

B.C. Supreme Court upholds Shaughnessy heritage bylaws

Petition filed after city protected 320 properties from demolition

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GERRY KAHRMANN FILES



Bylaws passed last year to protect Shaughnessy's heritage homes are legitimate, a B.C. Supreme Court justice says.

A judge has upheld Vancouver bylaws aimed at protecting heritage homes in Shaughnessy from the increasing threat of demolition in a heated real estate market.



In a ruling released Friday, B.C. Supreme Court Justice Shelley Fitzpatrick rejected a petition filed by some homeowners in opposition to the bylaws, which were passed last year by city council in response to escalating concerns about homes being torn down.

"At first blush, a person might think that this case involves the mundane world of municipal bylaws and their validity," Fitzpatrick said. "That would be wrong. This case is mostly about money."

The judge said it was "well known" that in recent years, real estate prices in the Lower Mainland have "skyrocketed,"

driven by high demand in part from offshore investors looking for desirable places to "park their money."

"In Vancouver, that demand has fuelled an incredible increase in the number of home sales and sale prices. These new owners or investors have shown an immense propensity toward tearing down existing homes and replacing them with new homes," she said.

The judge said the issue of "large-scale" destruction of homes without regard to their heritage value was an "acute concern" in Shaughnessy, particularly in the older area of First Shaughnessy.

"The owners of residential lots in First Shaughnessy, including the petitioners, have no doubt seen recent, large gains in their property values to date," Fitzpatrick said. "At least some of the petitioners see (the bylaws) as impinging on their ability to maximize that value in the future."

Court heard that in 1994, a heritage inventory had been created that listed all buildings constructed before 1940. Only a small percentage were protected from demolition by a specific designation.

From 1994 to 2015, 43 properties in First Shaughnessy that were listed on the heritage inventory were demolished. First Shaughnessy is bounded by 16th Avenue to the north, King Edward to the south, East Boulevard to the west and Oak Street to the east.

Public hearings were held, and in September, despite facing opposition, city council passed the bylaws, protecting 320 of 595 properties in First Shaughnessy.

At trial, the petitioners made a number of arguments, including that council had improperly exercised its authority in approving the heritage bylaws. They sought a declaration that the

bylaws were illegal and that the city had failed to disclose relevant information at the public hearings.

The judge said the essence of the petitioners' argument was that the homes could not be protected without a specific assessment of their heritage value and character.

But she found she was "substantially" in agreement with the points raised by the city, including that the city had undertaken an assessment of the properties in a report prepared for council.

"The petitioners have failed to convince me that there is any basis upon which the city can be said to have acted outside its jurisdiction or authority under the charter," Fitzpatrick said, saying it was legitimate for the city to limit or remove property rights to address long-term planning objectives.