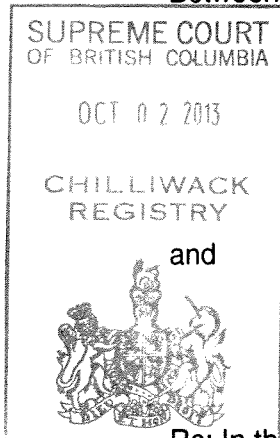


In the Supreme Court of British Columbia

Between



SOCIETY OF FORT LANGLEY RESIDENTS FOR SUSTAINABLE  
DEVELOPMENT, DAVID M. ABREO, DIANE ERIKA MORRISON,  
and VICKY L. FRASER

Petitioner  
Petitioners

TOWNSHIP OF LANGLEY

Respondent

Re: In the matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 and Township of  
Langley Heritage Alteration Permit No. 100685

### **AMENDED RESPONSE TO PETITION**

**Filed by:** The Corporation of the Township of Langley (the "**Township**")

THIS IS AN AMENDED RESPONSE TO the amended petition filed 05/Jul/22/Aug/2013.

#### **Part 1: ORDERS CONSENTED TO**

The Petition Respondent consents to the granting of the order set out in the following paragraphs of Part 1 of the petition: Nil.

#### **Part 2: ORDERS OPPOSED**

The Petition Respondent opposes the granting of the orders set out in paragraphs 1 to 12 of Part 1 of the petition.

#### **Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

Nil.

#### **Part 4: FACTUAL BASIS**

##### **Overview**

1. The Petition challenges the November 20, 2012 resolution (the "**Resolution**") of the Township's Council ("**Council**") authorizing the issuance of Heritage Alteration Permit No. 100685 (the "**Heritage Alteration Permit**") for a three storey mixed use commercial, retail

and residential development (the “**Development**”) on the property located at 9202/9224 Glover Road, Fort Langley, British Columbia (the “**Land**”).

### The Parties

2. The Respondent, the Township, is a municipal corporation pursuant to the provisions of the *Community Charter*, S.B.C. 2003, c. 26, with an address for service at 3000 – 1055 West Georgia Street, Vancouver, British Columbia.

Seifi Affidavit, #1, para. 4

3. The Petitioner, the Society of Fort Langley Residents For Sustainable Development (the “**Society**”), is a society incorporated pursuant to the provisions of the *Society Act*, R.S.B.C. 1996, c. 433, with an address for service at 8944 Mackie Street, Fort Langley, British Columbia. The purpose of the Society is to, within the Fort Langley Conservation Area, “strive to keep the character of the community as improvements to the commercial area, to tourist services, and to recreational amenities of Fort Langley are made.”

Petition, Schedule 10;

Seifi Affidavit, #1, Exhibit A

### Preliminary Issue: Standing

4. The recently created Society does not have private interest standing, and should not be granted public interest standing, to bring this Petition.

#### Private Interest Standing

5. The Society does not have a direct, personal interest in the Resolution and it will not gain any advantage peculiar to itself if the Petition succeeds, or suffer any disadvantage or prejudice peculiar to itself if the Petition fails. The only person who has a direct, personal interest in the Resolution is the person to whom the Heritage Alteration Permit was issued: Statewood Properties Ltd. (the “**Developer**”).

*Downtown Eastside Sex Workers United Against Violence Society v.*

*Canada (Attorney General)*, 2010 BCCA 439, affirmed on appeal 2012 SCC 45

#### Public Interest Standing

6. The Petition does not raise a serious justiciable issue; the Society does not have a real stake in these proceedings and they are not engaged with the issues they raise; and the Petition is not a reasonable and effective way to bring the issues it raises before the courts. All three of these factors, applied purposively and flexibly and weighed cumulatively, favour against exercising discretion to grant public interest standing to the Society to bring the Petition.

*Sierra Club of Canada v. Comox Valley Regional District*, 2010 BCCA 343;

*Galganov v. Russell (Township)*, 2012 ONCA 409;

*Canada (Attorney General) v. Downtown Eastside Sex Workers, 2012 SCC 45*

**Main Issues**

7. In the event that the court
- (a) finds that the Society has private interest standing, or grants the Society public interest standing, to bring the Petition, and
  - (b) finds that the Petition is not barred by section 11(b) of the JRPA.
- the Township's response to the main issues in the Petition is set out below.

**The Land**

8. The Developer is the owner of the Land.

Seifi Affidavit, #1, Exhibit B

9. The Land is located within:

- (A) the Community Commercial Zone (the "**C-2 Zone**") designated in the Township of Langley Zoning Bylaw 1987 No. 2500 (the "**Zoning Bylaw**"); and

Seifi Affidavit, #1, Exhibit C

- (B) the heritage conservation area (the "**Heritage Conservation Area**") designated on Map 4 of the Langley Official Community Plan Bylaw 1979 No. 1842 Amendment (Fort Langley Community Plan) Bylaw 1987 No. 2527 (the "**FLOCP**").

Petition, Schedule 5

**(A) The Zoning Bylaw and the Off-Street Parking Bylaw**

**Use**

10. Section 102 of the Zoning Bylaw provides that, in the Zoning Bylaw:

"ACCESSORY USE" means a use that is customarily and clearly incidental or subordinate to a permitted principal use of the land, building or structure situated on the same lot.

"USE" means the purpose for which any lot, parcel, tract of land, building or structure is designed, arranged or intended, or for which it is occupied or maintained.

Seifi Affidavit, #1, Exhibit C

11. Section 602.1 of the Zoning Bylaw permits all of the following uses in the C-2 Zone:

(1) accessory buildings and uses

...

(3) commercial uses

...

(6) Licensee Retail Store subject to the provisions of the "Liquor Control and Licensing Act" and Regulations pursuant thereto

...

(9) residential uses accessory to a commercial use and subject to Section 602.3.

Seifi Affidavit, #1, Exhibit C

12. Commercial uses in the C-2 Zone must comply with section 602.2 of the Zoning Bylaw, which provides as follows:

All business shall be conducted within a completely enclosed *building* except for parking, loading, display, eating areas and seasonal *uses*, where accessory to a permitted *use*. No storage areas shall be located in any required front yard setback.

Seifi Affidavit, #1, Exhibit C

13. Residential uses in the C-2 Zone must comply with section 602.3 of the Zoning Bylaw, which provides as follows:

(1) An accessory *residential use* may be located above the first floor of the building, and shall have a *gross floor area* no greater than twice the *gross floor area* of the non-*residential use* contained within the same building.

(2) The maximum number of *dwelling units* shall not exceed one *dwelling unit* per 135 m<sup>2</sup> of *lot area* (74 units per hectare).

Seifi Affidavit, #1, Exhibit C

#### Density of Use

14. The Zoning Bylaw does not contain any density of use requirements for commercial and retail uses in the C-2 Zone but does contain density of use requirements for residential uses in the C-2 Zone (section 602.3(2)).

Seifi Affidavit, #1, Exhibit C

Required Off-Street Parking Spaces for the Development

15. Residential uses in the C-2 Zone must provide the number of off-street parking spaces specified in section 107.3 of the Zoning Bylaw. Commercial uses in the C-2 Zone must provide the number of off-street parking spaces specified in section 107.3 of the Zoning Bylaw, subject to reductions to this number made pursuant to the Fort Langley Off-Street Parking Bylaw 1995 No. 3472 (the "Off-Street Parking Bylaw") and section 107.1(2) of the Zoning Bylaw.

Seifi Affidavit #1, Exhibit C;  
Seifi Affidavit #2, Exhibit C

16. Section 11(b) of the Off-Street Parking Bylaw provides that:

In the event of an owner of land of an existing commercially occupied building wishes to remove or demolish the said building in favour of a new building, only the increased gross floor area between the old demolished building and the new building will be required to comply with the off-street parking requirements of the [Zoning Bylaw]....

Seifi Affidavit #2, Exhibit C

17. Section 107.1(2) of the Zoning Bylaw provides that:

Within the Fort Langley area as indicated more particularly on the map in Section 107.10, only fifty percent (50%) of the commercial off-street parking and loading requirements of Section 107.3 are required.

Seifi Affidavit #1, Exhibit C

**(B) Heritage Bylaws, Resolutions and Guidelines**

~~1518.~~ On October 1, 1979, Council adopted the Langley Official Community Plan Bylaw 1979 No. 1842 (the "**OCP**").

Petition, Schedule 7

~~1619.~~ On October 26, 1987, Council adopted the FLOCP.

Petition, Schedule 5

~~1720.~~ As of May 3, 1993, section 945(4)(c) of the *Municipal Act*, R.S.B.C. 1979, c. 290 (the "**Municipal Act**"); provided that:

(4) A community plan may, for the purposes of section 976, designate areas for the

(c) protection of Provincial or municipal heritage sites, under the *Heritage Conservation Act*,

and the plan shall, with respect to those areas,

(f) describe the special conditions or objectives that justify the designation, and

(g) specify guidelines respecting the manner by which the

(i) conditions will be alleviated,

(ii) revitalization will occur, and

(ii) objectives of the guidelines referred to in paragraph (e) will be achieved.

~~1821.~~ On May 3, 1993, Council adopted the Langley Official Community Plan Bylaw 1979 No. 1842 Amendment (Fort Langley Community Plan) Bylaw 1987 No. 2527 Amendment (Development Permit Area) Bylaw 1993 No. 3204 ("**Bylaw No. 3204**"). Bylaw No. 3204 repealed and replaced Section 5.1 of the FLOCP and, in so doing:

- (i) a development permit area was designated pursuant to section 945(4)(c) of the *Municipal Act*; and
- (ii) Council was to "adopt by resolution detailed building design guidelines for this development permit area, encompassing facades, canopies, signage and lighting."

Seifi Affidavit, #1, Exhibit D

~~1922.~~ In the same meeting, Council passed a resolution "adopting" the Fort Langley Building Façade Design Guidelines (the "**Façade Guidelines**"). Section 1.4 of the Façade Guidelines provided that:

The maximum allowable building height for any building within the heritage alteration permit area shall not exceed two storeys or 9 metres (29.5 ft.). This height will preserve the existing scale of development in the downtown area.

Seifi Affidavit, #1, Exhibit E

Petition, Schedule 6

~~2023.~~ The Façade Guidelines were not adopted by bylaw pursuant to the procedures required for adoption of a community plan set out in section 947 of the *Municipal Act*, as amended, or in accordance with the procedures required for adoption of an official community plan set out in section 882 of the *Local Government Act*, R.S.B.C. 1996, c. 323 (the "**LGA**"), as amended.

Seifi Affidavit, #1, para. 13

~~21~~24. In 1996, the *Municipal Act* was revised and a new provision - section 880 - was enacted to govern the designation of heritage conservation areas. Section 880 provided, in part:

- (1) For the purposes of heritage conservation, a community plan may designate an area as a heritage conservation area to which 971(1) [*Heritage conservation areas*] applies.
- (2) If a heritage conservation area is designated under subsection (1), the community plan must
  - (a) describe the special features or characteristics that justify the designation,
  - (b) state the objectives of the designation, and
  - (c) specify guidelines respecting the manner by which the objectives are to be achieved.

~~22~~25. On July 28, 1997, Council passed a resolution that the Façade Guidelines be amended by:

- (a) adding the following sentence to the end of the second paragraph in Section 1: General Principles:

“The development permit area was changed to a heritage conservation area in 1997.”

- (b) changing “development permit” to “heritage alteration permit” wherever it appears in the Façade Guidelines,

when Langley Official Community Plan Bylaw 1979 No. 1842 Amendment (Fort Langley Community Plan) Bylaw 1987 No. 2527 Amendment (Heritage Conservation Area) Bylaw 1997 No. 3710 (“**Bylaw No. 3710**”) is adopted.

Seifi Affidavit, #1, Exhibit F

~~23~~26. On October 27, 1997, Council adopted Bylaw No. 3710, which:

- (i) repealed the references to “development permit area” in Section 5.1 of the FLOCP and replaced them with references to “heritage conservation area”;
- (ii) repealed the reference to “development permit” in Section 5.1 of the FLOCP and replaced it with a reference to a “heritage alteration permit”; and
- (iii) specified conditions under which a heritage alteration permit is not required.

Seifi Affidavit, #1, Exhibit G

2427. On June 25, 2012, Council adopted Langley Official Community Plan Bylaw 1979 No. 1842 Amendment (Heritage) Bylaw 2012 No. 4931 ("**Bylaw No. 4931**"). Bylaw No. 4931 added the "preservation and enhancement of the unique and character-defining aspects of Langley's historic sites, communities and cultural resources" to the goals set out in section 2.2 of the OCP and added heritage objectives and policies to section 4 of the OCP (see section 4.12).

Seifi Affidavit, #1, Exhibit H

### **The Heritage Alteration Permit**

2528. On May 2, 2012 ~~the Developer~~ Eric Woodward applied to the Township for a heritage alteration permit (the "**Application**") for the Development. The Application was completed on the Township's Development Application Form. The Amended Petition raises issues regarding the following two items listed on the Development Application Form:

- (a) a title search and, if the property is owned by a company, a BC Company Summary Search; and a letter on company letterhead to confirm the applicant's authority to sign on the company's behalf ("**Item B**"); and
- (b) a letter of intent detailing the proposal ("**Item K**").

Petition, Schedule 2

Seifi Affidavit #2, para. 4

29. With respect to Item B, the Application included a title search for the Land indicating that the Developer was the owner of the Land and a BC Company Summary Search for the Developer indicating that Mr. Woodward was the Developer's President, Secretary and sole Director and Officer. The Township did not require a letter on the Developer's letterhead to confirm Mr. Woodward's authority to sign on the Developer's behalf because the BC Company Summary Search sufficiently demonstrated Mr. Woodward's authority to sign on the Developer's behalf. With respect to Item K, a letter of intent detailing the proposal was provided in support of the Application.

Petition, Schedule 2

Seifi Affidavit #2, Exhibits A and B

2630. On July 23, 2012, Council heard submissions about the Application from Township residents and passed a resolution directing Township staff to bring forward the Application to Council for Council's consideration.

Seifi Affidavit, #1, Exhibit I

2731. On September 17, 2012, Council passed a resolution authorizing Township staff to bring the Application forward to the required public input/hearing for the heritage alteration



permit, together with the site-specific amendments for height and any other consequential related amendments to related enactments.

Seifi Affidavit, #1, Exhibit J

2832. On November 19, 2012, Senior Development Planner Chris Laing submitted a Report to Mayor and Council (the "**Report**") recommending that Council:

- (a) consider the Application;
- (b) make the issuance of a heritage alteration permit for the Development subject to nine conditions specified in the Report;
- (c) make the issuance of a building permit for the Development subject to twelve conditions specified in the Report; and
- (d) consider amending Section 1.4 of the Façade Guidelines to provide as follows: "Proposed building height should respect the precedent of scale within the heritage alteration permit area and provide appropriate transition to adjacent buildings".

Petition, Schedule 3

2933. On Page 11 of the Report, under a heading titled "Variances", the Report states that the current proposal requires the following three variances to the Zoning Bylaw:

- (a) Height: The Zoning Bylaw indicates a maximum building height of 9.0 metres and two storeys. The Development requires a height variance to permit a height of 13.26 metres and three storeys.
- (b) Site Coverage: Where at least 50% of the required parking spaces are provided underground or within the building, the Zoning Bylaw limits lot coverage in the C-2 Zone to 60%. In the Development, 89% of the required parking spaces are provided underground, and the Development requires a variance to permit lot coverage of 67%.
- (c) Rear Yard Setback: The Zoning Bylaw requires a rear yard setback of 3.0 metres in the C-2 Zone. The Development requires a variance to permit a rear yard setback of 0.1 metres.

Petition, Schedule 3

34. On Page 12 of the Report, under a heading titled "Access and Parking", the Report states that the Development requires 17 residential off-street parking spaces and 49 commercial off-street parking spaces (for a total of 66 off-street parking spaces) to comply with the Zoning Bylaw. The Report concludes that the Development is in compliance with the Zoning Bylaw because it includes 67 off-street parking spaces.

Petition, Schedule 3

- ~~30~~35. On November 19, 2012, in a public hearing, Council heard submissions about the Application from Township residents and passed a resolution adjourning the public hearing until 7:00 PM on November 20, 2012.

Seifi Affidavit, #1, Exhibit K

- ~~34~~36. On November 20, 2012, the public hearing of November 19, 2012 reconvened at 7:00 PM. During this hearing, Council heard submissions about the Application from Township residents and from the Developer and passed the Resolution. The Resolution amended Section 1.4 of the Façade Guidelines to read as follows:

Proposed building height should respect the precedent of scale within the heritage alteration permit area and provide appropriate transition to adjacent buildings.

Seifi Affidavit, #1, Exhibit L;

Petition, Schedule 8

37. In May 2013, the Developer provided the Township with:

- (a) new building surveys which revised the gross floor area for the existing commercial building on the Land, the Frontier Hardware building, from 699 m<sup>2</sup> to 553.3 m<sup>2</sup>; and
- (b) new building drawings that altered the apartment mix in the Development to six two-bedrooms units, three one-bedroom units and one studio unit.

Seifi Affidavit #2, para. 8

38. The Township subsequently re-calculated the number of residential and commercial off-street parking spaces and confirmed that the Developer continued to comply with the Parking Requirements.

Seifi Affidavit #2, para. 9

- ~~32~~39. On June 21, 2013, Township staff issued Demolition Permit No. BP125536 for the Development. Demolition has begun on the Land.

Seifi Affidavit, #1, Exhibit M

40. On August 19, 2013, Township staff issued Building Permit No. BP125892 (the "Excavation Permit"), authorizing the installation of on-site plumbing works and subsequent excavation on the Land.

Seifi Affidavit #2, para. 11

## Part 5: LEGAL BASIS

### General Principles of Local Government Law

1. Modern local government legislation gives local governments a broad discretion to enact official community plans and bylaws and to approve permits. The Supreme Court of Canada has endorsed a broad and purposive approach to the interpretation of such local government powers.

*Nanaimo (City) v. Rascal Trucking Ltd.*,  
2000 SCC 13, [2000] 1 S.C.R. 342 at paras. 17-20

*United Taxi Drivers Fellowship of Southern Alberta v. Calgary (City)*,  
2004 SCC 19, [2004] 1 S.C.R. 485 at paras. 6-8.

2. The standard of review with respect to a local government's jurisdiction to make bylaws is the standard of correctness. The standard of review with respect to decisions made by a local government within its jurisdiction is the standard of reasonableness.

*O'Flanagan v. Rossland (City)*, 2009 BCCA 182 at para. 19

3. Accordingly, courts display a degree of judicial deference in reviewing the decisions of local governments. As was said in *Nanaimo (City) v. Rascal Trucking Ltd.* at paras. 35-36:

Municipal councillors are elected by the constituents they represent and as such are more conversant with the exigencies of their community than are the courts. The fact that municipal councils are elected representatives of their community, and accountable to their constituents, is relevant in scrutinizing intra vires decisions. The reality that municipalities often balance complex and divergent interests in arriving at decisions in the public interest is of similar importance. In short, these considerations warrant that the intra vires decision of municipalities be reviewed upon a deferential standard.

4. Where democratically elected local government officials make a decision within their jurisdiction, courts should take a deferential approach when reviewing the decision. As explained by the Court in *Nanaimo (City) v. Rascal Trucking Ltd.* at para. 36:

Recent commentary suggests an emerging consensus that courts must respect the responsibility of elected municipal bodies to serve the people who elected them and exercise caution to avoid substituting their views of what is best for the citizens for those of municipal councils. Barring clear demonstration that a municipal decision was beyond its powers, courts should not so hold. In cases where powers are not expressly conferred but may be implied, courts must be prepared to adopt the "benevolent construction" which this Court referred to in *Greenbaum*, and confer the powers by reasonable implication. Whatever rules of construction are applied, they must not be used to usurp the legitimate role of municipal bodies as community representatives.

*Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 at 244,  
adopted in *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 at paras. 35-37

### **Authority to Designate the Heritage Conservation Area**

5. The Heritage Conservation Area was designated pursuant to section 880(1) of the *Municipal Act*. In accordance with section 880(2) of the *Municipal Act*, the FLOCP describes the special features or characteristics that justify the designation of the Heritage Conservation Area, states the objectives of the designation, and specifies the following three guidelines respecting the manner by which the objectives are to be achieved:
  - (a) historic buildings should be renovated and restored in a manner appropriate to their individual period and style and, whenever possible, original forms, materials and details should be uncovered or left in place and preserved;
  - (b) new construction and infill projects should be designed to blend harmoniously with historic elements of the streetscape; and
  - (c) decorative styles which are out of place with the architectural evolution of Fort Langley should be avoided.

(the “**Heritage Guidelines**”).

*Municipal Act*, s.880(1) and (2)

### **Authority to Issue the Heritage Alteration Permit**

6. Section 971(1)(b) of the *LGA* obligates a person to obtain a heritage alteration permit before beginning the construction of a building or structure in a heritage conservation area. As the Development involves the construction of a building or structure in the Heritage Conservation Area, the Developer was required to obtain a heritage alteration permit before beginning construction of the Development.

*LGA*, s.971(1)(b)

7. Together, sections 972(1)(a) and 973(1) of the *LGA* provide that, if the *LGA* requires the issuance of a heritage alteration permit for alterations or other actions, a local government may issue a heritage alteration permit authorizing such alterations or other actions subject to the terms, requirements and conditions that the local government considers consistent with the purpose of the heritage protection of the property. In accordance with these sections, Council had authority to issue the Heritage Alteration Permit subject to the conditions that Council attached to the Heritage Alteration Permit, which conditions it considered to be consistent with the purpose of the heritage protection of the Land.

*LGA*, ss.972(1)(a) and 973(1)

8. Pursuant to sections 972(2)(b) of the *LGA*, a heritage alteration permit may, in relation to property within a heritage conservation area, vary the provisions of a zoning bylaw. However, section 972(4) of the *LGA* provides that:

- (a) the use or density of use may not be varied;

(b) a flood plain specification under section 910 (2) may not be varied;

(c) in relation to property within a heritage conservation area, the permit must be in accordance with the guidelines established under section 970.1 (2) (b) for the heritage conservation area.

*LGA*, ss.972(2)(b) and 972(4)

9. The Heritage Alteration Permit varied the provisions of the Zoning Bylaw with respect to height, site coverage and rear yard setback but did not vary the use or density of use and was in accordance with the Heritage Guidelines.

#### Use

10. The Heritage Alteration Permit did not vary the “use” of the Land within the meaning of section 972(4)(a) of the *LGA* because the commercial, retail and residential uses of which the Development consists are permitted under the Zoning Bylaw.

#### Density of Use

11. The Society alleges that the Heritage Alteration Permit varied the “density of use” of the Land within the meaning of section 972(4)(a) of the *LGA*.
12. Section 903(1) of the *LGA* provides that a local government may, by bylaw, do one or more of the following:
  - (a) divide the whole or part of the municipality or regional district into zones, name each zone and establish the boundaries of the zones;
  - (b) limit the vertical extent of a zone and provide other zones above or below it;
  - (c) regulate within a zone
    - (i) the use of land, buildings and other structures,
    - (ii) the density of the use of land, buildings and other structures,
    - (iii) the siting, size and dimensions of
      - (A) buildings and other structures, and
      - (B) uses that are permitted on the land, and
    - (iv) the location of uses on the land and within buildings and other structures;
  - (d) regulate the shape, dimensions and area, including the establishment of minimum and maximum sizes, of all parcels of land that may be created by subdivision, in which case
    - (i) the regulations may be different for different areas, and

(ii) the boundaries of those areas need not be the same as the boundaries of zones created under paragraph (a).

13. Local governments may choose to regulate density in a number of ways, including by:
  - (i) imposing a maximum permitted floor area ratio on a defined area of land (e.g. a lot or parcel);
  - (ii) specifying the number of dwelling units permitted for a defined area of land (e.g. per lot, per square metre or per hectare); and
  - (iii) specifying the number of principal and accessory buildings permitted on a defined area of land (e.g. per lot, per parcel or per hectare).

Seifi Affidavit, #1, Exhibits N and O

14. The Zoning Bylaw does not impose any density of use requirements for commercial or retail uses in the C-2 Zone, it only imposes density-related requirements for residential uses in the C-2 Zone. Section 602.3(2) of the Zoning Bylaw provides that "the maximum number of dwelling units shall not exceed one dwelling unit per 135 m<sup>2</sup> of lot area (74 units per hectare)."
15. The Heritage Alteration Permit varied the siting, size and dimensions of buildings permitted on the Land by the Zoning Bylaw within the meaning of section 903(1)(c)(iii)(A) of the *LGA* by permitting: (1) an increase in site coverage from 60% to 67%; (2) a decrease in the rear yard setback from 3.0 metres to 0.1 metres; and (3) an increase in the height from 9.0 metres to 13.26 metres. These variances to the siting, size and dimensions of buildings and structures permitted on the Land by the Zoning Bylaw do not constitute variances to the density of use permitted on the Land by the Zoning Bylaw within the meaning of section 972(4)(a) of the *LGA*.

*Karpick v. Colwood (City)*, [1988] B.C.J. No.

16. As the residential use permitted by the Heritage Alteration Permit complies with section 602.3(2) of the Zoning Bylaw, the Heritage Alteration Permit does not vary the density of residential use permitted on the Land by the Zoning Bylaw. As the Zoning Bylaw does not contain density of use requirements for commercial or retail uses, the Heritage Alteration Permit does not vary the density of commercial or retail uses permitted on the Land by the Zoning Bylaw.

#### Heritage Guidelines

17. Where a municipal council has applied development permit guidelines, courts have characterized the decision as being made within council's jurisdiction, to which deference is due.
 

*511784 BC Ltd. v. Salmon Arm (District)*, 2001 BCSC 245 at para. 50;  
*0742848 B.C. Ltd. v. Squamish (District)*, 2011 BCSC 747 at para. 18
18. Heritage permit guidelines serve the same purpose as development permit guidelines, except that they apply to an area designated as a heritage conservation area rather than to an area designated as a development permit area: while heritage permit guidelines restrict a local government's

authority to issue a heritage alteration permit in a heritage conservation area, development permit guidelines restrict a local government's authority to issue a development permit in a development permit area. Where, as here, a municipal council has applied heritage permit guidelines, the decision is being made within council's jurisdiction and, like the application of development permit guidelines, should be given deference by the courts.

19. As the Development does not involve the renovation or restoration of an existing historic building, the applicable Heritage Guidelines are as follows:
  - (b) new construction and infill projects should be designed to blend harmoniously with historic elements of the streetscape; and
  - (c) decorative styles which are out of place with the architectural evolution of Fort Langley should be avoided.
20. Prior to passing the Resolution, Council determined that the Heritage Alteration Permit is in accordance with the applicable Heritage Guidelines, as required by section 972(4)(c) of the *LGA*: the Development is designed to blend harmoniously with historic elements of the streetscape and avoids decorative styles which are out of place with the architectural evolution of Fort Langley. Council's determination is entitled to deference and should not be interfered with by the court.

*Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 at 244,  
adopted in *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 at paras. 35-37

### **The Façade Guidelines**

21. The Heritage Alteration Permit is in accordance with the Façade Guidelines and, in particular, with section 1.4 of the Façade Guidelines, as amended by the Resolution.
22. In the alternative, if the Heritage Alteration Permit is not in accordance with the Façade Guidelines, Council had authority to issue the Heritage Alteration Permit because the Façade Guidelines were not adopted by bylaw in accordance with the procedures required for adoption of a community plan set out in section 947 of the *Municipal Act*, or in accordance with the procedures required for adoption of an official community plan set out in section 882 of the *LGA*, and are therefore not part of the OCP or the FLOCP. The only guidelines which are part of the OCP and the FLOCP are the Heritage Guidelines.

### **The Application**

23. The Petitioners' argument that a failure to include Item B and Item K in the Application renders the Heritage Alteration Permit a nullity cannot succeed because: (1) the Application included Item B and Item K; and (2) neither the *LGA* and its associated regulations, nor any Township bylaw, require that all items on a Development Application Form must be provided. Further, even if they did, Council's failure to follow such a non-statutory procedure would only be an irregularity and would not be fatal to the validity of the Heritage Alteration Permit.

*Botterill v. Cranbrook (City)*, 2000 BCSC 1225 at para. 41;  
*Silverado Land Corp. v. Courtenay (City)*, 2000 BCSC 1667 at para. 47

### Re-Calculation of the Parking Requirements

24. The Heritage Alteration Permit does not regulate the requirement for, nor the calculation of, the off-street parking spaces required for the Development. Parking requirements are regulated by Zoning Bylaw and the Off-Street Parking Bylaw (collectively the "Parking Requirements"). Accordingly, the re-calculation of the Parking Requirements did not violate a condition of the Heritage Alteration Permit or amend the Heritage Alteration Permit as alleged or at all.

Seifi Affidavit #2, para. 7

25. In the alternative, neither the LGA and its associated regulations, nor any Township bylaw or resolution, require Council to amend a heritage alteration permit in a specified way, and, even if they did, Council's failure to follow such a non-statutory procedure would only be an irregularity and would not be fatal to the validity of the Heritage Alteration Permit.

Botterill v. Cranbrook (City), 2000 BCSC 1225 at para. 41;  
Silverado Land Corp. v. Courtenay (City), 2000 BCSC 1667 at para. 47

### **Delay**

2326. Under section 11(b) of the *Judicial Review Procedure Act*, RSBC 1996, c 241 (the "**JRPA**") an application for judicial review may be barred by the passage of time if "the court considers that substantial prejudice or hardship will result to any other person affected by reason of delay."

2427. The rationale for requiring timely applications for judicial review rests on the need to balance:

... the justice of an individual applicant's complaint about an exercise of a statutory power of decision with the need to preserve the integrity of the administrative scheme, make efficient use of judicial resources, avoid a multiplicity of proceedings, and avoid prejudice to any other person.

*Speckling v. British Columbia (Labour Board)*, 2008 BCCA 155 at para. 16

2528. The Resolution authorizing the issuance of the Heritage Alteration Permit was passed on November 20, 2012. The Petition was filed on July 5, 2013, 7.5 months later. ~~The Society has not provided any explanation for this delay in the Petition or in the~~Between November 20, 2012 and today, the Developer expended substantial time, energy and money complying with the conditions of the Heritage Alteration Permit, undertaking demolition on the Land pursuant to the Demolition Permit (which was issued on June 21, 2013 prior to the filing of the Petition) and undertaking construction and excavation on the Land pursuant to the Excavation Permit. Should the Petition be permitted to proceed, substantial prejudice and hardship will result to the Developer as a result of the Society's delay.

Affidavit #1 of Harold Whittell

*Harrison v. Richmond (City)*,  
 [1993] B.C.J. No. 826, 14 M.P.L.R. (2d) 261



**Part 6: MATERIAL TO BE RELIED ON**

1. Affidavit # 1 of R. Seifi, sworn 29/July/2013.
2. Affidavit # 2 of R. Seifi, sworn 27/September/2013.

The Petition Respondent estimates that the application will take 1 day.

Bull, Housser & Tupper LLP

per:

Date: 30/July/1/October/201  
3

Erika Lambert for:  
Signature of Lawyer for Petition Respondent

Daniel Bennett

Petition Respondent's) address for service:

3000 - 1055 West Georgia Street  
Vancouver, British Columbia  
V6E 3R3

Fax number address for service:

604-641-4949

E-mail address for service (if any):

None.

Name of the Petition Respondent's lawyer, if any:

Bull, Housser & Tupper LLP  
Attention: Daniel Bennett

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In the Supreme Court of British Columbia

Between

SOCIETY OF FORT LANGLEY RESIDENTS FOR  
SUSTAINABLE DEVELOPMENT, DAVID M.  
ABREQ, DIANE ERIKA MORRISON, and VICKY L.  
FRASER

Petitioner  
Petitioners

and

TOWNSHIP OF LANGLEY

Respondent

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**AMENDED RESPONSE TO PETITION**

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**BULL, HOUSSEY & TUPPER LLP**  
Barristers & Solicitors  
3000 - 1055 West Georgia Street  
Vancouver, B.C. V6E 3R3  
Attention: Daniel Bennett  
Direct Telephone: 604.641.4882  
Direct Facsimile: 604.646.2553

DB/ELL

Matter# 13-2661

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