



Affidavit #1 of Harold Whittell

Sworn the 3rd day of July, 2013

No. **S** 026696
Chilliwack Registry

In the Supreme Court of British Columbia

**SOCIETY OF FORT LANGLEY RESIDENTS
FOR SUSTAINABLE DEVELOPMENT**

And:

TOWNSHIP OF LANGLEY

, Petitioner

, Respondent

A F F I D A V I T

I, **Harold Whittell**, homeowner, of 35 208th Street, Langley, B.C., V2Z 1T2 MAKE OATH AND SAY AS FOLLOWS:

1. I am a director of the petitioner herein, and as such have personal knowledge of the matters and facts herein deposed to in this affidavit, save as to such matters as are known to me based on information and belief, and as to such last mentioned matters, I verily believe them to be true.
2. I am authorized by the petitioner to make this affidavit.
3. Now produced and shown to me and marked **Exhibit A** to this my affidavit is a copy of a petition, in respect of which the Society of Fort Langley Residents for Sustainable Development is the petitioner (the Society).

4. The Society constituting the petitioner was formed to represent several residents of Fort Langley who are alarmed by the actions of council of the Respondent because such actions of that council pose a serious and irredeemable threat to the preservation of heritage sites and historical context of Fort Langley. The municipality of Fort Langley was incorporated in 1873 and is known as the “Birthplace of BC”. The respondent, the Township of Langley itself, is a place where the rich heritage of the past is combined with the future. There are six unique, distinct communities located in the Township of Langley, including Fort Langley, and there are a number of urban centers that provide convenience and amenities to the whole area. As is stated in the Fort Langley Community Plan, “The community of Fort Langley is a place with a significant and historical role which has retained much of the scale and character of a rural small town in the midst of the urbanization of the Fraser Valley. Its character and ambiance are prized by the area’s residents...” [Fort Langley Community Plan, Introduction]

5. In the Fort Langley Community Plan the historical context of the community is clearly understood: “Fort Langley is a distinct community within the Township of Langley. It was one of the Province’s earliest towns, with the community established next to the Hudson’s Bay Company fort. The Fort itself was built at its present site in 1839 – and the Crown Colony of British Columbia was proclaimed there in 1858...Fort Langley has retained much of its historical land use pattern...The Fort, now a National Historic Park, overlooks the Fraser River from this escarpment...Nearby, the commercial area is focused on the “main street”, Glover Road...There is also a significant stock of heritage buildings in Fort Langley...” [Fort Langley Community Plan, Land Use, Regional Role]

6. Developments on Glover Road, the “main street”, are involved in the matters dealt with in this petition. This is identified in the Fort Langley Community Plan for special concern: “Key to the revitalization guidelines for Glover road is the heritage building theme for commercial buildings fronting on Glover road and Mavis Avenue. These theme guidelines call for the restoration of heritage buildings and older buildings with potential heritage interest and for treatment of contemporary and new buildings with elements to complement the heritage theme...” [Ibid, Commercial, Commercial Core]

7. As important as these guidelines and policies are, the introduction in 1997 of an amendment makes the intention of the community of Fort Langley perfectly clear: "The Heritage Conservation Area shown on Map 4 will serve two important objectives: it will ensure that new development will respond to the heritage theme, thereby enhancing the commercial core's attractiveness to tourists, and it will protect the area from the introduction of much larger new buildings in a style which could potentially affect the scale and character of the core area." [Ibid, Commercial Core]
8. The land in question in this Petition, at 9202 and 9224 Glover Road is land located in the commercial core of Fort Langley, and is directly affected by these guidelines and policies. These addresses if redeveloped must conform to the thematic structure of the downtown core. The development proposed would have a significant negative affect on the scale and character of the core area. The lands in question are located in a designated heritage conservation area created by the town of Fort Langley in 1993. The purpose of that conservation area is to protect the heritage character of downtown Fort Langley. If the development proposed for this land proceeds, I believe it will offend in fact and in principle the concept of heritage conservation of this part of the downtown core.
9. The facts set out in the petition, Exhibit A, are true, based on my personal knowledge or based on information and belief, which I verily believe to be true.
4. Schedule 10 to the petition is a copy of a certificate of incorporation of the petitioner. There are five directors of whom four are residents of the town of Fort Langley.
5. Schedule 1 to the petition is an extract from a certified true copy of the Zoning bylaw no. 2500 of the Township of Langley, which I obtained from the township offices.

6. Schedule 2 to the petition is a certified copy of the Application submitted on behalf of the developer of 9202 and 9224 Glover Road (the "Land") on or about May 2, 2012 and I obtained this from the Township offices.
7. Schedule 3 to the petition is a certified copy of a staff report prepared by staff of the Township of Langley and presented November 19, 2012 to council. I obtained a copy of this Report from the offices of the Township.
8. Schedule 4 to the petition is a certified copy of minutes of a council meeting held November 20, 2012, which I obtained from the offices of the Township.
9. Schedule 6 to the petition is a certified copy of Fort Langley Building Design Guidelines, which form a part of the Fort Langley Community Plan which I obtained from the Township.
10. Schedule 5 to the petition is a certified copy of the Fort Langley Official Community Plan, which I obtained from the Township.
11. Schedule 7 to the petition is a certified copy of the Township of Langley Official Community Plan, which I obtained from the Township.
12. Schedule 8 to the petition is a certified copy of Alteration Permit No. 100685 , which I obtained from the Township.
13. Schedule 9 to the petition is a copy of an Agenda relating to the November 19, 2012 public hearing concerning the development of 9202 and 9224 Glover Road, which I attended.

14. I am authorized to state that the petitioner undertakes, subject to any order the court may make, to abide by any order which the court may make as to damages.

SWORN BEFORE ME at

The *city of Langley*
in the Province of British Columbia
this *3rd* day of *July* 2013



A Commissioner for taking oaths in
The Province of British Columbia

Matthew Alexander MacCallum

Expiry of Appointment

30/06/16


HAROLD WHITTELL

No.
Chilliwack Registry

In the Supreme Court of British Columbia

Between:

SOCIETY OF FORT LANGLEY RESIDENTS
FOR SUSTAINABLE DEVELOPMENT

, Petitioner

And:

TOWNSHIP OF LANGLEY

, Respondent

Re: In the matter of the Judicial Review Procedure Act RSBC 1996, c. 241 and Township of
Langley Heritage Alteration Permit no. 100685

THIS IS EXHIBIT " A " TO THE
PETITION TO THE COURT AFFIDAVIT OF Harold Whittell,

ON NOTICE TO:

Township of Langley

SWORN BEFORE [Signature]

THIS 3rd DAY OF July 20 13

This proceeding has been started 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.

Matthew Alexander MacCallum
A Commissioner for taking Affidavits
for British Columbia
Expiry of Appointment
30/06/16

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: 46085 Yale Road, Chilliwack, B.C., V2P 2L8
(2)	The ADDRESS FOR SERVICE of the petitioner(s) is: c/o Roy J. Stewart, Q.C., 1057 3 rd Avenue, Prince George, B.C., V2L 3E3
	Fax number address for service (if any) of the petitioner(s): 250-960-2176

	E-mail address for service (if any) of the petitioner(s):
(3)	The name and office address of the petitioner's(s') lawyer is: Roy J. Stewart, Q.C., 1057 3 rd Avenue, Prince George, B.C., V2L 3E3

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. a declaration that the decision of council of the Township of Langley made on November 20, 2012 to issue Heritage Alteration Permit No. 100685 be set aside because of error of law on the face of the record;
2. a declaration that Township of Langley Heritage Alteration Permit No. 100685, issued November 20, 2012 is invalid due to it being inconsistent with the Fort Langley Community Plan Bylaw no. 2527 (the OCP);
3. a declaration that the development contemplated by the Township of Langley Heritage Alteration Permit No. 100685, located at 9202 and 9224 Glover Road in Fort Langley (the Development) is situated in the Heritage Conservation Area specified in the Fort Langley Community Plan;
4. a declaration that the Township of Langley Heritage Alteration Permit No. 100685 authorizes works and design as part of the Development contrary to the Fort Langley Building Design Guidelines, forming a part of the Fort Langley OCP (the Guidelines);
5. a declaration that the Development does not comply with the Township of Langley Zoning Bylaw no. 2500 (the Zoning Bylaw);
6. a declaration that the Township of Langley Heritage Alteration Permit No. 100685 authorizes works and design as part of the Development which impermissibly alters density of use restrictions associated with the Fort Langley OCP and the Zoning Bylaw;
7. a mandatory injunction against the defendant, its servants and agents forbidding the issuance of any demolition permit associated with the Development until such time as the Development and any permits issued in respect of that Development comply with the OCP, the Guidelines and the Zoning Bylaw;
8. a mandatory injunction against the defendant, its servants and agents forbidding the issuance of any building permit associated with the Development until such time as the Development complies with the OCP, the Guidelines and the Zoning Bylaw;
9. a mandatory injunction forbidding any person from engaging in any demolition of any building or structure located on land described in the Development as 9202 and 9224 Glover Road in Fort Langley, British Columbia until further order of this court to be issued when the planned Development complies with the OCP, the Guidelines and the Zoning Bylaw;
10. an injunction forbidding any person from engaging in construction of a building or structure on land described as the Development as 9202 and 9224 Glover Road in Fort Langley, British Columbia until further order of this court to be issued when the planned Development complies with the OCP, the Guidelines and the Zoning Bylaw;

11. an order that any peace officer be authorized to arrest and remove from 9202 and 9224 Glover Road any person who the peace officer has reasonable and probable grounds to believe is contravening or has contravened the provisions of this order;
12. any peace officer who arrests and removes any person pursuant to this order be authorized to:
 - a) release that person from arrest upon that person undertaking in writing to appear before this court at such time and place as may be fixed in the notice for the purpose of bringing proceedings against for contempt of court or of fixing a date for such a proceeding and such other undertakings as the peace officer may deem appropriate;
 - b) where such person has refused to give such written undertaking, or where in the circumstances the peace officer considers it necessary, to bring forthwith such person before this court at the court house located in the Township of Langley, British Columbia, or such other place as the court may direct for the purpose of being proceeded against for contempt of court or of fixing a time for such proceedings, and a peace officer may, where circumstances dictate, detain such person until it is possible to bring such person before the court.
13. Costs.

Part 2: FACTUAL BASIS

1. The petitioner is a society incorporated pursuant to the laws of the Province of British Columbia, having its offices at 8944 Mackie Street, Fort Langley, V1M 2S1, the directors of which number five, four of which are electors resident in Fort Langley, British Columbia. A copy of the certificate of incorporation of the petitioner is attached as **Schedule 10**.
2. The respondent is a municipality incorporated pursuant to the provisions of the Local Government Act.
3. Certain property located at 9202 and 9224 Glover Road in Fort Langley is owned by Statewood Properties Ltd. (the "Applicant" and the "Land", respectively)
4. The Land is zoned Community Commercial Zone (C-2) under the terms of the Township of Langley Zoning Bylaw no. 2500. A certified copy of an extract from the Zoning Bylaw is attached as **Schedule 1**
5. The Land is situated within the Fort Langley Heritage Conservation Area.
6. The Applicant proposes to construct a three storey 43.5 foot high mixed use development with 12,906 square feet of retail at grade, 13,724 square feet of offices on the second floor and ten units of residential apartments on the third floor. A copy of the Application is attached as **Schedule 2**.
7. The Applicant was required to apply for a Heritage Alteration Permit.
8. The Permit allows for certain characteristics of the proposed development to be dealt with by council, but council cannot deal with land use or density with respect to the application.
9. The administration of the Township of Langley prepared a staff report which was tabled at the time of consideration of the application. A certified copy of the Staff Report is attached as **Schedule 3**.

10. The staff report stated:
- "The current proposal, in staff's opinion, is inconsistent with the provisions of the Fort Langley Building Façade Guidelines included in the Fort Langley Community Plan and requires consultation by Council of variances to the Community Commercial (C-2) zone, forming part of the Permit"
11. The application was scheduled for consideration in a meeting held Monday November 19, 2012. A certified copy of the minutes of the council meeting of November 19, 2012 is attached as **Schedule 4**.
12. The staff report indicated, with respect to the Zoning Bylaw, that the current proposal requires three variances to the Zoning Bylaw: relating to height the proposed development since it would have a height which is inconsistent with existing regulations in this Zoning District; Site Coverage: site coverage regulations under the Zoning Bylaw would be exceeded; Rear Yard Setback: the proposed development would not comply with setback requirements.
13. The staff report concluded
- "Staff recommends that Council receive the information presented in this report for information and that prior to the required Heritage Alteration Permit being forwarded to Council for consideration that the current proposal be amended to further address the items outlined in this report."
14. The Fort Langley Building Design Guidelines (the Guidelines) are a part of the Fort Langley Community Plan. A certified copy of the Guidelines is attached as **Schedule 6**.
15. The Fort Langley Community Plan was enacted in 1987 under the statutory framework of the Municipal Act then in effect (FLOCP). A certified copy of the FLOCP is attached as **Schedule 5**.
16. The FLOCP contains the following policy statements:
- "The community of Fort Langley is a place with a significant historical role which has retained much of the scale and character of a rural small town in the midst of the urbanization of the Fraser Valley... [Introduction]
 - The Community Plan seeks to retain the features of the community, which makes it such a desirable place to live. [ibid]
 - "Fort Langley is a distinct community within the Township of Langley... Fort Langley has retained much of its historical land use pattern.... Nearby, the commercial area is focused on the "main street", Glover Road, and surrounded by the community's residential area comprised almost entirely of single family homes." [2.1 Regional Role]
 - "The commercial area is generally comprised of small stores, with individual structures and identities, and primarily one and two storey's in height... There is also a significant stock of heritage buildings in Fort Langley... As a result of its distinctive scale and character and of its heritage structures, Fort Langley is in a special position to take advantage of its assets and attract tourists and tourist-related development. [ibid]
 - "The Fort Langley commercial core focuses on Glover Road between St. Andrews Street and the bridge across Bedford Channel... Key to the revitalization guidelines of Glover Road is the heritage building theme for commercial buildings fronting on Glover Road and Mavis Avenue. These theme guidelines call for the restoration of heritage buildings and older

buildings with potential heritage interest and for treatment of contemporary and new buildings with elements to complement the heritage theme." [2.3.1 Commercial Core]

17. In 1997 the Official Community Plan was amended to include the following:

"The Heritage Conservation Area shown on Map 4 will serve two important objectives: it will ensure that new development will respond to the heritage theme, thereby embracing the commercial core's attractiveness to tourists, and it will protect the area from the introduction of much larger new buildings in a style which could potentially affect the scale and character of the core area..." [2.3.1]
18. The FLOCP Implementation Plan in part 5 includes the following:

"General building design guidelines are as follows:...

(b) new construction and infill projects should be designed to blend harmoniously with historic elements of the streetscape..."
19. In 1997 the FLOCP was amended to stipulate "Council shall adopt by resolution detailed building design guidelines for this heritage conservation area..."
20. The Fort Langley Council adopted building design guidelines in 1997 (the Guidelines)
21. In 1979 the Township of Langley adopted its Official Community Plan (TLOCP). A certified copy of the TLOCP is attached as **Schedule 7**.
22. A goal specified for the TLOCP includes:

"6. Preservation and enhancement of the unique and character-defining aspects of Langley's historic sites, communities and cultural resources." [2.2 Official Community Plan Goals]
23. For purposes of dealing with Heritage aspects of the FLOCP, it includes the following:
 - "Langley's strategic goals for heritage align with the broader civic goals of economic, environmental and cultural sustainability.
 - Objectives:...
 - To preserve the unique and character-defining aspects of Langley's historic places and communities by protecting and celebrating significant heritage resources that illustrates Langley's wide range of heritage values.
 - To support sustainable development of our urban and rural areas through a heritage resource management program that assists in the development of a complete community by building on the character, amenities, and historic infrastructure of existing neighbourhoods....
 - To promote heritage conservation efforts that contributes to an advanced understanding and appreciation of historic resources in the Township...
 - Policies...
 - Ensure that plans are developed for all of Langley's historic communities to preserve the character of those communities...."
24. The Township of Langley Official Community Plan consists of, inter alia, Fort Langley Community Plan, Bylaw no. 2527, including the Guidelines.

25. The attachments forming part of the resolution of council relating to the Heritage Alteration Permit considered by council (schedules A through K) relating to building plans did not include design criteria capable of meeting the requirements of the Fort Langley Building Design Guidelines.
26. No Zoning Bylaw amendments were considered by council on or before November 20, 2012.
27. Council resolved to issue the Heritage Alteration Permit without requiring compliance with the Guidelines, processing Zoning amendments or considerations of density issues which contradicted or offended Zoning and Guideline requirements. A certified true copy of Heritage Alteration Permit No. 100685 is attached as **Schedule 8**.
28. The development contemplated by the Heritage Alteration Permit will result in the development and construction of a building or buildings located in the Heritage Conservation Area, contrary to the Guidelines, Zoning Bylaw and other regulatory requirements, irreparably offending the heritage preservation aspects of those regulations.
29. Council issued an Agenda to the public for purposes of explaining the process involving an Heritage Alteration Permit. Copy of that Agenda is attached as **Schedule 9**.

Part 3: LEGAL BASIS

1. The proposed development of the Lands does not comply with the Township's land use policies and the Heritage Conservation Area requirements as outlined in the Fort Langley Community Plan.
2. The proposed development of the Lands requires three variations to the Zoning Bylaw requirements for the use and development of the Lands.
3. The development would not meet several of the design guidelines for the Fort Langley area contained in the Guidelines and other bylaws.
4. Any zoning bylaw amendments processed to accommodate the proposal of the Applicant must be consistent with the FLOCP and the TLOCP. Given the policy considerations set out in those plans, the height, set back and site coverage required will not be capable of being consistent with those plans.
5. The Heritage Alteration Permit deals with certain development features for the property, but does not deal with the requirements set out in the Fort Langley Official Community Plan, which specifies that the development must be consistent with the Fort Langley Building Façade Guidelines.
6. The Official Community Plan was not amended and could not be amended by virtue of the issuance of the Permit. No bylaw amending the Fort Langley Official Community Plan to accommodate this development by amending those Guidelines exists. In the absence of any amendment of the FLOCP, the Permit is invalid since it purports to allow development inconsistent with the FLOCP and this is beyond the jurisdiction of council.
7. The Heritage Alteration Permit does not and can not deal with the required Zoning Bylaw variances relating to density required for this development. No bylaw enacted or

proposed brings about variations for height limitations, set back restrictions or site coverage limitations which currently exist. As such the development cannot proceed until such matters are dealt with by council providing such variations.

8. Those variations could not be met by the issuance of a development variance permit since that permit system does not allow for alteration of density parameters specified in the Zoning Bylaw.
9. No future development of the Lands contemplated in the Heritage Alteration Permit can take place so long as these variations in density requirements are not dealt with through an amendment to the Zoning Bylaw.
10. Until such alterations to density requirements are formally enacted by Zoning Bylaw amendment bylaws, no building permit can be issued.
11. It is an error of law on the face of the record to issue a Heritage Development Permit which purports to permit development contrary to the requirements of the Official Community Plan, contrary to the Zoning bylaw and contrary to the Building Guidelines.
12. Redevelopment of the Lands contemplated for redevelopment by the Heritage Alteration Permit would unalterably and irreparably undermine the Heritage policies for land located in the Heritage Conservation Area, to the detriment of the cultural and historical heritage of Fort Langley, contrary to the law.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Harold Whittell made the day of , 2013

The petitioner estimates that the hearing of the petition will take 2 days.

Date:

Signature of
[] petitioner [x] lawyer for petitioner(s)
Roy J. Stewart, Q.C.

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:

nature of [] Judge [] Master