



## Administration Report

**Report Date:** August 22, 2013

**Meeting Date:** August 26, 2013

**To:** Mayor & Council

**From:** City Manager, Byron Johnson

**Subject:** Review of secondary suite lawsuit – Higgins v. Quesnel (City)

### PURPOSE

Staff is bringing this report to inform Council and the public regarding the outcomes of the lawsuit brought forward by Leonard Street residents Higgins, King, and Maile challenging the recent rezoning to allow a secondary suite.

### SUMMARY

- The petitioner’s main assertions were as follows:
  - that the rezoning was contrary to the Official Community Plan (the OCP),
  - that the rezoning process was not handled correctly by City staff
- The judge found in favour of the City.
- The City was awarded costs.

### STATUTORY REQUIREMENTS

When rezoning applications are brought before Council, the rezone in question must not be in conflict with the OCP. The legal process of completing a rezoning include: requirements for a public hearing, advertising, and informing residents within a prescribed radius of the location. If any of the above requirements are not met, the bylaw may be challenged in court.

### COUNCIL POLICY

The ***Affordable Housing Strategy*** which has been endorsed by Council specifically supports the concept of increasing the number of secondary suites in Quesnel to provide more rental options for residents of the community.

### FINANCIAL IMPLICATIONS

The cost breakdown for this case is estimated as follows:

Legal fees/disbursements/taxes	\$14,456
Estimated cost recovery	<u>\$ 6,430</u>
<b>Net Cost to taxpayers</b>	<b>\$ 8,026</b>

### BACKGROUND

1. Consistency of Rezone with OCP

- a. OCP's are meant to be read as a whole. Individual sentence and sections cannot be picked from the OCP and used to challenge a rezone, if the OCP read as a whole supports the rezone.
  - b. The spot zoning process is not only consistent with the OCP, it is specifically mentioned as the tool to allow secondary suites.
  - c. The judge stated in his reasons for judgement that he was not sure that there was even a potential incompatibility for him to interpret.
2. The petitioners also alleged that there were numerous flaws in the actual handling of the rezoning process by staff.
    - a. The most common reason for rezoning applications to fail is due to procedural errors. The law is very specific on the process to be followed.
    - b. The judge did not find flaws in the procedures followed by City staff.
    - c. A local website that frequently "reports" on City issues has the following excerpt:

### **Leonard Street Court Case Results**

**The Judge states:** *"There are concerns about the advice that was given to Council concerning this amending bylaw during the enactment process, by Tanya Turner, the City's Manager of Development Services."*

**The above excerpt is intentionally misleading, the Judge was referring to the assertions made by the petitioner's own lawyer. This is contained on pages 2 and 3 of the attached Reasons for Judgement.**

### **ATTACHMENTS**

Oral Reasons for Judgement in Higgins v. Quesnel (City)

### **RECOMMENDATION**

**THAT Council receives Administration report #110/13, regarding the outcomes of the lawsuit brought forward by Leonard Street residents Higgins, King, and Maile challenging the recent rezoning to allow a secondary suite, as information.**