IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Higgins v. Quesnel (City)*, 2013 BCSC 1365

Date: 20130710
Docket: 15819
Registry: Quesnel

Between:

John Higgins, Valerie King, and Susan Maile

Petitioners

And

The City of Quesnel

Respondent

Before: The Honourable Mr. Justice Schultes

Oral Reasons for Judgment

Counsel for the Petitioners:	K.J. Surcess
Counsel for the Respondent:	C.S. Murdy
Place and Date of Hearing:	Prince George, B.C. July 10, 2013
Place and Date of Judgment:	Quesnel, B.C. July 10, 2013

[1] **THE COURT:** The petitioners, residents of Leonard Street in the Johnston neighbourhood of Quesnel, are seeking a declaration that a bylaw enacted by the City is invalid because it conflicts with Quesnel's Official Community Plan ("OCP"). The bylaw in question permitted an amendment to the zoning bylaw to allow a secondary suite in the home at 136 Leonard Street.

[2] The basic facts are not in dispute. The owner of 136 Leonard Street constructed and rented out a secondary suite there. The Johnston neighbourhood is zoned "RS1", and such a use was contrary to that zoning. The violation was reported to the City, and the owner was given the choice to either decommission the suite or seek an amendment to the zoning bylaw to allow it. He chose the latter option, and the process of an amendment bylaw being enacted went forward with the City.

[3] A public hearing is required for an amendment of this kind. The hearing took place on March 25 of this year. During it, many residents of the neighbourhood spoke out strongly against allowing the suite. Their concerns had to do with the general incompatibility of secondary suites with the longstanding character of the neighbourhood and the tendency of such suites to bring with them a host of problems with parking, traffic, and general safety.

[4] Despite these concerns, the amendment bylaw permitting the suite was ultimately adopted by Council on April 22.

[5] In forceful submissions, counsel for the petitioners, Ms. Surcess, has referred to several aspects of the OCP which she submits are inconsistent with the enactment of this bylaw:

- The OCP speaks of such development goals as maintaining the consistency of new buildings with the character of the existing neighbourhood. Under it, the Johnston neighbourhood is designated a low density single family neighbourhood. The OCP instead encourages residential densification for Quesnel in established commercial and employment areas, or in specifically designated multiple family zones.

- Several aspects of the actual rezoning process were flawed in this case. The bylaw was enacted after the owner had already built and rented the suite, resulting in the legitimization of a violation, rather than an authorization process. In addition, Council passed the bylaw in the face of numerically overwhelming opposition on the part of actual area residents.

- Contrary to one of the main justifications for allowing the suite, it is actually unlikely to provide an affordable housing option for its tenant, given the high listing price for the house that contains it. In any event it appears from the available evidence that Quesnel has a very high vacancy rate and so will not be lacking in affordable options in the market.

- 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. Ms. Surcess argues that Ms. Turner made a critical omission by failing to report that the amendment sought stemmed originally from a neighbourhood complaint about the existing illegal suite. Further, it is alleged that she mischaracterized the nature of secondary suite policies in other comparable British Columbia municipalities -- describing them as blanket policies when in fact they contain numerous exceptions and restrictions.

- The material that Ms. Turner sent to Council also left the impression that the Johnston Neighbourhood Association had not acted on the opportunity to provide input with respect to this amendment when, in fact, that association's opposition to secondary suites was already a matter of record as far as the municipal officials were concerned.

- Most crucially, Ms. Turner is said to have provided an inaccurate summary of the actual relationship between the OCP and the bylaw in issue, by failing to stress the need for overall consistency with the goals of the OCP and to direct Council's attention to the myriad ways in which approving a suite in this location would fall short of those goals.

[6] The legal standard that I must apply here is not in dispute. This is an application for judicial review, and therefore the bylaw can be declared invalid only if I am satisfied that Council's decision to enact it was unreasonable, in the sense that it falls outside the range of reasonable outcomes that could have arisen on the facts and the law. This is meant to be a deferential standard of review. Applying that standard to this case, I must be satisfied that any inconsistency between the bylaw and the OCP was of such a nature that to proceed with the former in the face of the latter was unreasonable: *Residents and Ratepayers of Central Saanich Society v. Saanich (District)*, 2011 BCCA 484.

[7] To be unreasonable in this sense, the bylaw must be incompatible, which has been held to be a synonym for *in absolute and direct collision,* with the official community plan. OCPs are intended to be broad statements of vision setting out general objectives and policies. They are not to be interpreted and enforced as though they were actual pieces of legislation. That said, a bylaw that conflicts directly with a specific direction in an OCP will certainly be invalid: see *Central Saanich* at paras. 39 to 40.

[8] In determining whether there is incompatibility, an OCP must be read as a whole. Inconsistency between a bylaw and a specific part of an OCP may not amount to a direct collision if it can be seen as consistent with other parts of the OCP: *Striegel v. Tofino (District)* (1994), 20 M.P.L.R. (2d) 218 (B.C.S.C.) at para. 14.

[9] The difficulty that I have with the petitioners' submissions in this case is that I am not sure that there is even a potential incompatibility on the face of the OCP for me to interpret.

[10] As counsel for the City, Mr. Murdy, has pointed out, s. 3.3.7.1 of the OCP expressly permits secondary suites in single detached dwellings upon following a rezoning process (the municipal term for which is "spot zoning") *in addition to* any specific zoning that permits them there as a matter of course. That is, of course,

exactly what occurred here -- a specific zoning bylaw was passed to authorize spot zoning in this neighbourhood.

[11] Further, s. 3.3.3.3 of the OCP does no more than assert that single family use is the primary one for low density single family residential housing like Leonard Street. It does not purport to make it the exclusive use.

[12] It is also meaningful that a variety of other uses that could conceivably raise all of the same concerns that the petitioners fear in relation to this suite, such as bed and breakfasts or the always-dreaded group homes, are already explicitly permitted under the RS1 zoning that applies to this neighbourhood. The OCP also explicitly contemplates considering other uses in low density single family residential areas, including some that raise similar concerns as secondary suites.

[13] On this point, I have considered carefully the decision of Mr. Justice Truscott in *Sevin v. Prince George (City)*, 2012 BCSC 1236, on which significant reliance is placed by the petitioners. It seems to me, however, that that case resolved on its own particular facts rather than on the application of any different legal test than the one I am applying here.

[14] In *Sevin* Truscott J. identified a direct incompatibility between the residential treatment facility that had been approved by an amendment bylaw and Prince George's rural and agricultural land use designation under its OCP. Crucially, the *urban* residential designation section of their OCP explicitly described such facilities as an appropriate use. The City's social plan, which apparently explained the need for such facilities throughout the city and might therefore have shown that allowing one in the rural and agricultural area was not consistent with the OCP, was not placed before the Court.

[15] This omission placed Truscott J. in a situation in which the OCP was silent on placing the treatment facility in a rural area but expressly endorsed it in an urban area, with no other information about the City's social planning to give that stark contrast any context. I am not surprised that on those facts he reached the

conclusion that there was a direct conflict between the bylaw and the OCP, but as I have said those are very different facts from the ones that face me here.

[16] Leaving aside the merits of Council's decision to spot zone this suite, which the petitioners are perfectly entitled to disagree with, I can find nothing in Quesnel's OCP that made it inconsistent for Council to have given its approval. At the end of the day the petitioners' submissions -- about the previous bylaw violation, the incompatibility with the OCP, the strong opposition to the suite during the hearing process, and the alleged flaws in Ms. Turner's assistance to Council during the stages of its enactment -- are really all just different ways of arguing that Council should not have reached the decision that it did about this suite on the merits.

[17] If that is the petitioners' view then their remedy, as in the case of all contentious political decisions within a community, is at the ballot box. However unpopular it may be in certain circles, this decision was reasonably open to Council to make and in such a case a reviewing court will not invalidate the bylaw that resulted.

[18] It follows, therefore, that the petition is dismissed, and the respondent will be entitled to its costs at Scale B.

[19] Thank you very much.

T. Schultes J.

The Honourable Mr. Justice T.A. Schultes