Bylaw, other Municipal bylaws and Provincial enactments;….

[27] With respect to the responsibilities of owners of property, s. 7.2 of the *Building Bylaw* provides as follows:

> 7.2 Any Owner of property for which a Permit is issued shall be responsible for the cost of repair of any damage to Municipal works that occurs as a result of the work covered by the Permit. A Damage Deposit plus an administration fee will be collected prior to Permit issuance as per the Fees and Charges Bylaw No. 4414, 2005 and as amended or re-enacted from time to time.

[28] The District Council is the elected governing body of the municipal corporation, pursuant to s. 6(2) of the *Community Charter*.

[29] The Demolition Decision was made pursuant to ss. 72-74 of the *Community Charter*, which provides, in relevant part, as follows:

> 72 (1) A council may impose remedial action requirements in relation to
>
> (a) matters or things referred to in section 73 [*hazardous conditions*],
>
> (b) matters or things referred to in section 74 [*declared nuisances*]…
>
> […]
>
> 73 (1) Subject to subsection (2), a council may impose a remedial action requirement in relation to any of the following:
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> (a) a building or other structure, an erection of any kind, or a similar matter or thing;
>
> […]
>
> (2) A council may only impose the remedial action requirement if
>
> (a) the council considers that the matter or thing is in or creates an unsafe condition…
>
> […]
>
> 74 (1) A council may declare that any of the following is a nuisance and may impose a remedial action requirement in relation to the declared nuisance:
>
> (a) a building or other structure, an erection of any kind, or a similar matter or thing…
>
> […]
>
> (2) Subsection (1) also applies in relation to a thing that council considers is so dilapidated or unclean as to be offensive to the community.

[30] Following a decision under s. 72 of the *Community Charter*, affected parties may apply for reconsideration by the council under s. 78, which provides as follows:

> 78 (1) A person who is required to be given notice under section 77 (1) [*notice to affected persons*] may request that the council reconsider the remedial action requirement.
>
> (2) Subject to section 79 [*shorter time limits in urgent circumstances*], a request under subsection (1) must be made by written notice provided within 14 days of the date on which the notice under section 77 (1) was sent or a longer period permitted by council.
>
> (3) If the council receives a notice that complies with subsection (2), it must provide the person with an opportunity to make representations to the council.
>
> (4) After providing the opportunity referred to in subsection (3), the council may confirm, amend or cancel the remedial action requirement.
>
> (5) Notice of a decision under subsection (4) must be provided in accordance with section 77 (1) and (2) [*notice to affected persons*].

[31] I turn to the issues raised in this matter.

1. Was the Permit Decision Reasonable?

[32] The petitioner and Mina are the two registered owners of the Property. The Property houses a single-family residential structure. However, the structure was severely damaged by a fire in 2015 and has been uninhabitable since. Since 2020, the petitioner has sought to obtain demolition and building permits for the Property. The District has refused to grant the permits, on the basis that the *Building Bylaw* requires signatures from both co-owners where one owner has notified the District that they have denied consent for the permit application.

[33] Following the Court's decision in *Este CA*, Mina wrote a letter to the District on September 23, 2020, informing them that she was a co-owner of the Property and that she did not consent to any future applications for demolition or building permits for the Property. In the letter, she stated that no permit should be issued in respect of the Property unless she provided written consent.

[34] On November 16, 2020, the petitioner submitted documents to the District, requesting that they be processed as an application for a building permit and

demolition permit for the Property. The next day, the Senior Manager of Permits, Inspections & Land Development for the District, Kevin Spooner, responded that the application was incomplete. Among other things, Mr. Spooner informed the petitioner that the application could not be completed without the signature of both co-owners.

[35] On December 22, 2020, Mr. Spooner again explained to the petitioner the District's position that signatures from both registered owners were required before a building permit would be issued.

[36] On December 30, 2020, Mr. Spooner informed the petitioner that any application package for a building permit for the Property would need to include a "Registered Owner Authorization Letter" if only one of the co-owners was signing the application itself.

[37] On January 19, 2021, counsel for the District sent a letter to then-counsel for the petitioner setting out the District's position. In relevant part, the letter states as follows:

> … the District has made abundantly clear to [the petitioner] on many occasions that applications for demolition and the proposed new build on the Property require signoff by the Property's registered co-owner. [The petitioner] demonstrated that she understood that requirement when she commenced a proceeding in the BC Supreme Court seeking to compel the co-owner to sign the permit application [which was dismissed in *Este CA*]…
>
> The District has carried out a preliminary review of [the petitioner's] recent partial submissions for a demolition permit application and building permit application and have advised in detail, in the form of a letter sent on December 22, 2020, what is needed to move these applications forward. In the event that [the petitioner] is the sole applicant for the new building permit, as indicated on the application form reviewed in the December 22 letter, she will require a Registered Owner's Authorization Letter signed by the co-owner appointing her as the co-owner's agent for the purposes of the building permit application….
>
> […]
>
> Your letter refers to a renovation permit issued to your client over a decade ago, for which the District did not require the co-owner's signature or authorization form. *When processing building permits other than demolition permits, the District presumes, in the absence of knowledge to the contrary, that a single registered owner is authorized to act on behalf of all holders of a registered interest in that property. … However, in circumstances where the District is aware of active, ongoing litigation over the beneficial ownership of a*

> *property, and has been specifically advised by a registered owner that their consent to any permit application is denied unless otherwise indicated in writing the District is fully justified in reasonably requiring that written confirmation of the application be received from all registered owners. ...*
>
> [Emphasis added.]

[38] The petitioner reapplied for demolition and building permits numerous times between January and September 2021. Each time, the application did not include the co-owner's signature or a Registered Owner Authorization Letter designating the petitioner to act as the co-owner's agent, within the meaning of the *Building Bylaw*. Accordingly, the applications were rejected on effectively the same grounds as contained in the January 19, 2021 letter. Likewise, Mina never provided written consent for the issuance of building permits.

[39] The petitioner challenges the District's decision to deny her permit application on three grounds.

[40] First, she says the District had no statutory authority to deny her application on the stated grounds, and the decision was therefore unreasonable. She argues that nowhere in the *Building Bylaw* does it state that both co-owners of a property must provide their consent as part of an acceptable permit application. The petitioner says that if a permit application meets the standards set out in the relevant bylaw, the municipality must issue the permit: *Turney v. Langley (Township)*, 2016 BCSC 1099 at para. 43.

[41] Second, she submits that the District's decision to deny her application was unreasonable because it had previously granted her a similar permit in 2009 without Mina's explicit consent. The petitioner notes that in *Vavilov*, the Court held that a decision-maker's past practices or decisions may inform whether the subject decision was itself reasonable: para. 131.

[42] Third, the petitioner submits the District's decision unlawfully restricts her ability to make use of the Property. In this respect, the petitioner adopted Mehran Taherkhani's (the petitioner's ex-husband) submissions relating to the nature of tenancies in common.

[43] Mr. Taherkhani relies on the dissenting Justices' comment in *Vavilov* that there is a presumption that legislation is drafted to conform with the common law: para. 249. He argues that, in the context of tenants-in-common, the District's interpretation of the *Building Bylaw* as requiring both owners to consent prior to a building permit being granted is unreasonable, as it is not consistent with the common law. Mr. Taherkhani says that "each tenant in common has a right of use over the entire property" and that each co-owner does not have a right to "compel property uses": *Este CA* at para. 41. Accordingly, he submits that Mina's continued unwillingness to consent to—and the District's unwillingness to grant—a permit has unlawfully limited the petitioner's use of the Property, contrary to the common law principles of tenancy in common.

[44] The District says its interpretation of the *Building Bylaw* was reasonable. The District notes s. 8.1.1 of the *Building Bylaw* provides that "[e]very Owner of a property" must obtain a building permit prior to commencement of work on the property. The District says the use of the word "every" here suggests that where there are multiple owners, the express or implied consent of each is required for a permit application. The District notes the phrase "every Owner" is not used elsewhere in the *Bylaw*. Rather, the *Bylaw* predominantly refers to "the Owner", which connotes a single owner.

[45] Moreover, the District notes s. 7.2 of the *Building Bylaw* provides that "[a]ny Owner of a property for which a Permit issued shall be responsible for the cost of repair for any damage" to District property due to work under the permit. The District submits that this imposes statutory liability upon any and all owners of a property—regardless if they took part in the permit application process or not—and it is therefore reasonable not to impose this liability absent the consent of the owner. The District says this is particularly true where the co-owner has specifically notified the District that they do not consent to the proposed permit application.

[46] Finally, the District argues that *Yestal v. New Westminster (City)*, 2012 BCSC 925 [*Yestal*], is analogous in principle. In that case, the petitioners sought to overturn

the respondent City's decision not to grant a building permit. The petitioners had applied for a permit to renovate a limited common space. The strata, who held legal title to the common property and retained some rights under the relevant statute, did not consent to the application. Because the strata had not agreed to the application, the City refused to grant a permit. In finding that the strata was a proper party to the judicial review, the Court held as follows:

> [32] I am satisfied that where, as here, the bundle of ownership rights is divided as between two parties, the position taken by the applicant and by the City in interpreting the Building Bylaw as requiring the consent of the Strata Corporation for a building permit application is apt.

[47] The District says the same principle applies in the present case. They submit that the "bundle of rights" is split between Mina and the petitioner and that it was reasonable for the District to refuse the permit applications where Mina's consent was explicitly withheld.

[48] With respect to the petitioner's argument that the District had previously granted permits without Mina's consent, the District says that it generally presumes implied consent as between the co-owners, absent evidence otherwise. However, the District says that because they have been put on notice that one co-owner does not consent to the issuance of a permit, they must obtain explicit consent as part of an application.

[49] With respect to the petitioner's argument that the District is unlawfully limiting her use of the Property, the District relies on *Fonseca v. Gabriola Island Local Trust Committee*, 2021 BCCA 27 [*Fonseca*], to argue that common law principles with respect to the use of property between co-owners are not a relevant factor in the present case. The District says the subject matter of the Permit Decision is statutory interpretation, not common law rights. The District submits that the purpose of the *Building Bylaw* is to limit and regulate private law rights: *Fonseca* at para. 41.

[50] In my view, the Permit Decision was reasonable.

[51] The petitioner argues that the *Building Bylaw* does not require the consent of both co-owners prior to the issuance of a permit. I disagree. I accept the District's submission that the express or implied consent of all owners is required prior to the issuance of building permits. In particular, I find the District's interpretation that s. 8.1.1 of the *Bylaws* requires that "[e]very Owner" consent is reasonable, both in terms of the plain meaning of the provision and the broader context of the bylaw.

[52] With respect to the plain wording of s. 8.1.1, I accept that it is reasonable to interpret the phrase "[e]very Owner" as meaning all registered owners of a property. I note that this is the only provision in the *Building Bylaw* which uses this verbiage and that the plain meaning of "every" may connote all owners of a property.

[53] More importantly, I accept that the overall statutory context of the *Bylaw* supports this interpretation. As the District argues, s. 7.2 imposes statutory liability on all owners of a property for damages to municipal property in the completion of work under the permit. It would strain credulity to hold a co-owner liable for damage caused under a permit for which they have specifically withheld their consent—as is the case here. The absurdity of such an outcome weighs against the interpretation proposed by the petitioner.

[54] Moreover, such an interpretation is consonant with the Court's decision in *Yestal*.

[55] In my view, much the same reasoning disposes of the petitioner's second argument—that the District's past decisions to grant permits without written consent from Mina render the Permit Decision unreasonable. The District says that the *Building Bylaw* requires implied or express consent of co-owners prior to issuance of a building permit. Further, the District says that its general practice is to presume both owners' consent, absent evidence to the contrary. I accept that this approach is reasonable within the specific administrative context in which the District operates. I also accept that the District is in a better position than the Court to assess its own operational capacity and to interpret its enabling bylaws in a manner which reflects this capacity.

[56] In the present case, therefore, it follows that the District presumed there was implied consent when it approved the permits in 2009. However, in September 2020, Mina specifically informed the District that she did not consent to the issuance of any permits going forward. Once the District was put on notice, it required explicit consent from Mina before it would be permitted to accept the petitioner's application. In my view, this was a reasonable interpretation of the *Building Bylaw*.

[57] Finally, the petitioner argues that the District's interpretation of the *Building Bylaw* impermissibly impinges on her use of the Property. I disagree. While the Court in *Este CA* held that each tenant-in-common has the right of use over the entire property, to say that the *Bylaw* unlawfully infringes on this right misconceives the issue. The present case is not a question of the use of the Property—it revolves around the District's decision following a request for regulatory permission, and therefore must be assessed in light of its own governing statutory scheme. As noted above, I have found that the District's interpretation of the *Building Bylaw* was reasonable in the circumstances.

[58] Moreover, the very purpose of building and zoning bylaws is to limit and regulate the private law rights of property owners: *Fonseca* at para. 41. As the Court noted in *Yu*, under such building bylaws, the building permit "legalize[s]" the activity, as it is presumptively not allowed: para. 72. This is the case here. Section 5.1 of the *Building Bylaw* provides that no construction may be carried out without a permit. The regulatory role municipalities play in this regard is a well-established limit on private rights over property. Indeed, given that the petitioner's use of the Property is presumptively limited by the *Bylaws*, it is her continued insistence on managing the Property against her co-owner's wishes which undermines the tenancy in common, not the Permit Decision.

[59] Accordingly, the petitioner's challenge to the Permit Decision should be dismissed.

2. Was the Demolition Decision Reasonable?

[60] As noted above, the Property houses a derelict structure which has been uninhabitable since a fire in 2015. The petitioner does not dispute the dilapidated state of the building—indeed, she has repeatedly sought a permit to demolish it on her own.

[61] On December 3, 2020, the Deputy Chief Administrative Officer for the District, Mark Chan, emailed the petitioner and Mina copies of the District staff report (the "First Staff Report") that was going to be presented to the District Council meeting on December 14, 2020 (the "Initial Hearing"). The First Staff Report recommended the District pass a resolution ordering the demolition of the structure.

[62] On December 4, 2020, Mr. Chan emailed the petitioner and Mina's counsel a link to the Council agenda for the Initial Hearing.

[63] Between December 4 and 6, 2020, the petitioner sent Mr. Chan, District Council, and the District Building Department staff her submissions for the Initial Hearing (the "First Submissions"). The First Submissions were included in the Council agenda for the Initial Hearing.

[64] At the Initial Hearing, the Council passed a resolution ordering that the structure be demolished, pursuant to ss. 72-74 of the *Community Charter* (the "Initial Decision"). Prior to voting on the resolution, the Council considered the First Staff Report and the First Submissions. Moreover, the petitioner made oral submissions before the District Council.

[65] Following the Initial Hearing, the District sent the petitioner a letter informing her of the Initial Decision, which was received via registered mail on December 18, 2020.

[66] On January 15, 2021, the petitioner requested the District Council reconsider the Initial Decision, pursuant to s. 78 of the *Community Charter*. The District placed

reconsideration of the Initial Decision on the agenda at the next available Council meeting, which was taking place on February 8, 2021.

[67] On January 21, 2021, counsel for the District wrote to then-counsel for the petitioner and counsel for Mina, informing them that reconsideration of the Initial Decision was on the agenda for the Council's February 8, 2021 meeting (the "Reconsideration Hearing"). The District also stated that if the petitioner and/or Mina wished to make submissions at the Hearing, they could do so in writing and/or orally.

[68] Shortly thereafter, the petitioner requested that the Reconsideration Hearing be adjourned to a Council meeting in March 2021. The petitioner stated she was not available for the February 8, 2021 meeting, and in any event, needed more time to prepare her submissions. The District obliged and scheduled the Reconsideration Hearing for the March 8, 2021 Council meeting.

[69] On February 16, 2021, the petitioner informed the District that she was seeking new legal counsel and would not be prepared to make submissions at the March 8, 2021 Council meeting. She also said she was not available in April 2021. Accordingly, the District rescheduled the Reconsideration Hearing again, moving it to the March 29, 2021 Council meeting.

[70] On February 22, 2021, counsel for the District wrote a letter to the petitioner informing her of the new meeting date and that no further extensions would be granted.

[71] On February 25, 2021, the petitioner requested a third extension for the Reconsideration Hearing.

[72] On March 1, 2021, counsel for the District wrote a letter to the petitioner denying her request for a further extension. Counsel stated the Reconsideration Hearing would proceed as planned on March 29, 2021, and that the petitioner could appear remotely or through counsel.

[73] On March 22, 2021, counsel for the District provided a copy of the staff report to be presented at the Reconsideration Hearing to the petitioner (the "Second Staff Report").

[74] On March 23, 2021, the petitioner contacted Mr. Chan to take issue with the contents of the Second Staff Report. The same day, counsel for the District responded to the petitioner on Mr. Chan's behalf, stating that "[i]f [the petitioner] disagree[d] with the information presented in the [Second Staff Report], the reconsideration hearing [was her] opportunity to explain what [she] disagree[d] with and why" and that the petitioner "may do so in advance in writing, at the meeting via telephone or videoconference, or both." The petitioner also sought an adjournment of the Reconsideration Hearing the same day, which was denied.

[75] On March 29, 2021, the petitioner sent the District Council her written submissions for the Reconsideration Hearing (the "Second Submissions"). The Second Submissions were provided to Council as part of the information package for the meeting.

[76] On March 29, 2021, counsel for the District sent the petitioner and Mina instructions on how to appear at the Reconsideration Hearing via telephone or videoconference.

[77] The Reconsideration Hearing proceeded as scheduled on March 29, 2021. At the hearing, the Council considered the following:

1. The materials from the Initial Hearing (i.e., the First Staff Report and the First Submissions);
2. Written submissions from third parties in favour of demolition;
3. The Second Staff Report; and
4. The Second Submissions.

[78] At the Reconsideration Hearing on March 29, 2021, the Council issued the Demolition Decision, passing a resolution affirming the Initial Decision.

[79] Mina and the petitioner were served with the notice that the Demolition Decision was issued at the Reconsideration Hearing on April 13 and May 11, 2021, respectively.

[80] Where a party has engaged an administrative decision-maker's reconsideration power, and the decision-maker has undertaken the reconsideration, it is the reconsideration decision that represents the final decision and is the subject of the judicial review: *Yellow Cab Co. v. British Columbia (Passenger Transportation Board)*, 2014 BCCA 329 at para. 40. Accordingly, the Court must examine the District Council's rationale for affirming the Initial Decision (i.e., the Demolition Decision). In the meeting minutes from the Reconsideration Hearing, the Council stated as follows in this respect:

> THAT Council confirm the remedial action requirement in relation to [the Property], in the terms of the resolution passed on December 14, 2020.

[81] The Council's decision to affirm the Initial Decision provides little in the way of reasoning. Indeed, it appears the Council effectively adopted the reasoning in Initial Decision for the Demolition Decision. Accordingly, the Initial Decision may be considered to provide necessary context: *Sereda v. Ni*, 2014 BCCA 248 at para. 26; *International Longshore and Warehouse Union – Canada, Local 400 v. Ledcor Resources & Transportation Limited Partnership*, 2021 BCSC 2077 at para. 30.

[82] The reasons for the Initial Decision are set out in the minutes of the District Council's December 14, 2020 meeting. With respect to the resolution passing the Initial Decision, the Council stated as follows:

> 1. Council hereby considers that the fire damaged building located on the Property (the "Derelict Building") is unsafe and therefore is in a hazardous condition within the meaning of Section 73 of the *Community Charter*;
> 2. Council hereby considers that the Derelict building is a nuisance, and so dilapidated and unclean as to be offensive to the community, within the meaning of Section 74 of the *Community Charter*;
> 3. Council hereby requires, pursuant to its powers under Section 72(2)(b) of the *Community Charter*, that the Owners, within 60 days of the date this Resolution is sent to the Owners, do all things necessary to apply for a demolition permit for the Derelict Building under the [*Building Bylaw*];

> 4. the Owners, within 60 days of receiving a demolition permit applied for under Section 3 of this Resolution, must demolish the Derelict Building and remove all resulting debris, and comply with all applicable requirements of the [*Building Bylaw*] including Section 20.2;
> 5. the Owners or either of them may request that Council reconsider the terms of this Resolution by providing the District with written notice within 28 days of the date on which notice of this Resolution is sent to the Owner under Section 77 of the *Community Charter*; and
> 6. if the Owners or either of them has not completed any requirement imposed by this Resolution within the time limit for so doing, District staff are authorized to fulfil the applicable requirement without further notice and at the expense of the Owners, and may recover the cost of so doing form the Owners, together with interest, as a debt and in the same manner as municipal taxes, in accordance with sections 17, 258 and 259 of the *Community Charter*.

[83] As the Court noted in *Vavilov*, where reasons are supplied, they constitute the starting point for the judge's review of the administrative decision: paras. 81, 84. However, the entire factual and statutory context is also pertinent: *Vavilov* at para. 106. Of particular moment in the present case, therefore, is the District's staff reports and the petitioner's submissions which were presented to the Council at both hearings.

[84] The First Staff Report cites various expert reports recommending the structure be demolished and which were commissioned by the petitioner. According to an architectural report issued in February 2016, over 75% of the structure was "completely destroyed" in the fire and suffered "ongoing damage" from exposure to the elements. The architectural report recommended demolition. Moreover, an engineering report from May 2016 also recommended complete demolition.

[85] The First Staff Report also notes that s. 9.5 of the *Building Bylaw* states that if only 25% of an existing structure remains above its foundations, it must be demolished. The First Staff Report includes a May 8, 2017 letter from Mr. Spooner to the petitioner notifying her of this requirement and stating that the structure must be demolished.

[86] Finally, the First Staff Report lists extensive community complaints about the health, safety, and unsightliness of the structure. Moreover, the report also laid out

concerns raised by the fire department, as well as steps taken by the department to reduce such risks.

[87] The Second Staff Report does not reiterate the evidence provided in the First Staff Report. Rather, it details the interactions between the petitioner, Mina, and the District since the Initial Hearing. The Report notes that, since the Initial Hearing, the petitioner submitted incomplete applications for a demolition permit. The Report says that although the demolition applications had both Mina and the petitioner's signatures, they lacked various technical requirements. Moreover, the Report states that the petitioner also submitted incomplete building permit applications for the Property. As was previously the case, the building permit applications did not include Mina's signature or consent. The Report also notes the petitioner had continued to request that the building permit be granted in tandem with the demolition order. However, the Report says that a building permit is not necessary for a demolition order to be issued and that given the ongoing litigation over the Property and Mina, it was not appropriate in the circumstances.

[88] In her First Submissions, the petitioner did not take issue with the District's request for an order that the structure be demolished. Rather, she said that the order should be accompanied by an order that a building permit be issued.

[89] In her Second Submissions, the petitioner again argues the structure should not be demolished unless a building permit is concurrently issued. She requests that the Council overrule the District and order that a building permit be issued. She also says the District's interpretation of the *Building Bylaw* as requiring the consent of both owners is unreasonable and should not be adopted by the Council. The petitioner asserts that demolishing the structure without issuing a building permit would create a health and safety hazard and interferes with her use of Property. Overall, the petitioner's Second Submissions closely tracks her First Submissions, with the exception that she claims the Second Staff Report includes untrue or unsubstantiated statements.

[90] In my view, the Demolition Decision was reasonable.

[91] As noted above, the Decision was issued pursuant to s. 73 of the *Community Charter*, as the Council found that the structure was "unsafe and therefore… in a hazardous condition". Based on the evidence before the Council, this was a reasonable finding. The First Staff Report includes various expert reports noting the dilapidated state of the house, all of which recommended demolition. Moreover, there was evidence that the fire department viewed the structure as a fire hazard and had taken steps to reduce this risk.

[92] The Council also relied on s. 74 of the *Community Charter*, on the basis that the structure constituted a nuisance which required remedial action. Pursuant to s. 74(2) the Council found that the structure was "so dilapidated and unclean as to be offensive to the community". In this respect, the First Staff Report provides statements from various neighbours and citizens, who stated that the structure had attracted squatters, rodents, and other trespassers.

[93] The First and Second Staff Reports, the petitioner's First and Second Submissions, and the Council resolution provide insight into the Council's decision-making process. When viewed together, they demonstrate that the Demolition Decision was justified, intelligible, and transparent. In particular, the Staff Reports provide cogent evidence which satisfy the requirements of the *Community Charter*. The Council reasonably assessed this evidence, applied it to their specific statutory context, and issued the Demolition Decision. Moreover, the Second Staff Report and Second Submissions do not raise any significant points which undermine the underlying reasonableness of the Initial Decision. Indeed, the Council appears to have reviewed the materials before it at the Reconsideration Hearing and determined the Initial Decision appropriately assessed the relevant factors within the statutory context.

[94] Moreover, I also note the petitioner did not contest the merits of the Demolition Decision. Rather, she only sought to have an order that a building permit be issued to accompany the demolition order. Indeed, both at the Initial Hearing and the Reconsideration Hearing, the petitioner's principal argument was that the

Council should also order a building permit be issued. This argument was effectively twofold:

1. The District had unreasonably interpreted the *Building Bylaws* as requiring both co-owners' signatures for a permit application in the present case and thus had wrongfully withheld a permit. Accordingly, the Council should override the District's decision and order the issuance of a building permit.

2. If the structure were demolished but no building permit was issued, it would undermine the purported purposes of the decision—being the health and safety of the District and its citizens. The petitioner argued that demolishing the structure without plans to erect a new one would present a hazard.

[95] With respect to the first point, I have disposed with this issue above. The District's decision not to issue a permit without Mina's consent was reasonable in the context. It was therefore reasonable for the Council to adopt the District's interpretation.

[96] Moreover, I find it was reasonable for the Council not to issue a building permit as part of the Demolition Decision. At the outset, I note the Council did not specifically address this issue in the resolution. However, a decision-maker's reasons need not explicitly consider or include all arguments raised to be reasonable: *Vavilov* at para. 91. Rather, reasonableness must be assessed within the entire context of the proceeding. In this respect, I note that the Staff Reports specifically note that the petitioner had repeatedly sought approval for a building permit and that the District had refused to do so without the co-owner's signature. Given the District's role in issuing permits and greater familiarity with the *Building Bylaw*, it was reasonable for the Council to rely upon the District's interpretation.

[97] Moreover, while the petitioner argued that ordering the structure be demolished without a building permit would create a health and safety hazard, I find the Council was reasonable in rejecting this position. There was sufficient evidence

before the Council to find letting the structure remain intact would create a greater risk to health and safety than demolishing it. This determination was a matter of assessing evidence and applying the facts to the specific statutory context within which the Council operates. The Council examined both the District and the petitioner's evidence and preferred the District's. Part of that referenced the fact that the District required any demolition to be done in a safe manner with the property to be left in a safe condition. The Council is owed deference in this regard.

[98] Finally, I would briefly address an argument raised by the petitioner which she says is a matter of procedural fairness, but which is better considered in relation to the substantive reasonableness of the Demolition Decision.

[99] The petitioner says the Demolition Decision was unfair because the Council did not consider the petitioner's evidence which contradicted the evidence in the First Staff Report. I disagree.

[100] A decision will be regarded as reasonable if there is some evidence upon which the decision-maker's finding could reasonably be made: *Scott v. British Columbia (Superintendent of Motor Vehicles)*, 2013 BCCA 554 at para. 31. Decision-makers do not necessarily have to provide reasons for why they prefer one party's evidence: *Hanson v. British Columbia (Superintendent of Motor Vehicles)*, 2006 BCSC 210 at para. 17 [*Hanson*]; *Giesbrecht v. British Columbia (Superintendent of Motor Vehicles)*, 2011 BCSC 506 at para. 27. It is sufficient if the reasoning process is apparent from the decision and there is some evidentiary basis for the essential findings: *Hanson* at para. 17

[101] I am satisfied that Initial Decision and Demolition Decision are grounded in a sufficient evidentiary basis, such that they cannot be said to be unreasonable. The First Staff Report considered at both hearings contains evidence in support of the decisions. The Initial Decision is worded as such that it is clear the Council accepted the evidence in this Report. While neither decision explicitly considers the evidence adduced by the petitioner, the reasoning clearly demonstrates the Council preferred

the District's evidence. Again, given the deference owed to decision-makers with respect to the assessment of evidence, I would not accede to this ground.

3. Was the Demolition Decision Procedurally Fair?

[102] The petitioner submits that the Demolition Decision—and in particular, the Reconsideration Hearing—was procedurally unfair. The petitioner's arguments are twofold:

1. The Reconsideration Hearing was procedurally unfair because the District refused to adjourn it so that the petitioner and her counsel could attend; and
2. The Demolition Decision was procedurally unfair because the Council did not consider the petitioner's evidence which purportedly contradicted the evidence in the First Staff Report.

[103] At the outset, I would briefly dispose of the petitioner's second argument. As noted above, I find that the Council's assessment of the evidence in the Initial and Demolition Decision was reasonable.

[104] However, the manner in which a decision-maker treats evidence may be a matter of procedural fairness in limited circumstances. That is, where a decision-maker rejects relevant evidence, this may undermine the fairness of the proceeding: *Université du Québec à Trois-Rivières v. Larocque*, [1993] 1 S.C.R. 471 at 491; *Labrie v. Liu*, 2021 BCSC 2486 at para. 31. The Council did not dismiss the petitioner's evidence or refuse to admit it into the record. Quite the opposite—the evidence was included in the packages considered by the Council at each hearing. Moreover, there is no reason or evidence to suggest the Council ignored the petitioner's submissions or her evidence. Accordingly, I would dismiss this ground for review.

[105] An administrative body owes a duty of fairness whenever its decisions affect the "rights, privilege or interests of an individual": *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 at 653. There is no doubt the Council owed the petitioner procedural

fairness in the present case—ordering the demolition of a person's property is a significant remedy under the *Community Charter*. This is recognized in s. 78(3) of the *Community Charter*, which states that a person seeking reconsideration "must [be] provide[d] with an opportunity to make representations to the council."

[106] In *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] S.C.R. 817 at para. 23, the Court identified five contextual factors to be considered when identifying the degree of fairness owed in an administrative proceeding:

1. The nature of the decision and the process followed in making it, including the closeness of that process to the judicial process;
2. The statutory scheme and the role of the decision within the scheme;
3. The importance of the decision to the individual affected;
4. The legitimate expectations of the person challenging the decision; and
5. The procedural choices made by the tribunal itself.

[107] I find the Council met its duty of fairness to the petitioner. As described above, the petitioner:

1. was given notice of both hearings;
2. made oral and written submissions at the Initial Hearing;
3. was given notice and reasons for the Initial Decision;
4. was granted two adjournments of the Reconsideration Hearing;
5. was given the opportunity to make oral and written submissions at the Reconsideration Hearing; and
6. was given notice and reasons for the Demolition Decision.

[108] The only issue is whether the District's refusal to adjourn and reschedule the Reconsideration Hearing a third time deprived the petitioner of a fair process. In my view, it did not.

[109] The petitioner argues that the District's refusal to adjourn the hearing for the third time deprived her of her right to legal representation. Respectfully, I disagree. There is no freestanding and unassailable right to legal counsel at municipal hearings. (See *Macdonald v. Institute of Chartered Accountants of British Columbia*, 2010 BCCA 492 at para. 40)

[110] I note further the subject matter of the Demolition Decision was not particularly complex. The materials before the Council were not substantial and the legal tests under ss. 72-74 of the *Community Charter* are relatively simple. Second, the petitioner is not an unsophisticated individual. Ms. Este has represented herself in court and before administrative decision-makers many times. Indeed, she represented herself before the Court in the present case. In my view, she had the capacity to represent herself fully and effectively.

[111] While I accept that the consequences of the Demolition Decision were serious, I find that this does not outweigh the other considerations. (See also *Antrobus v. Vanvugt*, 2014 BCSC 2345).

[112] Moreover, the petitioner has given no reason why she could not have availed herself of the opportunity to appear at the Reconsideration Hearing. Indeed, she made submissions on her own behalf at the Initial Hearing. It is not open to the petitioner to seek indeterminate extensions for the Reconsideration Hearing she requested, then fail to attend and claim her right to a fair process was violated. The fact that the petitioner did not have any oral submissions made on her behalf at the Reconsideration Hearing was because of decisions she made, not any unfair conduct by the District.

[113] In any event, I note she provided the Second Submissions in advance of the Reconsideration Hearing which were included in the package provided to Council. Accordingly, her arguments were made known to Council before they affirmed the Demolition Decision.

[114] In conclusion, I find that the Council met its duty to provide the petitioner with a procedurally fair process.

4. Is the Petition an Abuse of Process?

[115] As noted above, Mina argues that the petition is an abuse of process and should be dismissed. She says the petitioner has taken inconsistent positions with respect to her interest in the Property in various legal proceedings and that the petition also constitutes a collateral attack on the Court's decision in *Este CA*.

[116] Based on my foregoing conclusions, I decline to consider the abuse of process argument. I note, however, that I do have a concern that this is a collateral attack on the Court's decision – *Este CA*, but I do not need to determine that issue.

VII. CONCLUSION

[117] In summary, I find that the petition should be dismissed on the following grounds:

1. The Permit Decision was reasonable;

2. The Demolition Decision was reasonable; and

3. The Demolition Decision was procedurally fair.

[118] As per the normal course of order for judicial reviews, the parties will bear their own costs.

"Burke J."