



No.S026696
Chilliwack Registry

In the Supreme Court of British Columbia

SOCIETY OF FORT LANGLEY RESIDENTS
FOR SUSTAINABLE DEVELOPMENT

, Petitioner

TOWNSHIP OF LANGLEY

, Respondent

APPLICATION RESPONSE

Application response of: Society of Fort Langley Residents for Sustainable Development, (the "application respondent")

THIS IS A RESPONSE TO the notice of application of the respondent Township of Langley filed August 2, 2013.

Part 1: ORDERS CONSENTED TO

The application respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

Nil.

Part 2: ORDERS OPPOSED

The application respondent opposes the granting of the orders set out in paragraphs 1, 2 and 3 of Part 1 of the notice of application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The application respondent takes no position on the granting of the orders set out in paragraphs Nil of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. The petitioner was formed, primarily, by a group of ratepayers, electors and residents of Fort Langley
2. Fort Langley forms a part of the Township of Langley, located in the Fraser Valley, and the town of Fort Langley has enacted an Official Community Plan and incorporated guidelines to regulate development in a development permit area including a Heritage Conservation Area.
3. Fort Langley is a community with a significant historical connection to the creation of British Columbia, and advertises that fact along with the preserved character of its historical town buildings and requirements for new developments which maintain this theme.
4. The petitioner is an interest based group formed by local residents primarily resident in the municipality of Fort Langley and seeks to ensure that the historical and preserved character of the community of Fort Langley is not lost through improvements to the commercial area, tourist services and recreational amenities.
5. The petitioner challenges the validity or legality of a Heritage Alteration Permit issued by council of the Township of Langley on November 20, 2012.

6. Mr. Harold Whittell, a member and director of the Society, sought clarifications, information and reconsideration of the Heritage Alteration Permit commencing within one week of the passing of the resolution authorizing it and continuing without success until July, 2013.
7. The petitioner subsequently become the petitioner in this proceeding to seek, inter alia, a declaration that the exercise of statutory power of decision by the Township of Langley was invalid due to errors, including failure to conform to the preconditions to the exercise of the statutory power of decision, varying density of use by use of a Heritage Alteration Permit, contrary to the Local Government Act, and amending the Permit without due process.
8. If the petitioner is successful in its application for a declaration for invalidity of the Heritage Alteration Permit it will preserve the character of a portion of the community of Fort Langley within the Heritage Conservation Area, for the benefit of all residents of the municipality of Fort Langley and all citizens of British Columbia.
9. Of the founding membership of the application respondent four of the five are residents of the town of Fort Langley and are individually rate payers and electors of the town of Fort Langley. Each of them would, if named as a petitioner, have standing in this matter.
10. Each of the four have a direct personal interest in the outcome of development as authorized by the Heritage Alteration Permit since each of them lives and resides in the town of Fort Langley and enjoys the benefit of the Heritage Conservation Area which is protected from unauthorized development by provisions of the Official Community Plan of the town of Fort Langley and its concomitant Zoning regulations and building regulations.
11. The application respondent, as an incorporated society, is a means for its members to collectively focus their concerns and the application respondent acts for the benefit of its members. The petition herein is an expression of the direct personal interest of the membership of the application respondent.
12. The application respondent's petition, if successful, will prevent irreparable harm to the residents, rate payers and electors of the town of Fort Langley by preventing new development in the Heritage Conservation Area which would not conform effectively to the heritage theme incorporated in the Fort Langley Official Community Plan, and thereby undermine the commercial core's attractiveness to tourists, and will protect the area from the introduction of much larger buildings in a style which could potentially affect the scale and character of the core area.
13. The land in question is located in the commercial core of the town of Fort Langley and is directly affected by the Fort Langley Official Community Plan, and is governed by Zoning, Building and other regulatory bylaws of the town of Fort Langley which must be applied consistently with the guidelines and policies that preserve and enhance the historical theme associated with that area.
14. The application respondent is an entity charged, by its constitution, to object to development within the Heritage Conservation Area of the town of Fort Langley that contravene the reasonable and long standing regulation of such new developments and to do so on behalf of its members, which includes residents, ratepayers and electors of the town of Fort Langley.

Part 5: LEGAL BASIS

1. There is a serious justiciable issue involved in the outcome of this process, initiated by petition. The justiciable issue is whether the town of Fort Langley Official Community Plan, Zoning regulations and procedural bylaws governing the Heritage Alteration Permit have been validly and legally complied with.

2. In the event that the development authorized by the Heritage Alteration Permit proceeds contrary to the requirements of local regulation, the development would undermine or corrupt the stated and long standing goal of the town of Fort Langley to preserve its historical character in respect of land comprising the historical town of Fort Langley. This alone represents a threat to the future of businesses catering to tourism, one of the significant classes of business operating in the town of Fort Langley.
3. This issue is an important one that is far from frivolous and is appropriate for judicial determination as noted below:
 - a) The application for a Heritage Alteration Permit failed to comply with certain mandatory preconditions and accordingly could not be accepted for processing, according to the regulations of the Township of Langley. Those mandatory preconditions for an application for a Heritage Alteration Permit included ensuring that all required schedules, including Schedules B and K, were included with the application. Schedules B and K were not provided by the applicant. The acceptance for consideration of the incomplete application for a Heritage Alteration Permit was contrary to the regulations and requirements created by the petition respondent itself.
 - b) The application for a Heritage Application Permit proposed a building height of 13.26 meters or 43.5 feet whereas the Zoning Bylaw indicated a maximum building height of 9 meters or 29.5 feet. It is alleged that this inconsistency had to be dealt with by council through an amendment to the Zoning regulations since a Heritage Alteration Permit could not vary density of use requirements; the rear yard setback proposed in the application for the Heritage Alteration Permit is 0.1 meters but the zoning district requires a rear yard setback of 3 meters, and this inconsistency had to be dealt with by council through an amendment to the Zoning regulations since a Heritage Alteration Permit could not vary density of use requirements.
 - i) Section 972(4)(a) of the Local Government Act states, in respect of the issuance of a heritage alteration permit by a local government "the use or density of use may not be varied" by the issuance of such a permit.
 - ii) The response to the petition alleges that "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." [para 16 Response to Petition]
 - iii) In the C-2 Commercial Zoning district, where the land in questions is located, the Zoning Bylaw regulates, for commercial users, "lot coverage", "Siting of Buildings and Structures", "Height of Buildings and Structures", "Parking and Loading" among other things.
 - iv) The position of the respondent to the petition relating to whether the Heritage Alteration Permit varies density of use provisions, as set out in its Response to the Petition, is premised on the proposition that those aspects of zoning regulation applicable to the land affected by the Permit, including lot coverage, siting of buildings, height of buildings and parking and loading requirements, are not density of use requirements for commercial or retail uses.
 - v) The variance of use or density of use, as proscribed by s.972 (4) (a) of the Local Government Act, noted above, is in respect of use or density of use provisions in a zoning bylaw.
 - vi) S. 972(2) states "the heritage alteration permit may, in relation to protected heritage property or property within a heritage conservation area, vary or supplement provisions of...a bylaw under Division 7... of Part 26..."

(including Zoning regulations) but in respect of this permissive provision, s. 972(4) prohibits the variation of the use or density of use.

- (c) The dimensions of the buildings submitted by the applicant at the time of its application for a Heritage Alteration Permit were incorrect, and favored the applicant for the Heritage Alteration Permit when calculating parking requirements. Council for the petition respondent has amended the Heritage Alteration Permit upon being made aware of the error, to allow the parking requirements to be reconsidered. Such amendment to the Heritage Alteration Permit was not processed by reference to the same process (resubmission for amendment followed by public hearing) used to issue it, contrary to the regulations of the respondent to the petition.
15. The application respondent and its membership have a real stake in the outcome, since its purpose is "strive to keep the character of the community" and the only effective means of doing so is to seek the application of the rule of law to the activities of local government in the instance of a real and present danger that aspects of the heritage values of the community, included in the town of Fort Langley Official Community Plan, as supplemented in its Zoning regulations, will be lost or damaged by this development.
 16. The issues involved were brought to the attention of the town council and its administrative staff by Mr. Whittell commencing shortly after the issuance of the Heritage Alteration Permit. Mr. Whittell is a member and a director of the petitioner. The township and its staff were fully aware of the issues raised by Mr. Whittell from the outset. There can only be a facetious insistence that Mr. Whittell is not the petitioner to allege lack of contact.
 17. The petition is a reasonable and effective way to bring the issue before the court. This is a case which transcends the interests of those most directly affected by the challenged permit since it deals with matters of long standing concern to the residents of the town of Fort Langley, many citizens of British Columbia concerned with preserving heritage, and involves the enforcement of laws which preserve the unique characteristics of the town of Fort Langley in a context of historical importance.
 18. There are no realistic alternative means which would favour a more efficient and effective use of judicial resources and which would present a context more suitable for adversarial determination. There is an imminent, real, and perceived danger to the continuation of heritage values and buildings, ambience and character to the area of the town of Fort Langley which is connected to the creation of British Columbia. The court and the use of a petition to bring these issues to the attention of the courts is the means to justice in this case.
 19. The developer, which has received a copy of the petition, and the affidavits, is directly affected by this matter. That developer has the right to be represented in these proceedings.
 20. The discretion of the court ought to be exercised in this case, with its unique proportions, in favour of granting public interest standing to the Society which has brought the petition.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Harold Whittell made July 3, 2013
2. Affidavit #2 of Harold Whittell made August 16, 2013
3. Petition filed July 5, 2013
4. Response to Petition filed August 2, 2013

The application respondent estimates that the application will take 2 hours.

[Check whichever one of the following is correct and complete any required information.]

- ☒ [x] The application respondent has filed in this proceeding a document that contains the application respondent's address for service.
- ☐ [] The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

Date: 20/08/2013

Signature of ☐ [] application respondent

☒ [x] lawyer for application respondent

Roy J. Stewart, Q.C.

No. S026696

CHILLIWACK REGISTRY

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BETWEEN:

SOCIETY OF FORT LANGLEY RESIDENTS
FOR SUSTAINABLE DEVELOPMENT

, Petitioner

And

TOWNSHIP OF LANGLEY

, Respondent

RESPONSE TO APPLICATION

ROY J. STEWART LAW CORPORATION

Barristers and Solicitors

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File No. 2012030