

No. 292045-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

WILLIAM H. DAVIS, JAMES F. BENTHIN,

Appellants,

v.

CITY OF SPOKANE AND KONSTANTIN VASILENKO,

Respondents.

RESPONDENT CITY OF SPOKANE'S RESPONSE TO
APPELLANTS' OPENING BRIEF

HOWARD F. DELANEY
CITY ATTORNEY
WSBA No. 13805

SALVATORE J. FAGGIANO
ASSISTANT CITY ATTORNEY
WSBA No. 15696

Attorneys for Respondent City of Spokane
Office of the City Attorney
5th Floor, Municipal Building
W. 808 Spokane Falls Blvd.
Spokane, WA 99201-3326
(509) 625-6225

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I. INTRODUCTION.

Respondent City of Spokane concurs with the Introduction as presented in Respondent Vasilenko's Response Brief and incorporates the same herein as if fully set forth.

II. STATEMENT OF CASE.

Respondent City of Spokane concurs with the Statement of Case as presented in Respondent Vasilenko's Response Brief and incorporates the same herein as if fully set forth.

III. ARGUMENT.

Respondent, City of Spokane concurs with the Argument as presented in Respondent Vasilenko's Response Brief and incorporates the same herein as if fully set forth.

IV. ATTORNEYS FEES.

Pursuant to RCW 4.84.370, if the City of Spokane is the prevailing party or substantially prevailing party in this appeal, the City is entitled to recover reasonable attorney

fees and costs from the Appellants as the City prevailed before the Superior Court. RCW 4.84.370 provides that:

(1) Notwithstanding any other provisions of this chapter, reasonable attorneys' fees and costs shall be awarded to the prevailing party or substantially prevailing party on appeal before the court of appeals or the supreme court of a decision by a county, city, or town to issue, condition, or deny a development permit involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. The court shall award and determine the amount of reasonable attorneys' fees and costs under this section if:

(a) The prevailing party on appeal was the prevailing or substantially prevailing party before the county, city, or town, or in a decision involving a substantial development permit under chapter 90.58 RCW, the prevailing party on appeal was the prevailing party or the substantially prevailing party before the shoreline[s] hearings board; and

(b) The prevailing party on appeal was the prevailing party or substantially prevailing party in all prior judicial proceedings.

(2) In addition to the prevailing party under subsection (1) of this section, the county, city, or town whose decision is on appeal is considered a prevailing party if its decision is upheld at superior court and on appeal.

Based upon the authority of the foregoing statute the City is entitled to recover reasonable attorney fees and costs from Appellants if the City is the prevailing party or substantially prevailing party in this appeal. *Mower v. King County*, 130 Wn.App. 707, 125 P.3d 148, *reconsideration denied* (2005); *Pavlina v. City of Vancouver*, 122 Wn.App. 520, 94 P.3d 366 (2004). Accordingly, pursuant to RAP 18.1 and based upon RCW 4.84.370, the City requests that the Court of Appeals award reasonable attorney fees and costs to the City and against Appellants.

V. CONCLUSION.

Respondent City of Spokane respectfully requests that the Court of Appeals affirm the Superior Court in all respects. In addition, the City of Spokane should be awarded its reasonable attorney fees and costs against the Appellants.

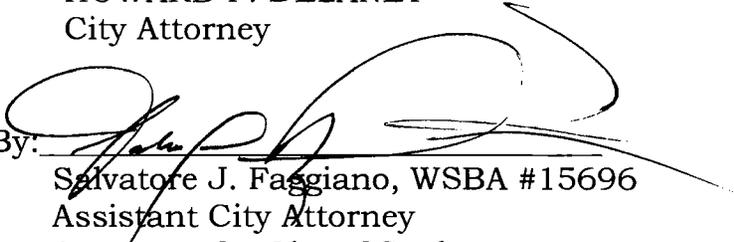
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DATED this 6th day of January, 2011.

HOWARD F. DELANEY
City Attorney

By: 

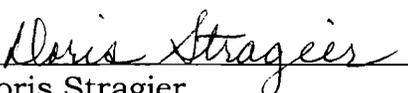
Salvatore J. Faggiano, WSBA #15696
Assistant City Attorney
Attorneys for City of Spokane
Respondent

DECLARATION OF SERVICE

I declare, under penalty of perjury, that on the 6th day of January, 2010, I caused a true and correct copy of the foregoing "Respondent City of Spokane's Response to Appellants' Opening Brief," to be delivered to the parties below in the manner noted:

John F. Bury	<input type="checkbox"/>	VIA FACSIMILE
Murphy, Bantz & Bury, P.S.	<input type="checkbox"/>	VIA U.S. MAIL
818 W. Riverside Ave., Ste. 631	<input type="checkbox"/>	VIA OVERNIGHT SERVICE
Spokane, WA 99201	<input checked="" type="checkbox"/>	VIA HAND DELIVERY
Attorney for Appellants		

J. Steve Jolley	<input type="checkbox"/>	VIA FACSIMILE
Herman, Herman & Jolley, P.S.	<input checked="" type="checkbox"/>	VIA U.S. MAIL
12340 East Valleyway	<input type="checkbox"/>	VIA OVERNIGHT SERVICE
Spokane Valley, WA 99216	<input type="checkbox"/>	VIA HAND DELIVERY
Attorneys for Respondent Vasilenko		


Doris Stragier
Attorney Assistant
City Attorney's Office
808 W. Spokane Falls Blvd.
Spokane, WA 99201-3326