

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

John Higgins, Valerie King, and Susan Maile

PETITIONERS

AND:

The City of Quesnel

RESPONDENTS

**PETITION TO THE COURT**

**ON NOTICE TO:** The City of Quesnel\_of 410 Kinchant St, Quesnel, BC V2J 7J5

**This proceeding has been started by the petitioners for the relief set out in Section 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 petitioners
  - 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.

**Orders, including orders granting 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 petitioners,

- (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: 350 Barlow Avenue, Quesnel, BC, V2J 2C2

(2) The ADDRESS FOR SERVICE of the petitioner(s) is: 3563 Manweiler Road Quesnel BC V2J 5G6

Fax number for service (if any) of the petitioner(s): 1-855-648-9656

Email address for service (if any) of the petitioner(s): ksurcesslaw@live.com

(3) The name and office address of the petitioner's(s') lawyer is: Karen Surcess 3563 Manweiler Road Quesnel BC V2J 5G6

### **CLAIM OF THE PETITIONERS**

#### **Section 1: ORDERS SOUGHT:**

1. A declaration that Amendment Bylaw 1716 of 2013 (the "Bylaw") is invalid and should be quashed because it is inconsistent with the Official Community Plan ("OCP") of the City of Quesnel (the "City"), contrary to the provisions of s.884(2) of the *Local Government Act*, R.S.B.C. 1996, c.323;
2. Special costs of this proceeding alternately, ordinary costs; and
3. such further and other relief as to this Honourable Court seems just.

#### **Section 2: FACTUAL BASIS**

1. The petitioners are all electors and taxpayers of the City. They all reside on Leonard Street in the Johnston neighbourhood within the City.
2. The City rezoned 136 Leonard Street by means of an amended Bylaw to the City of Quesnel Zoning Bylaw No. 1662, 2009, entitled "City of Quesnel Zoning Bylaw Amendment Bylaw No. 1716 of 2013."
3. The Bylaw permits a Secondary Suite at 136 Leonard Street. Prior to the amendment, Johnston Neighbourhood was designated as a Low Density Single Family Residential (LDSF) Neighbourhood which did not allow Secondary Suites.

4. The OCP for the City was established by City Council Bylaw No. 1630 and was adopted on July 23<sup>rd</sup>, 2007. The document is divided into 23 different Sections.
5. Section 3 of the OCP outlines the Background, Objectives and Policies of Residential neighbourhoods.
6. Section 3.2 of the OCP outlines the City Council's Residential Objectives. Relevant Objectives are as follows: .3 Manage residential growth in such a way that it minimizes negative environmental impact and protects the existing quality of life. .5 Encourage residential development that is generally compatible, in terms of built form, scale and character, with the existing neighbourhood.
7. Section 3.3.1 of the OCP outlines Council's General Policies as follows:
  1. Direct residential development to areas designated for residential uses on the Land Use Map.
  4. Encourage an intensification of residential land use and density in the following areas: Near established commercial and employment areas; along major arterials; in areas where existing services can accommodate higher densities within other selected areas designated for multiple family development on the OCP map.
8. Section 3.3.3 of the OCP states that the purpose of the LDSF Residential designation is to identify areas primarily suitable for single family dwellings.
9. Section 3.3.3 of the OCP also outlines Council's policies regarding LDSF Neighbourhoods. The relevant policies are as follows: .2 Preserve and enhance the character of existing single family neighbourhoods in Quesnel; and .3 Single family residential is the primary use accommodated in the LDSF Residential designation.
10. Section 3.3.7 of the OCP outlines Council's policies regarding Secondary Suites. The relevant policies are as follows: .1 Retain a specific zone that permits secondary suites, and allow secondary suites within single detached dwellings upon following a rezoning process to permit the secondary suite.
11. The Bylaw allows for the rezoning of 136 Leonard Street and did not rezone the Johnston neighbourhood as a specific zone that permits secondary suites.

12. Section 4 of the OCP outlines the background and objectives surrounding each City neighbourhood.

13. Section 4.1.6 of the OCP states that the Johnston neighbourhood is comprised of primarily single family dwellings with some school, commercial and recreational development.

14. Section 4.2 of the OCP outlines the Council's objectives regarding different neighbourhoods.

The relevant objectives are as follows: .1 Recognize the unique character of different neighbourhoods in Quesnel. .5 Work with the residents of each neighbourhood to implement policies set out in other sections of the OCP as they relate to each specific neighbourhood.

### **Section 3: LEGAL BASIS**

1. *Judicial Review Procedure Act*, R.S.B.C. 1996 c.241;
2. Section 262 of the *Local Government Act* which authorizes an application to the court set aside all or Section of a bylaw for illegality;
3. Section 875 (1) of the *Local Government Act*;
4. Section 877 (1) of the *Local Government Act*;
5. Sections 877 (1) and (2) of the *Local Government Act*; and
6. Section 884(2) of the *Local Government Act*;
7. *Sevin v. Prince George (City)*, 2012 BCSC 1236.

### **Section 4: MATERIAL TO BE RELIED ON**

1. Affidavits of: John Higgins  
Valerie King  
Susan Maile

The petitioners estimate that the hearing of the petition will take 1 day.

DATED June 29, 2013

\_\_\_\_\_  
KAREN SURCESS

petitioner  lawyer for petitioner(s)

**To be completed by the court only:**

Order made

- in the terms requested in paragraphs \_\_\_\_\_ of Section 1 of this petition
- with the following variations and additional terms:

Date: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

Signature of  Judge  Master

**File No:  
QUESNEL REGISTRY**

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**RESPONDENTS**