

CANADA / JUDGMENT

Lorval Developments Ltd. v. Langley (Township)

2025 BCSC 1148

COURT

Supreme Court of British Columbia

DECIDED

20 June 2025

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2025 BCSC 1148 Lorval Developments Ltd. v. Langley (Township)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lorval Developments Ltd. v. Langley (Township),

2025 BCSC 1148

Date: 20250620

Docket: S246118

Registry: Vancouver

In the Matter of the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241

and In the Matter of the Local Government Act, R.S.B.C. 2015, c. 1

Between:

Lorval Developments Ltd., G&T Martini Holdings Ltd., Emvico Properties Ltd.,

Vivco Properties Ltd., 1097399 B.C. Ltd., 1253210 B.C. Ltd.,

1253211 B.C. Ltd. and Martini Film Studio Ltd.

Petitioners

And

The Corporation of the Township of Langley

Respondent

Corrected Judgment: The text of para. 4 of the Reasons for Judgment has been corrected on June 23, 2025.

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

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Place and Dates of Hearing:

Vancouver, B.C.

March 10-13 and 28, 2025

Date of Written Submissions Received:

March 25, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 20, 2025

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Introduction

- [1] Under the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241, Lorval seeks to overturn the Township of Langley's Community Amenity Contributions Policy, alleging that it creates a mandatory collection scheme without the requisite statutory authority.
- [2] Langley's CAC Policy, originally approved in 2018, provides the administrative guidelines by which the Township negotiates civic amenity contributions from those seeking to rezone commercial, industrial, and residential lands. The Policy was adopted to help offset the cost of providing new and upgraded public amenities for a population expected to double over the next 30 years.
- [3] Since the early 2000s, many local governments across the Province have seen the increased land value from enhanced zoning as a reasonable basis for developers to fund community amenities. This case appears to be the first challenge to the legality of such a CAC policy, despite a 2014 Provincial Government report on amenity contributions predicting this exact dispute in the following way:

While some people may view the difference between requiring a contribution and negotiating one as semantics, it is nevertheless critical from a legal perspective. The courts can be expected to see this difference as important in determining whether a zoning bylaw was done legally or illegally.

[]

When dealing with rezonings, local governments can put themselves at legal risk by creating fees, charges or taxes that are not expressly provided for in legislation.

- [4] In addition to challenging Langley's CAC Policy as a mandatory fee regime without lawful authority, Lorval argues that it is also unreasonable. Lorval contrasts the charges contemplated in the CAC Policy with the more rigorous legislated controls and constraints in the amenity cost charge regime recently introduced into the Local Government Act, R.S.B.C. 2015, c. 1, ss. 570.1-570.95.

- [5] Finally, Lorval argues that the June 10, 2024 amendment to the CAC Policy, in addition to being unlawful and unreasonable, was adopted in breach of procedural fairness. The alleged unfairness being the denial of Lorval's opportunity to make submissions to oppose the amendment at a public hearing.
- [6] In response, Langley acknowledges that the CAC Policy would be beyond its lawful authority if it did in fact represent a mandatory payment scheme. Langley says, however, that the CAC Policy goes no further than providing guidance about the non-mandatory contribution targets which it hopes to negotiate in voluntary rezoning agreements with developers. It says that such agreements are authorized under its general power to contract in s. 8(1) of the Community Charter, S.B.C. 2003, c. 26. Thus, Langley says, the CAC Policy does not impose payment obligations on those who would rezone but merely provides guidelines and targets for negotiations.
- [7] Regarding the reasonableness of its CAC Policy, Langley submits that it is consistent with the Provincial Government's 2014 guidelines, and points to the widespread use of such policies among other British Columbia municipalities. It also says Lorval has submitted a factually insufficient record for any finding that its CAC Policy is being implemented unreasonably.
- [8] On procedural fairness, Langley argues that the issue is moot. The decision effecting Lorval in the June 10, 2024 public hearing has subsequently been rescinded and remitted for further consultation and input. In this way, Lorval has already received the relief it could obtain from its procedural fairness challenge in these proceedings. Langley also argues mootness more generally, in response to Lorval's overall challenge to the CAC Policy, by pointing out that the only amenity contributions in the CAC Policy applicable to Lorval's development lands in issue were rescinded in late 2024.
- [9] For the reasons that follow, and based on a reading of the CAC Policy as a whole, I find that it does represent a mandatory amenity payment regime in exchange for certain, specified rezonings. As a matter of law, such a regime cannot be imposed without the appropriate statutory authority which does not exist.
- [10] The CAC Policy is therefore set aside as invalid.

Parties

- [11] The Corporation of the Township of Langley is a district municipality under the LGA.
- [12] The Lorval Group is a family-owned group of companies that builds, manages and owns industrial, commercial, and residential projects in Langley.
- [13] Lorval Developments Ltd. is the group's Langley-based residential, commercial, and industrial development company. It is currently managing the development of two land assemblies in Langley, owned by various companies in the group. These are known as the Martini Lands and the Gloucester Lands, both of which have been subject to Langley's CAC Policy.

Lorval's Development Lands

Martini Lands

- [14] From 2018-2020, Lorval purchased the Martini Lands for approximately \$190 million. This is a land assembly of over 70 acres in the Williams Neighbourhood Plan area of Langley. Lorval plans to develop the assembly into a business park, including a large-scale office, warehouse and film studio project.
- [15] The existing zoning is "Suburban Residential - SR2", which is a low-density area comprising mainly large hobby-farm lots. The Official Community Plan designation is "Business Park". Thus, its development requires rezoning but no amendment of the OCP.
- [16] In 2021, Lorval obtained third reading of its rezoning bylaw amendment. Fourth reading is not yet achieved. By late 2023, it had paid approximately \$8 million in security to Langley and spent \$26 million on site preparation.
- [17] Lorval alleges that two steps taken by Langley in 2023-2024 rendered the contemplated development unfeasible. Both steps have been subsequently rescinded by Langley to some extent.
- [18] First, by a neighbourhood plan amendment in December 2023, Langley converted 38% of the area to the Township's own use as a works-yard. On June 10, 2024, that amendment was revised, such that the works-yard's location was to be determined later but would not be placed on developments such as the Martini Lands which had already achieved third reading.
- [19] Second, Langley's June 10, 2024 amendment to the CAC Policy substantially increased the amenity contributions for rezoning of the Martini lands, by adding a \$550,000/acre target contribution for the Williams and Smith Neighbourhood Plan areas. Lorval's evidence is that this added \$32-39 million in new costs for its project.
- [20] On October 7, 2024, in what Lorval says was a tactical response to this petition having been filed in September, Langley removed the \$550,000 target contribution for the Williams Neighbourhood and directed staff to conduct additional public and property-owner consultation to reconsider the CAC Policy in that area.

Gloucester Lands

- [21] The Gloucester Lands total just under 13 acres in the Gloucester Community Plan area. Lorval is a minority owner of this assembly, the majority share being owned by an arm's length business partner.
- [22] In 2008, the owners applied to remove the lands from the Agricultural Land Reserve to facilitate industrial development. In May 2022, Langley's Council gave third reading to the official community plan and zoning bylaw amendments.

- [23] In December 2022, Langley's Council (a) passed a CAC Policy amendment that introduced a CAC for agricultural and other conversions, and (b) reversed third reading of the Gloucester rezoning and directed staff to have discussions with the applicant to "ensure" that the community amenity contributions were proportionate to the value being created.
- [24] Lorval's evidence is that the owners rejected these changes because the price for the land was established before the CAC Policy amendment, and the proposed CAC of over \$16 million reduced its return on investment to 3% thereby undermining financing of the project.
- [25] On February 18, 2023, Langley responded to the owners' rejection of the increased CACs by advising in writing that the rezoning application "can just sit if they are not interested in a community-oriented thought process". Langley then made compliance with the CAC Policy a condition of fourth reading of the rezoning bylaw.
- [26] In 2024, Langley added 7% (\$1,321,428) to the CACs to be paid.

Amenity Charges in the LGA

- [27] The Township operates under the Community Charter and the LGA, both of which limit municipal fees to those expressly provided for by statute.
- [28] The LGA contains three sets of provisions enabling local governments to charge for amenities and raise amenity funds:
- Density bonus bylaws (ss. 482 to 482.6);
 - Phased development agreements (ss. 515 to 522); and
 - Amenity cost charge bylaws, added in November 2023 (ss. 570.1 to 570.95).
- [29] Regarding fees being limited to those statutorily authorized, s. 193(1) of the Community Charter says this:

Authority for fees and taxes

193 (1) A municipality may not impose fees or taxes except as expressly authorized under this or another Act

- [30] The definition of "fees" includes "a fee by any name, including a charge".

- [31] Section 462 of the LGA prohibits the imposition of additional charges as a condition of rezoning. It says:

Fees related to applications and inspections

462 (1) A local government may, by bylaw, impose one or more of the following types of fees:

- (a) application fees for an application to initiate changes to the provisions of

- (i) an official community plan or bylaw under Division 4 [Official Community Plans] of this Part,
- (ii) a land use regulation bylaw
- []
- []
- (5) No other fee, charge or tax may be imposed in addition to a fee under subsection (1) as a condition of the matter referred to in that subsection to which the fee relates.
- (6) A local government, the City of Vancouver or an approving officer must not do either of the following unless authorized by this Act, by another Act or by a bylaw made under the authority of this Act or another Act:
 - (a) impose a fee, charge or tax;
 - (b) require a work or service to be provided.

2014 Provincial Government Guidelines

- [32] As mentioned above, Langley submits that its CAC Policy is consistent with the Provincial Government's 2014 guidelines regarding community amenity contributions ("2014 Guidelines").
- [33] Lorval counters that the 2014 Guidelines are not a statutory authorization of mandatory fees, and in any event they were withdrawn from Provincial Government policy years ago. Lorval further argues that the CAC Policy is in fact inconsistent with the 2014 Guidelines, in that the latter contemplated negotiated, non-imposed, modest contributions which were not based on the increase in land value from rezoning (referred to as a "lift-based" approach).
- [34] Both sides relied on numerous aspects of the 2014 Guidelines, which run more than thirty pages. I will summarize and quote from them in detail as they provide helpful context for this dispute. All emphasis in the quotations is from the 2014 Guidelines themselves.
- [35] Their stated purpose is to "help local governments understand the risks, challenges, and recommended practices related to obtaining [CACs]". They say at the outset that they are "not a substitute for provincial legislation".
- [36] They provide the following background about CACs and the rezoning process:

Provincial legislation allows local governments to ensure that developers install services as part of their development, both on the site itself and immediately adjacent.

Legislation also allows local governments to impose development cost charges (DCCs) for certain off-site services, namely, water, sewer, drainage and roads and park land. Increasingly, local governments are relying on the rezoning process to secure affordable housing, and contributions towards recreation facilities and other community amenities that cannot be funded through DCCs.

LGA section 904 allows zoning bylaws to include the option of additional (bonus) density subject to specific conditions, which can include providing amenities. This provision in the LGA has been in place since 1995.

As an additional approach, local governments sometimes negotiate CACs from those seeking a change in zoning. A change in use or an increase in density generally boosts the value of land, and provides the possibility of a financial benefit to the landowner, developer or local government. Increasingly, local governments and residents see this as a reasonable opportunity to help fund community amenities.

In considering CACs, it is important that local governments understand the limits of their legislative authority, follow good planning principles, be fair, clear and consistent, and understand the financial and market impacts.

Housing affordability is a particular challenge for many B.C. communities. This guide describes how CACs, if not handled carefully, can potentially decrease the supply of new housing and lead to increases in housing prices.

[37] The following helpful definitions are provided:

"Community Amenities" contribute to the attractiveness of a project or a neighbourhood, and typically include aesthetic features, public spaces, and facilities to meet a range of social, cultural, recreational, and infrastructure needs of the community.

"Community Amenity Contributions (CACs)" are amenity contributions agreed to by the applicant/developer and local government as part of a rezoning process initiated by the applicant/developer. CACs can take several forms including community amenities, affordable housing and financial contributions towards infrastructure that cannot be obtained through DCCs, such as recreation facilities or a fire hall. The agreed-to contribution would be obtained by the local government if, and when, the local government decides to adopt the rezoning bylaw.

"Density Bonus Zoning", as authorized under LGA s. 904, is intended to provide options for the developer to build either to the "base" density or to a higher level of density, if they provide certain amenities or affordable housing, or meet other specified conditions. The developer, by right, always has the option of developing at the base level of density, but usually has an incentive to consider higher densities.

[38] The legislative context at the time is summarized this way:

Provincial legislation enables local government to require services, collect fees and/or obtain land from new development to address certain impacts of new growth, The following sections of the LGA enable local governments to require new development to provide:

- DCCs for off-site services (s. 933);
- money towards acquiring school sites (s.937.3);
- on-site services related to subdivision (s.938);
- excess capacity or extended services (s.939);
- up to 5% of land being subdivided for park land, or cash-in-lieu (s.941); and,
- land for roadways (s.945).

Not all impacts of development are covered by these legislative provisions. Increasingly, local governments are taking the position that new development should not be a burden on local taxpayers and are supplementing the above requirements with CACs. For example, local governments commonly impose DCCs to pay for allowable items such as water and sewer mains, then seek contributions towards facilities not covered by DCCs, such as expansion of a fire hall, recreation centre or library.

[39] They provide the following warning about the legality of CACs, some of which was already quoted in my Introduction:

A common misperception is that local governments have authority to require CACs as a condition of rezoning. In fact, there is no authority to impose such conditions on a rezoning applicant; any contributions must either be at the initiative of the applicant/developer or emerge from rezoning negotiations between the applicant/developer and the local government.

[]

It is important for local governments to appreciate that in the case of zoning decisions, the council/regional board "discretion" is limited to either approving or not approving the zoning bylaw. Having discretion to approve or not approve a zoning bylaw does not give authority to unilaterally impose conditions.

If the council/regional board wishes applicants/developers to contribute amenities or provide affordable housing, it should either amend its zoning bylaw to include density bonus options, with specified contributions as a condition of higher density, or be prepared to negotiate such contributions when rezoning applications are put forward. It is critical that any discussions with rezoning applicants be negotiations, not the council/regional board imposing charges for rezoning.

While some people may view the difference between requiring a contribution and negotiating one as semantics, it is nevertheless critical from a legal perspective. The courts can be expected to see this difference as important in determining whether a zoning bylaw was done legally or illegally. The Appendix illustrates an example of how to establish guidelines for CACs while remaining open to negotiation.

[]

When dealing with rezonings, local governments can put themselves at legal risk by creating fees, charges or taxes that are not expressly provided for in legislation.

Practices to avoid include:

- Imposing any charge, including CACs, for which there is no legal authority;
- Presenting an applicant/developer with a list of "required" contributions that will be expected if the rezoning is to proceed; and/or,
- Adopting a general policy or a policy in a community or neighbourhood plan that could be construed as imposing charges for rezoning and implying that these are not negotiable.
- Adopting a policy that could be seen as committing the council/regional board to rejecting rezoning proposals unless the applicant/developer provides contributions; and/or,
- Guaranteeing an applicant/developer, either verbally or in writing, that a zoning amendment will pass if they make certain contributions.

[40] The recommended practices were summarized this way:

To maintain public confidence in the planning process, it is critical that councils/regional boards see zoning as a regulatory tool, and a means to implement the OCP. It is vital that councils/regional boards NOT focus on rezoning as a revenue source and lose sight of long term planning. Councils/regional boards must avoid the perception that they are no longer planning but simply "selling zoning".

[]

Planning ahead can help ensure that potential contributions are earmarked for the highest priorities.

Such an approach comprises:

- understanding future growth projections, how the OCP vision and policies accommodate growth, and how new development will impact the community;
- working with the community and stakeholders, including developers, to identify the amenities that will help address the impacts of growth; and,

· estimating and allocating the costs required to pay for the amenities; and could also include, establishing preferred target amounts for CACs.

(Emphasis in the 2014 Guidelines.)

[41] Regarding ensuring that the CACs do not increase housing affordability, the Guidelines say:

The amount of the CAC requested is paramount. If the value of CACs adds a relatively small amount to the cost of a project, the CACs may push the price of land down slightly and/or the developer might take slightly less profit, but the CAC amount is unlikely to prevent the project from proceeding. Alternatively, when the value of CACs is significant, it is more likely that the project would not proceed, and that the result will be upwards pressure on housing prices.

[42] Finally, regarding choosing an approach to obtaining amenities, they say:

There are currently three typical strategies used to seek amenities. These are:

1. Including density bonus provisions in a zoning bylaw (using the authority in LGA, s.904);
2. Setting preferred CAC amounts for properties being rezoned, typically on a per unit or an area basis; and,
3. Seeking CACs based on the expected increase ("lift") in the value of the land that would result from the rezoning, typically as a percentage of the lift.

[]

Overall, it is recommended that local governments make density bonus zoning their starting point when seeking amenities and affordable housing. Allowing modest levels of density bonus, tied to modest contributions, strikes a good balance between ensuring new development contributes to a community while minimizing the risk that these contributions hurt housing affordability.

Where "pre-zoning" land with a density bonus may not be practical, local governments are encouraged to set targets for CACs, and be open to negotiation at time of rezoning. Again, the target contributions should be modest to minimize the impact on housing affordability.

Negotiating CACs based on a "lift" approach is inconsistent with the principles set out in this Guide. These principles support an approach that clearly identifies community needs and the impacts associated with new development, and links the CAC not to the "lift" in land value, but rather to the cost of providing a package of amenities that makes sense given the development being proposed.

Langley's CAC Policy

[43] Langley's CAC Policy was first adopted by Council on July 23, 2018. It applies to OCP and zoning bylaw amendments. Two years in the planning, it was based on three staff reports which included public consultation and surveys of other Lower Mainland municipalities.

- [44] The specific iteration of the CAC Policy challenged in these proceedings is the Policy as amended on June 10, 2024, a copy of which is attached hereto as Schedule A.
- [45] The CAC Policy's stated intention is "to obtain contributions to civic infrastructure and amenities from new development that involves rezoning" (s. 5.2). If CACs are not paid, "it is not necessarily in the public interest for the local government to support a rezoning" (s. 2.3). Contributions are not conditional upon the developer seeking a density bonus or phased development agreement but instead apply to rezonings generally with some limited exceptions (ss. 5.2-5.3).
- [46] In the original version in 2018, contributions were a fixed-rate, municipal-wide charge, with charges of \$3,000 to \$5,700 per unit, depending on housing type. The CAC Policy has since been amended nine times. Without going into the details of the various amendments, suffice it to say they have introduced increased target contributions, additional community amenities for funding, and various "lift" based target contributions proportionate to the value created by the rezoning in question.
- [47] The first amendment, on April 15, 2019, was based on a staff report to Council of February 25, 2019, which said this about the 2014 Guidelines:

The guide clarifies that there is no authority for local governments to require CACs as a condition of rezoning. Any contributions must either be at the initiative of the applicant/developer or emerge from rezoning negotiations between the applicant/developer and the local government.

- [48] As mentioned above, the June 2024 amendment added a \$550,000/acre target contribution for the Williams Neighbourhood Plan, which Lorval estimates to add \$32-39 million to the cost of its project.
- [49] As of the June 2024 amendment, the CAC Policy included five categories of amenity contribution targets:
- Municipal-wide, residential contributions (Table 1);
 - Density bonus contributions, for residential properties in the urban containment boundary (Table 2);
 - Property value lifts in certain specified areas (s.5.2 (h), (i) and (j));
 - Specific contribution targets for the Brookwood-Fernridge Neighbourhood Plan areas (Table 3); and
 - Specific contribution targets for the Smith and Williams Neighbourhood Plan areas (Table 4).

[50] On October 7, 2024, the CAC Policy was amended again, in what Lorval says was a tactical response to its petition having been filed. The sole amendment was to remove "all target contribution rates specific to the Williams Neighbourhood Plan". Further consideration of the Williams Neighbourhood Plan was deferred while staff engaged in consultation.

[51] For present purposes, the following parts of the CAC Policy are key.

[52] The Purpose and Background sections of the CAC Policy include the following:

1. Purpose

1.1 To provide administrative guidelines for a Community Amenity Contribution (CAC) Program.

2. Background

[]

2.2 CACs are voluntary amenity contributions by the developer as part of a rezoning process.

2.3 CACs are intended to offset the cost of providing community amenities associated with new commercial, industrial and residential development, thereby having a benefit to the community. In the event that CACs are not made to help provide the amenities, it is not necessarily in the public interest for the local government to support a rezoning. It has become common practice for many municipalities in B.C. for developers to propose, or municipalities to seek, amenities from projects that are applying for changes in use or density in order to help address the needs or impacts of new development. In this policy, the amenities are intended to be collected through a fixed rate contribution, based on a set of predetermined amenities.

[53] The Related Policies section includes this:

3. Related Policies

3.1 The Official Community Plan (OCP) provides objectives and policies for the establishment of a community amenity contribution program. Objectives related to CACs aim to:

- (a) Ensure that new development pays for the capital costs of providing new infrastructure and facilities to serve that development.
- (b) Diversify revenue sources to fund new community infrastructure.
- (c) Provide tools and incentives to encourage affordable housing options.

3.2 Specific policies include:

- (a) Investigate potential for community amenity charges to cover the costs of facilities and amenities required for development that are not funded by DCCs.

[]

[54] The key principles include these:

4. Principles

4.1 As the Township of Langley continues to grow, new development should make a fair contribution to new community amenities, affordable housing, and other community needs, in order to meet the needs of a growing community and to contribute to managing growth pressures.

4.2 The Township of Langley will set its targets for CACs such that the cost implications for new development will be reasonable. The level of CACs will be such that there is minimal impact on new development. More specifically, the expectations for CACs are not likely to affect the financial viability of new development projects. The costs will be such that developers and landowners will still see incentives to seek higher density for residential developments.

[55] Section 5.1 specifies what proportion of funds raised will be allocated to various types of amenities. These include affordable housing and climate action initiatives, conference, recreation and entertainment centres and facilities, and parks, pools, sports fields, fire halls and police offices.

[56] Section 5.2 sets out five sets of prescribed charges: municipal wide; single family townhouse, rowhouse, duplex and apartments; "lift" based charges in certain areas; and specific contributions per dwelling or per square foot in certain neighbourhoods.

[57] This section also sets out principles to be applied in obtaining these contributions. These include:

5. Policy

[]

5.2 The Township intends to obtain contributions to civic infrastructure and amenities from new development that involves rezoning. In doing so, the Township will apply the following principles:

- (a) New development should make a fair contribution to new community amenities, affordable housing, and other community needs to meet the needs of a growing community and to address some of the impacts of growth.
- (b) The Township's community amenities are set out in section 5.1.
- (c) The Township will set its targets for amenities (and for cash-in-lieu of amenities, referred to herein as CACs, where one developer is not expected to provide an entire amenity) such that the cost implications for new development will be reasonable. The extent of Community Amenity Contributions will be such that there is little risk that there will be any impact on the pace of new development in the Township.

- (d) The Township will set targets for cash-in-lieu Community Amenity Contributions it hopes to obtain from new development. The targets as set out in Table 1 may be reviewed by Council from time to time, based on changing community needs, changing priorities, and changing market conditions.
- [58] Section 5.3 carves out the narrow range of developments exempted from the CAC program -- such as not-for-profits, small residential developments, and accessory dwelling. It also includes a twelve-month grandfathering provision.
- [59] Section 5.4 deals with collection of the CACs. It says that payment "shall be made to the Township before Council consideration of adoption of the Zoning Bylaw amendment bylaw".
- [60] Section 5.5 allows Council to "amend the CAC target contribution amounts [] as it deems appropriate in response to changing needs".
- [61] Section 5.6 says the CAC amounts may be recalculated to reflect changes in the Municipal Price Index.
- [62] Section 5.6 adds a mandatory annual inflation increase, saying that "any proposed community amenity contribution is subject to" the price index.

Amenity Cost Charge Bylaws

- [63] In November 2023, the Provincial Government amended the LGA and Vancouver Charter, S.B.C. 1953, c. 55, to provide authority for local governments to enact ACC bylaws. Thus, for the first time, local governments were authorized to impose charges to assist with the capital costs of amenities benefiting the development in question or the increased population resulting from the development.
- [64] The ACC amendments do not say that they prohibit or displace the long-standing practice of CACs. They expressly do not restrict or affect any other local government power under the two statutes:

Division does not restrict other powers

570.95 Nothing in this Division restricts or affects any other power of a local government under this or any other Act, subject to

- (a) the exceptions provided in sections 570.5 (2) [general prohibition against waiving or reducing charges] and 570.6 (4) [development for which charges may be waived or reduced], and
- (b) the condition that the capital costs of any amenity funded by an amenity cost charge must be recovered only once.

- [65] Langley's evidence is that it is in the process of moving to an ACC bylaw. The evidence suggests, however, that its CAC Policy will continue to apply at least to pre-ACC rezoning applications.
- [66] Langley acknowledged that the ACC procedures under the LGA are more tightly controlled than under its CAC Policy. For example, under s. 570.7:
- ACCs must specify the areas in which the charges will be imposed, the specific amenities to be funded, and the amount of the charges.
 - Charges must be similar for all developments that are expected to result in a similar increase in the population of residents or workers.
 - In setting the charges, the local government must deduct:
 - (a) the portion of the estimated capital cost to be funded by grants and other sources of funding that are external to the municipality or regional district;
 - (b) the portion of the estimated capital cost to be allocated to the existing population of the area and, as a result, funded by the local government;
 - (c) the portion of the estimated capital cost to be allocated to the development but funded by the local government.
 - Local governments must provide annual ACC reports and make available to the public, on request, the considerations, information and calculations used to determine a specific schedule or schedules of costs.

Analysis

Relief Sought Under the JRPA

- [67] Lorval seeks the following relief under the JRPA:
- Under s. 2(2)(a), to quash or set aside the CAC Policy or alternatively the June 10, 2024 amendment to the CAC Policy, for being beyond Langley's statutory authority (i.e. ultra vires); and/or
 - Under s. 2(2)(b), declarations that the CAC Policy or the June 10 amendment to it are unlawful for being substantively unreasonable, or that the June 10 2024 amendment was unlawful for being approved in a procedurally unfair manner.
- [68] Langley acknowledged that, as a matter of law, "if the CAC Policy on its face purported to create a mandatory payment scheme, then there is a reviewable issue and the CAC Policy could not legally do what it purported to do". In other words, it would go beyond the Township's legal authority and so be invalid.

Langley's Evidentiary Objections

- [69] Langley objects to certain of Lorval's evidence for being raised only in reply, not in its petition or supporting affidavits, thereby splitting its case.
- [70] Langley relies on the particular importance of adequate notice of one's case in petition proceedings, given the absence of discovery and other interlocutory processes that provide parties with additional opportunities to know and assess the opposing case (*Mayden v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2015 BCSC 692, para. 66).
- [71] Much of the impugned evidence is not relied on in the analysis below, as I found it not directly relevant to the issues to be decided. I therefore need not rule on the admissibility of Lorval's evidence regarding the following:
- Lorval's Chief Financial Officer's calculations of Langley's total amenity funds collected;
 - Langley's accounting for CAC contributions in its financial statements; and
 - Langley's Development Application Procedures Bylaw.
- [72] The important exception is Lorval's reliance on Langley's CAC treatment of the Gloucester Lands. Langley points out that these lands were not mentioned in the petition, and Lorval filed its evidence about them only in reply and mainly to impugn Langley's implementation of the CAC Policy.
- [73] Lorval counters that in fact Langley introduced Gloucester "in an apparent attempt to bolster its argument that payment of CACs is voluntary". Lorval argues that it submitted proper reply to refute that position. It further says that the petition asserts that zoning is conditional on compliance with the CAC Policy and so "it is hardly taking Langley by surprise to make arguments that the CAC Policy functions as a condition on rezoning applications".
- [74] From my review of the record, it was Langley who introduced evidence into the record about the Gloucester Lands. The October 1, 2024 affidavit of Aubrey Jensen, Langley's manager, strategic and social planning, attached two Council reports regarding the Gloucester Lands. One report quotes from a motion adopted on November 14, 2022, that the rezoning "be referred to staff to review with the applicant the Community Amenity Contributions to ensure they are proportionate to the value being created".
- [75] Langley having put these reports about Gloucester into evidence, in my view, it was open to Lorval to submit evidence regarding the application of the CAC Policy to these lands. I agree with Lorval's submission that its evidence in reply suggests CACs were imposed on this project as mandatory payments (see the evidence referred to in paras. 21-26 above).

[76] More generally on the issue of implementation of the CAC Policy, I agree with Langley, however, that the evidentiary record is insufficient for findings about how the CAC Policy has been implemented. Thus, Lorval's challenge must be confined to a review of the CAC Policy itself. Langley's submissions put the point this way:

It is open to Lorval to attack the Policy by impeaching the Policy on the basis of its wording - i.e. attacking the Policy on its face. That is essentially what the Petition does, and is also what was done in the six "regulation" cases that Lorval has put before the court.

However, to attack the CAC Policy based on its de facto implementation is an entirely different matter, and is heavily fact and evidence based. This is likely not an issue which can be dealt with on affidavit evidence at all, and would require oral testimony and document production. It certainly cannot be done based on the current record, with no applicable factual assertions in the Petition.

[77] I therefore do not make the finding, sought by Lorval, that the CAC Policy has been implemented as an unreasonable, mandatory scheme. This is highly fact and evidence dependent. On the record submitted by Lorval, the evidence is too limited and incomplete for such a finding.

Are Lorval's Challenges Moot?

[78] Langley argues that all relief sought by Lorval has become moot.

[79] First, Langley says that the only CAC Policy applicable to Lorval's development of the Martini Lands was the \$550,000/acre target approved in the June 2024 amendment, which included a one-year grace period. On October 7, 2024, before the grace period expired, Langley's Council resolved that "all target contribution rates specific to the Williams Neighbourhood Plan be removed". It deferred further consideration while staff engaged in "additional, sufficient public and property owner consultation on potential community amenity contributions to the Williams Neighbourhood Plan". Thus, to the extent Lorval's rezoning application was ever subject to the CAC Policy, it no longer is now.

[80] Second, Langley says that the alleged procedural unfairness to Lorval of the adoption of the June 10, 2024 amendments, without Lorval's opportunity to be heard, was cured by the same rescission of the amendment affecting the Martini Lands, and remitting of the matter for further consultation and consideration with property owners and others.

[81] Third, Langley says the works-yard designation is also moot. It no longer applies to the Martini Lands because they have already received third reading.

[82] Mootness applies when the court's decision will not resolve a controversy which affects, or might affect, the rights of the parties. This essential ingredient must be present, not only when the action or proceeding is commenced, but when the court is called upon to reach a decision (*Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342).

- [83] Despite the general rule that a court will not decide a moot dispute, it may exercise its discretion to do so (Borowski, para. 353). The appropriate considerations include whether there remains an adversarial relationship between the parties, judicial economy, and the court's law-making function (Moazami v. Kent Institution (Warden), 2024 BCCA 71, paras. 25-29).
- [84] In my view, the issues in this case which are moot and do not merit consideration are whether: (a) there was a breach of procedural fairness in the adoption of the CAC Policy's June 2024 amendment regarding the Wi; and (b) the "civic institution designation" was an unreasonable exercise of the Township's statutory authority.
- [85] Regarding (a), in the hearing Langley acknowledged the problematic way in which the \$550,000/acre target for the Williams Neighbourhood Plan was added to the CAC Policy on June 10, 2024. In brief, although all that was supposed to be put before Council in the public hearing that evening were amendments to the Brookwood-Fernridge Neighbourhood Plan areas, the amendment that actually put forward and adopted included amendments to the Williams and Smith Neighbourhood Plan areas as well.
- [86] Over the next few weeks, this led to confusion between Langley staff and Lorval, whereby staff mistakenly advised Lorval that the CAC Policy had not yet been amended as regards the Williams Neighbourhood Plan and the Martini Lands, and Lorval prepared its submissions to oppose that amendment at the public hearing upcoming on July 15, 2024.
- [87] At that public hearing, Lorval provided its written submissions and supporting documentation to argue against the proposed amendment. However, the Mayor precluded discussion on the basis that the CAC Policy was not subject to a public hearing. It then subsequently became clear that the CAC Policy amendment for Williams had already been adopted at the June 10, 2024 public hearing.
- [88] On October 7, 2024, Council passed an amendment to the CAC Policy, reversing this apparent error by removing the contribution rates from the Williams Neighbourhood Plan and directing staff to conduct additional consultation on potential contributions from the public and property owners.
- [89] I agree with Langley that the relief for this apparent procedural fairness would go no farther than Council has already gone in its October 7, 2024 resolution. In other words, if procedural unfairness were established, Lorval's remedy would likely be to quash the amendment and direct Langley to reconsider it in light of Lorval's submissions. Langley itself having rescinded the amendment affecting the Martini Lands, and remitted it for further public and property-owner consultation, I do not see how it would be in the interests of justice to go any further on this issue.
- [90] Regarding (b), I am unclear how this "civic designation" issue relates to the relief sought by Lorval in this case, as the status of the Williams Neighbourhood Plan is not in issue. In any event, Langley's position, supported by the evidence, is that there is no current intention to

place the civic work-yard within the Martini Lands. On June 10, 2024, the prior version of the OCP for the Williams neighbourhood was amended and second reading was given to a new version. This new version created only a "floating designation" for the works-yard and said that secure lands for the yard must be found "prior to rezoning of lands or development that have not received third reading", which rezoning the Martini Lands has already achieved.

- [91] In my view, the issues that should be decided are whether the 2024 CAC Policy is beyond Langley's statutory authority or is unreasonable. I say these should be decided, despite that Policy's application to the Williams Neighbourhood Plan area having been rescinded by Council in October 2024, for the following reasons.
- [92] First, I agree with Lorval that its petition was framed as a general challenge to the legality of the CAC Policy, as opposed to the policy's application to the Martini Lands in particular. The primary orders sought in the petition are that the entire CAC Policy be declared void or quashed. It is only in the alternative that the June 2024 amendments are specifically challenged. Also, the legal basis of the petition argues that the CAC Policy as a whole is "beyond the Township's authority". The petition challenges various sections of the CAC Policy which it says requires developers to make "specific prescribed financial contributions" and includes "imperative, detailed and prescriptive" language.
- [93] Second, in my view, this general framing of the issue was a reasonable approach for Lorval to take, as a developer interested in potential projects throughout the Township of Langley. Given Lorval's business, the general legality of the CAC Policy remains a live, adversarial controversy between the parties and of course the CAC Policy continues to apply to many others. There is therefore actual purpose and legal effect to the decision.
- [94] Third, Lorval's challenge to the CAC Policy is an issue of general importance concerning a local government's requiring CAC's as a prerequisite to zoning approval. The CAC Policy remains in effect and its validity was thoroughly argued in this hearing. Over four days, senior counsel in this area of law addressed their eight volumes of evidence and law and more than 200 pages of written submissions. These circumstances make it worthwhile to decide this aspect of the case.
- [95] Fourth, and finally, I agree with Lorval that, on the evidence, there is the appearance that the October 2024 CAC Policy amendment might have occurred in order to avoid judicial assessment of the CAC Policy. It would not be in the interests of justice for this issue of general importance to be rendered moot in this way.

Is the June 2024 CAC Policy a Mandatory Payment Scheme?

- [96] Lorval argues that the 2024 CAC Policy is beyond Langley's legal authority because it represents a mandatory payment scheme, requiring CAC contributions as a condition of rezoning.

[97] Lorval argues that it is unlawful for a local government to require, as a condition of its rezoning approval, substantial payments in the millions of dollars without express statutory authority. Further, it says, the LGA contains alternative, detailed regimes for requiring such charges, in the provisions for density bonuses, phased development agreements and now also the ACCs.

[98] Langley submits that the CAC Policy is not a mandatory payment regime. Rather, it is a policy describing the goals and targets which the Township hopes to negotiate in voluntary rezoning agreements with developers. Its position is that such agreements are authorized under the general power to contract in s. 8 of the Community Charter:

8 (1) A municipality has the capacity, rights, powers and privileges of a natural person of full capacity.

Governing Law

[99] As stated by the Supreme Court of Canada in *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64, at para. 49 [Pacific National]:

The basic position in Canadian law is that municipalities cannot zone in exchange for amenities without some specific statutory authority for such arrangements.

[100] It is common ground between the parties that a municipal government has only those powers granted to it by provincial legislation, and that municipalities in British Columbia have not been given the power to impose the charges contemplated in the CAC Policy.

[101] Lorval relies on numerous cases where purported administrative "guidelines" or "policies" were found invalid because they represented unauthorized mandatory requirements. In my view, many of these cases differed from our situation in that the mandatory guidelines were found invalid because they expressly contradicted, or were inconsistent with, statutory terms or regulation. In my view, that is not our situation because the 2024 CAC Policy is not contradictory of, or inconsistent with, the density bonus, phased development or ACC provisions of the LGA.

See for example: *Ontario Highway Transport Board v. Ontario Trucking Association*, 1988 CanLII 4552 (ONSC), 1988 Carswell Ont 2, paras. 53-54; *Independent Contractors and Business Assn. of British Columbia v. British Columbia*, 1995 CanLII 3302 (BCSC), 6 B.C.L.R. (3d) 177, paras. 47-51; *Guse v. Agricultural Land Commission*, 2018 BCSC 1983, para. 62, *Ishaq v. Canada*, 2015 F.C.R. 297, paras. 45, 53-57.

[102] In my view, helpful guidance comes from the leading case of *Ainsley Financial Corp. v. Ontario (Securities Commission)*, 1994 CanLII 2621 (ONCA), 21 O.R. (3d) 104. At issue was an Ontario Securities Commission's policy statement regarding the regulation of penny stocks. The policy set out "appropriate business practices" for securities dealers and advised that the Commission would be guided by the policy in regulating the industry. The Court found the policy to be a mandatory provision, rather than a guideline, and therefore invalid

because of the absence of statutory authority to create such policies.

[103] The Court summarized a regulator's entitlement to provide non-binding guidelines and policies this way:

[11] The authority of a regulator, like the Commission, to issue non-binding statements or guidelines intended to inform and guide those subject to regulation is well established in Canada. The jurisprudence clearly recognizes that regulators may, as a matter of sound administrative practice, and without any specific statutory authority for doing so, issue guidelines and other non-binding instruments.

[104] It then described the limitation on such policies, including that, absent statutory authority, they must not amount to mandatory requirements enforceable by sanction:

[14] [] Most importantly, for present purposes, a non-statutory instrument cannot impose mandatory requirements enforceable by sanction; that is, the regulator cannot issue de facto laws disguised as guidelines []

[15] If Policy Statement 1.10 has crossed the Rubicon between a non-mandatory guideline and a mandatory pronouncement having the same effect as a statutory instrument, then I agree with Blair J. that the Commission could only issue that statement if it had statutory authority to do so. The Commission concedes that as the legislation stood at the relevant time it had no such statutory authorization.

[105] The Court in Ainsley acknowledged there were no magic words, and often no bright line, separating a non-mandatory guideline from a mandatory pronouncement. The key consideration was the "thrust of the language considered in its entirety":

[16] [] At the centre of the regulatory continuum one shades into the other. Nor is the language of the particular instrument determinative. There is no magic to the use of the word "guideline," just as no definitive conclusion can be drawn from the use of the word "regulate." An examination of the language of the instrument is but a part, albeit an important part, of the characterization process. In analyzing the language of the instrument, the focus must be on the thrust of the language considered in its entirety and not on isolated words or passages.

[106] In Ainsley, the policy statement was held to be a mandatory provision, and thus invalid, based on two primary factors. First, the format of the statement read like a statute, with "a minutely detailed regime complete with prescribed forms, exemptions from the regime, and exceptions to the exemptions". Second, its coercive, mandatory nature linking the policy to the Commission's power to sanction suggested it would be treated like a statutory provision or regulation:

[19] I agree with Justice Blair's conclusion and also rely on the factors he assembles in support of it (at pp. 294-98 O.R.). Two of those factors are particularly significant. The first factor is the format of the statement. Guidelines connote general statements of principles, standards,

criteria or factors intended to elucidate and give direction. Policy Statement 1.10 sets out a minutely detailed regime complete with prescribed forms, exemptions from the regime, and exceptions to the exemptions. Policy Statement 1.10 reads like a statute or Regulation setting down a code of conduct (the phrase used in the Commission minutes to describe Policy Statement 1.10) and not like a statement of guiding principles.

- [20] The second factor is the linkage made in Policy Statement 1.10 between the Commission's power to sanction in the public interest and its pronouncement that the practices set out in the policy statement accord with the public interest. That connection gives the Policy Statement a coercive tone. Policy Statement 1.10 suggests that non-compliance could evoke the Commission's sanction powers. The threat of sanction for non-compliance is the essence of a mandatory requirement. The coercive effect of Policy Statement 1.10 is also apparent in the Commission staff's attitude toward the statement as reflected in the Staff Report submitted to the Commissioners. The Report demonstrates that the staff of the Commission, who are the individuals with their fingers on the enforcement trigger, would treat Policy Statement 1.10 as if it were the equivalent of a statutory provision or Regulation.
- [107] The Commission urged the Court to accept the language of the Policy "at face value". It relied on wording such as that it was "intended to inform" and that, in determining whether failure to comply with the Policy would constitute grounds for the Commission to act, it would "continue to consider the particular facts and circumstances of each case". The Commission argued that these passages indicated the Policy "was not intended to either impose specific obligations on those at whom it was directed or fetter the public interest discretion of the Commission" (para. 17).
- [108] The Court found the Policy "mandatory and invalid", adopting the following statement from the lower court decision:
- [1] To conclude, in view of all of the foregoing, that the effect of Policy 1.10 is not to impose standards and a code of conduct upon the securities dealers affected by it, which are obligatory in nature, would be to ignore the plain language of the document itself and the reality of the regulatory environment in which it is to be implemented.
- [109] Helpful guidance is also found in *Prairie Communities Development Corp. v. Okotoks (Town)*, 2011 ABCA 315, where the Alberta Court of Appeal found a municipality's contractual fee-collection scheme went beyond its lawful powers.
- [110] Alberta's Municipal Government Act, R.S.A. 2000, c. M-26 provided a comprehensive scheme permitting municipalities to impose off-site levies for land to be developed or subdivided. The Town of Okotoks adopted a bylaw for the collection of off-site levies which fell outside the scope of the statutory scheme, and roughly paralleled development cost charges in that they related to municipal works regarding water, sewer and drainage system, and roads.

- [111] Like Langley in this case, the Town of Okotoks relied on its natural person powers to enter into "voluntary" contractual arrangements with those wishing to develop their lands. By way of a Council resolution, it adopted a model contribution agreement, setting out the terms of a contract to be entered into between the Town and any prospective developer.
- [112] The Court found the contribution agreement not truly voluntary, but rather a condition of the development being permitted to proceed and so an effort to collect unauthorized fees:
- [29] [] The substantive question here, however, is whether the "agreement" adopted by Council was intended to facilitate voluntary contributions towards off-site expenditures, or to coerce developers to make payment of unauthorized levies as a condition of the development process. I have concluded that the Contribution Agreement is a colourable attempt by the Town to impose off-site levies for improvements not allowed by section 648. I explain as follows.
- []
- [49] In my view, therefore, the chambers judge erred in finding that the Town was merely using its natural person power "to enter into a voluntary agreement to collect levies other than those that it may only collect by bylaw" (para 60). The overwhelming evidence is that the acreage assessments and other development charges would be "required" to be paid by each developer seeking to develop land through the means of the Contribution Agreement. Indeed, the resolution expressly recognizes that the Contribution Agreement is the basis for "charging fees". Levies are by definition neither optional nor voluntary. Here, the clear intent evident from a review of the Town's own documents is that the fees and charges set out in the Contribution Agreement form part of the Common Levies imposed by the Bylaw and required to be paid by a developer as part of the subdivision and development process.
- [50] Nor can the Town, in these circumstances, rely upon its natural person powers to collect these unauthorized assessments and levies. The self-serving form and language of the Contribution Agreement cannot be allowed to obscure its purpose of compelling the payment of unauthorized off-site levies. The MGA spells out the facilities and infrastructure for which off-site levies may only be made. The natural person powers cannot be used to impose levies on other facilities and infrastructure []
- [51] Further, natural person powers do not extend to imposing fees or charges, or coercing developers into agreements to "voluntarily" pay for infrastructure deficits. Natural persons have no powers to issue subdivision or development approvals. Here, the Town is exercising its municipal powers which are restricted by the MGA.
- []
- [54] The Town argues that there was no evidence in the record that any developer had been denied subdivision approval because it refused to enter into the Agreement. That is so, but the evidentiary record demonstrates that the Contribution Agreement was the intended means to collect these unauthorized off-site levies, and that the Town intended that each

developer who developed land would pay these "fees" and "charges" purportedly imposed pursuant to the Bylaw. The Town has no authority to impose the acreage assessments and other development charges as part of the common levies.

[]

[56] For these reasons, I have concluded that the form of Contribution Agreement adopted by the Town as a basis for charging acreage assessments and other development costs is a colourable attempt to impose unauthorized off-site levies. In adopting the Contribution Agreement for this purpose, the Town went beyond its jurisdiction. The resolution adopting the Contribution Agreement is, therefore, invalid.

[113] Two more instructive cases are *G. Gordon Foster Developments Ltd. v. Langley (Township)*, 1979 CanLII 624 (BCCA), 14 B.C.L.R. 29 , and *Gardner Construction Ltd. v. Parksville (City of)*, 1995 CanLII 2408 (BCCA), 8 B.C.L.R. (3d) 223.

[114] In *Foster*, a bylaw was held invalid that gave the approving officer discretion to determine whether the cost of public utilities of proposed subdivisions would be excessive, and if so to levy fees from a set of schedules and refuse approval unless the prescribed amounts were paid.

[115] In finding the by-law beyond Langley's authority, the Court of Appeal said this:

[36] The rates fixed by the by-law were adopted by the council on the advice of the municipality's approving officer on the basis of studies made by that officer to ascertain average excessive cost figures of general application for lots of the various sizes mentioned in the bylaw. In my opinion, however, the fact that the figures came from the municipal approving officer does not have the effect, in the absence of statutory authority to do so, of giving the council the power to enact the impugned by-law.

[37] It was argued for the respondent that the by-law is *intra vires* on the footing that a municipal council may lawfully give guidance to an approving officer to assist him in the performance of his duties and that the impugned by-law does not go beyond giving such guidance. It is unnecessary to explore the argument because, assuming without deciding that the main premise of the argument is correct, the impugned by-law is not a by-law which gives guidance. The by-law is, in my view, patently one which is positive rather than one which guides, because it purports to firmly set a schedule of fees which may be levied by the approving officer in the circumstances which I have described at length.

[116] In *Gardner*, the Court of Appeal considered a City of Parksville by-law that compelled developers, as a condition of preliminary subdivision approval, to sign an agreement waiving a statutory twelve-month grace period from new civic charges imposed within that time. The petitioner had signed the waiver of its protections, in exchange for the City's agreement to accept and consider its application for preliminary approval of its subdivision. It sought to invalidate its own waiver because there was no statutory authorization to compel such an agreement as a condition of preliminary approval.

- [117] The Court rejected the City's arguments that: (a) there was no compulsion for a developer to obtain preliminary approval of a plan in order to obtain subdivision, and therefore it was not "compelled" to waive its right to the grace period; and (b) it was acting in the public interest by ensuring that developers, not the public, bore the costs of subdivision.
- [118] The Court agreed with the decision below that the bylaw providing for the waiver was ultra vires, because there was no statutory authorization to compel such an agreement as a condition of preliminary approval (paras. 11, 17).
- [119] Another case of helpful guidance is *Blueleader Enterprises Ltd. v. Director of Commercial Vehicle Safety*, 2024 BCSC 850. The petitioner challenged two informational bulletins regarding the vehicle inspection regime overseen by the Director of Commercial Vehicle Safety and Enforcement. The bulletins stated that "non-conforming ex-military vehicles" were not designed to conform with Canada Motor Vehicle Safety Standards and must not be inspected under the Motor Vehicle Act Regulations, which was a prerequisite to registration with the Insurance Corporation of British Columbia (paras. 65-66).
- [120] The Court rejected the Director's characterization of the bulletin as valid administrative guidance to vehicle inspectors. Instead, it found the proper characterization to be "rules as to what constitutes a proper inspection under the regulatory regime that do not derive directly from the regulations themselves with a threat of enforcement action" (paras. 64, 68). This constituted a mandatory direction "with the same effect as a regulation prohibiting inspections of a defined category of vehicles" which was not statutorily authorized (para. 69).

Analysis

- [121] The outcome of this case turns on the proper characterization of the CAC Policy. Is it a guide to the non-binding contributions to be discussed and negotiated between the Township and developers on a case-by-case basis? Or a detailed scheme intended to dictate the presumptive mandatory contributions?
- [122] In my view, the CAC Policy represents more than administrative guidance. Read as a whole, it indicates a mandatory fee regime, in that it suggests the specified contributions will generally be required as a condition of rezoning approval. It is therefore invalid for lacking the requisite statutory authority for such a regime.
- [123] As pointed out by counsel for Langley, the CAC Policy repeatedly describes the specified contributions as "guidelines" or "targets". They are also described as "voluntary amenity contributions" to be achieved in "site by site negotiations" which will "seek to obtain a target contribution that makes a meaningful contribution to community amenities while ensuring that landowners still have enough incentive to make land available in the redevelopment market".

[124] Cases such as Ainsley and Prairie Communities tell us, however, that these words do not necessarily mean that a policy will be found to provide only non-mandatory guidance. Instead, what must be considered is the character of the CAC Policy as a whole.

[125] Reviewing the CAC Policy in that way, in my view, there is a clear implication that the specified contributions will generally be required for a rezoning to be approved, such approval of course being within the sole discretion and control of the Township.

[126] In my view, the following aspects of the CAC Policy indicate this obligatory nature:

S. 2.3: CACs are "intended to offset the cost of providing community amenities associated with new commercial, industrial and residential development".

S. 2.3: In the event CACs are not made to help provide the amenities, "it is not necessarily in the public interest for the local government to support a rezoning".

S. 2.3: "It has become common practice for many municipalities in B.C for developers to propose, or municipalities to seek, amenities from projects applying for changes in use or density."

S. 2.3: "In this policy, the amenities are intended to be collected through a fixed rate contribution, based on a set of predetermined amenities."

S. 3.1(a), (b): The OCP objectives related to CACs include the aims to: "Ensure that new development pays for the capital costs of providing new infrastructure and facilities to serve that development"; and to "Diversify revenue sources" to do so.

S. 3.2(a): Specific applicable policies include to "Investigate potential for community amenity charges to cover the costs of facilities and amenities required for development that are not funded by DCCs."

S. 4.1: As the Township of Langley continues to grow, "new development should make a fair contribution to new community amenities, affordable housing, and other community needs".

S. 4.2: The target CACs will be set such that the cost implications for new development "will be reasonable".

S. 4.2: "The level of CACs will be such that there is minimal impact on new development The costs will be such that developers and landowners will still see incentives to seek higher density "

S. 5.2: "The Township intends to obtain contributions to civic infrastructure and amenities from new developments that involve rezoning."

S. 5.2(a): In doing so, it will apply the principle that "New development should make a fair contribution".

S. 5.2(e): "In site by site negotiations, the Township will seek to obtain a target contribution that makes a meaningful contribution to community amenities."

S. 5.2(j): "New development should make a fair contribution to new community amenities."

S. 5.2(j): "Where lots designated Residential and significant increases in density are proposed, CACs will be based on an amenity contribution proportionate to the value being created by the increase in density for Major OCP amendments "

S. 5.4(a): "Payment of the CAC shall be made to the Township, prior to Council consideration of the adoption of the Zoning Bylaw amendment bylaw."

[Emphasis added.]

[127] In my view, characterizing the CAC Policy as a mandatory payment scheme, as opposed to non-mandatory policy, is also supported by aspects of the CAC Policy similar to legal pronouncements in a regulation. As in Ainsley, the CAC Policy represents a complex, detailed scheme, with numerous precise formulas, processes, exemptions, and exceptions to the exemptions. Examples are:

- The precise percentage of funds allocated to specified amenities (s. 5.1);
- The precise per unit contribution targets, both township-wide and in certain neighbourhoods (s. 5.2, Tables 1-4);
- Specific, detailed circumstances where contribution targets are based on a cash contribution proportionate to the value being created by increased density (i.e. lift in value) (s. 5.2(h), (i), (j));
- Specific, detailed exemptions, exceptions to the exemptions, and grandfathering (s. 5.3);
- Detailed terms for the timing of collection (s. 5.4); and
- Specific inflation factors for all specified amounts (s. 5.6).

[128] Langley argues that many aspects of the CAC Policy impugned by Lorval were consistent with the 2014 Guidelines. Lorval argues against that, as described in paragraph 33 above.

[129] While consistency with the 2014 Guidelines may be a relevant consideration for assessing the reasonableness of the CAC Policy, in my view, it is irrelevant to assessing whether the CAC Policy goes beyond a local government's legal authority. As the 2014 Guidelines themselves say, they are not a substitute for provincial legislation.

[130] Langley also argued that, unlike in Ainsley, the CAC Policy includes no threat of sanction against non-paying developers. The CAC Policy does not involve the use of sanction-like powers.

[131] The reality of the situation, however, is that the CAC Policy is connected to Langley's discretionary rezoning power. Rezoning approval is entirely within the discretion of the Township. The CAC Policy indicates that Langley will require developers, in exchange for such rezoning, to make "a fair contribution" to community amenities and that the target CACs specified in the CAC Policy are "reasonable" and properly balance the competing interests at play.

[132] Given this context, in my view, the 2024 CAC Policy indicates the intention that developers must pay the amenity charges in exchange for rezonings. Thus, as in *Prairie Communities*, the effect is to "coerce developers to make payment of unauthorized levies as a condition of the development process". Contrary to the prohibition in *Pacific National*, it is to zone in exchange for amenities without specific statutory authority.

Is the 2024 CAC Policy Reasonable?

[133] Having found that the 2024 CAC Policy is a mandatory payment scheme beyond Langley's legal authority, no issue remains regarding whether it is a reasonable exercise of the Township's authority.

Conclusion

[134] Langley's CAC Policy, as amended, is a mandatory amenity payment regime beyond Langley's legal authority. It is therefore invalid and set aside.

[135] The issue of whether the 2024 CAC Policy was approved in a procedurally unfair manner is dismissed as moot.

[136] Unless the parties wish to speak to costs, Lorval is awarded costs of these proceedings at Scale B.

"Coval J."

Schedule A

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