

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Ferstel v. Nanaimo (Regional District)*,
2026 BCSC 291

Date: 20260203
Docket: S103483
Registry: Nanaimo

Between:

Brian Gordon Ferstel

Petitioner

And:

Regional District of Nanaimo

Respondent

Before: The Honourable Justice Marzari

On judicial review from: A remedial action requirement resolution of the
Regional District of Nanaimo, dated June 24, 2025.

Oral Reasons for Judgment

In Chambers

The Petitioner, appearing in person:

B. Ferstel

Counsel for the Respondent:

S. Dubinsky

Place and Date of Hearing:

Nanaimo, B.C.
February 3, 2026

Place and Date of Judgment:

Nanaimo, B.C.
February 3, 2026

[1] **THE COURT:** Mr. Brian Ferstel seeks judicial review of a remedial action requirement (the “RAR”) passed by the Regional District of Nanaimo last year that would require him to remove two buildings on property located on Nanaimo River Road in Nanaimo, BC (the “Property”), formerly owned by his deceased father.

[2] While Mr. Ferstel is not the registered owner of the Property, it appears that the land is owned by the Crown in the Right of the Province, and that it likely escheated to the Crown in February of 2025 prior to this current round of remedial action requirements. Mr. Ferstel explains that the Property was in his father’s name and that it has been more than 10 years since Mr. Ferstel’s father’s death, but that he has yet to seek to have the Property placed in his own name, largely because of the significant taxes owed on the Property that he would then have to pay.

[3] The Regional District concedes Mr. Ferstel has standing to bring this petition as a person with a right of redemption over the Property. As a result, he was served with all of the materials relating to the proposed remedial action requirement by the Regional District of Nanaimo, including warning letters that preceded that motion. Mr. Ferstel was also invited to, and was present at, the Board meeting and spoke to the initial remedial action requirement order in March 2025 (the “March Resolution”). Mr. Ferstel sought reconsideration of the March Resolution, and again was present and spoke at the reconsideration by the Board in June of 2025 (the “June Reconsideration Decision”).

[4] Judicial review is properly sought of the June Reconsideration Decision, though the March Resolution is an important part of the context in which I review the RAR. I do note, however, that I am not asked to, and I am unable to, consider or reconsider an earlier and completed remedial action requirement that I believe was executed in or about 2022 with respect to the same Property, which Mr. Ferstel also made reference to in his submissions before me.

[5] Although Mr. Ferstel did not serve the Attorney General or the owner of the Property itself, which would have been the Crown in Right of the Province, I understand that the Regional District of Nanaimo has done so and neither the

Attorney General, nor the Crown entity that controls the Property, have indicated an intention to respond or to participate in this judicial review.

[6] The legal basis stated in Mr. Ferstel's petition, which I would describe as slight, is undue hardship and unreasonableness. Although the petition pleads no further facts or legal bases, Mr. Ferstel does rely on an affidavit that he filed with that petition in December 2025 in which he states that the decision was unreasonable and has caused him undue hardship, primarily because he had done considerable work on the buildings at issue and in securing the Property. This includes replacing windows and doors, replacing sheathing, applying new tar paper and roofing materials. Furthermore, he says he could and would do more work on the two buildings, and one in particular which is his workshop, if he knew that they were not going to be demolished pursuant to the RAR.

[7] Mr. Ferstel did demolish a third building pursuant to the RAR but asserts the two remaining buildings are not unsafe or hazardous. Based on Mr. Ferstel's affidavit material and his oral submissions before me, I understand that his assertion that the buildings on the Property are not unsafe or structurally unsound is the primary thrust to his petition for judicial review. Before me, he also seeks more time to bring the buildings up to engineered safety standards.

[8] In the context of this judicial review, the plead ground of undue hardship is essentially wrapped into the legally recognized ground of unreasonableness. The review for reasonableness of the RAR includes the question of the reasonableness of the Board's consideration of any undue hardship that Mr. Ferstel, as the occupier and potential inheritor of the Property, may endure if the RAR was imposed.

[9] Although not plead, the Regional District notes that the burden would be on Mr. Ferstel to prove the decision was procedurally unfair, and they argue he has not done so.

[10] I find that Mr. Ferstel has neither plead, nor established, on the evidence before me, a lack of procedural fairness by the Regional District. Although there was

no requirement for them to do so at common law, or pursuant to the statutory regime, the Regional District did provide Mr. Ferstel with advance notice that the Board was intending to consider the initial RAR at its March 25, 2025 meeting and Mr. Ferstel was given an opportunity to make oral submissions prior to that resolution being passed on March 25, 2025.

[11] The Board also considered at that initial meeting Mr. Ferstel's request for an extension of time to repair the buildings at issue, and that that extension request was moved and considered, but ultimately did not pass. Once the March Resolution was passed, upon receiving Mr. Ferstel's request for reconsideration, the Board also received and reviewed the petitioner's written and oral submissions with regard to the June Reconsideration Decision.

[12] I also note that the Regional District has been somewhat patient with Mr. Ferstel in the sense that the June Reconsideration Decision would have required demolition of both remaining buildings within 30 days. The Regional District provided Mr. Ferstel additional time and a warning, allowing him to comply with the RAR by October 8, at which point he obtained demolition permits for both buildings, which themselves provided another 30 days for him to complete the demolition.

[13] Having disposed of the unpled issue of procedural fairness, I turn to the issue of unreasonableness. It is well established that the standard of review of local government resolutions, including resolutions that impose remedial action requirements, is reasonableness.

[14] Here, the local government is the Regional District, which is empowered by s.305 of the *Local Government Act*, R.S.B.C. 2015, c. 1, to impose remedial action requirements under s.73(a) of the *Community Charter*, S.B.C. 2003, c. 26, with respect to hazardous conditions of a building or structure.

[15] There are a number of cases that have considered remedial action requirements in the past, and the standard of review with respect to them. Some of them predate *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019

SCC 65, while some of them come after *Vavilov*. In the decision of *North Vancouver (District) v. Wilson*, 2022 BCSC 2014, this Court confirmed that the standard of review is reasonableness, but found that the remedial action resolution was unreasonable for a number of reasons. Another decision of this Court confirming the reasonableness standard was *Este v. District of West Vancouver*, 2022 BCSC 584, which was upheld by the Court of Appeal at 2022 BCCA 445. While there have been a number of *Este* decisions, it is this particular one that I am referencing with respect to the judicial review of a remedial action requirement.

[16] It is well established pursuant to *Vavilov* that when applying the standard of review of reasonableness, the role of the court on judicial review is not to reweigh the evidence or substitute its own findings of fact or views of what would be appropriate for those of the democratically elected decision maker, but, rather, to decide whether the decision is rationale or logical and justified in relation to the constellation of law and facts that are relevant to the decision. The review is conducted on the record before the decision maker.

[17] A decision to impose a remedial action requirement is reasonable if there is evidence upon which the decision maker's finding could reasonably be made, if the reasoning process is understandable and apparent from the decision, and there is an evidentiary basis for the essential findings.

[18] It has also been noted by this Court in *Madaninejad v. North Vancouver (District)*, 2015 BCSC 895, that it is generally considered in the public interest that lawfully made decisions by municipal or local government authorities are complied with, including with respect to remedial action requirements, particularly when they relate to safety.

The Petition for Judicial Review

[19] I understood Mr. Ferstel to raise several bases for arguing the decision was unreasonable. In this regard I have considered his submissions before me as well as his sworn affidavit evidence.

[20] The thrust of his submissions before me are that two of the three buildings subject to the RAR, although previously unsafe and structurally unsound, could be made sound, and that he has done considerable work, both between the March Resolution and the June Reconsideration Decision, and since the June Reconsideration Decision, towards making them structurally safe and sound.

[21] Second, Mr. Ferstel says that he has shown diligent effort prior to the June Reconsideration Decision by removing building #1, and that he also fully addressed the unsightly conditions that were on the Property. These unsightly conditions and the disrepair of the Property were not his fault, in any event, because it was his late brother's occupation of the Property that led to the unsafe and unsightly state of the Property, mostly because he let squatters and vandals occupy the Property. However, since his brother's death, which occurred before the March Resolution, Mr. Ferstel secured the Property for the safety of the public and he is now able to ensure that those problems will not arise again.

[22] Finally, Mr. Ferstel argues that it was unreasonable not to give him more time to remediate the buildings before passing either the March Resolution or the June Reconsideration Decision.

[23] In addition to the evidence that was properly in evidence before me, Mr. Ferstel also provided unsworn photographs and a copy of an engineering report signed this past weekend. Although those are not properly before me as they are not sworn and they are not part of the petition materials, I have considered them in part in relation to Mr. Ferstel's application that the entire judicial review be adjourned to allow him to get that kind of material gathered. In considering whether or not I should be allowing a further adjournment, I have also considered the potential merit of those materials that are unsworn and before me.

[24] Those materials include evidence that Mr. Ferstel has done further work since the June Reconsideration Decision to building #2, towards making that building structurally sound. Mr. Ferstel has also done work on building #3, which is the middle building, though Mr. Ferstel concedes that more work is still needed on

building #3 and that it is not yet structurally sound because the roof of building #3 is essential to its structural integrity. He says, however, that he is prepared to do that work.

[25] Mr. Ferstel emphasizes that he now has an engineering report with respect to building #2 that says that it is fully remediated and safe. He also says that he has a heated cement slab floor that was built in or about 1992 before permit requirements applied in his electoral area that is still good, not cracked, and upon which he moved one or both of these buildings.

[26] He also says anything valuable was stolen when his brother was in charge of the Property, or was removed when the Regional District cleaned up the Property back in 2022 pursuant to a previous RAR, but he still has some hoists and other tools that he uses for his art, and perhaps for his boiler-making business, that he wants to preserve and that he needs the buildings to do that.

[27] The Regional District did not object to my looking at the recent unsworn engineering report or the photographs that Mr. Ferstel has passed up to me, but I understand their argument to be that those are all too little and too late. They note that in April 2025, when Mr. Ferstel requested a reconsideration to the March Resolution, he wrote in his request that he would be getting an independent engineer to review his work and to certify the safety of the buildings, and that he would be getting building permits to do any required work, but that he had done neither by the June Reconsideration Decision. Nor had he done so as part of the materials filed for the judicial review in December of last year. In any event, the engineering report does not suggest that building #3 is safe, and falls far short of stating that building #2 is safe, even now.

Decision

[28] When considering reasonableness, it is the record before the Board at the June Reconsideration Decision that I must consider. The record before the Board includes staff reports before the Board that acknowledge that Mr. Ferstel had made significant progress to the unsightliness of the Property, such that there was no

longer any grounds to impose a remedial action requirement on the grounds of unsightliness, and also that one of the three buildings had been removed by Mr. Ferstel in accordance with the March Resolution (albeit without a permit).

[29] The report also acknowledged that the problem with unsightliness and vagrancy on the Property was largely a result of Mr. Ferstel's brother who had now passed, and that Mr. Ferstel was more responsible with respect to the Property. Furthermore, in the report before the Board staff expressly provided an option to the Board to defer the RAR reconsideration for six months to allow Mr. Ferstel to demolish the buildings on his own, which would have given him more time to make further presentations to the Board had the Board decided to take that option.

[30] Staff also noted in that report, however, that the promised engineering assurances that Mr. Ferstel had said he would provide as part of his request for reconsideration had still not been provided, that work had been done on the Property without permits, and that the buildings were still structurally unsound.

[31] The Board's decision was, nevertheless, to affirm the requirement for the demolition of the remaining buildings without delay. Despite some Board members and directors being opposed, the vote to confirm the RAR in June of 2025 was overwhelming.

[32] I do not have reasons for the decision of the Board, but I do have a staff report whose recommendations and rationale I find were largely followed by the Board. This, I find, is sufficient to understand the Board's rationale and reasoning in this case. On the record before the Board, I am satisfied that there was sufficient evidence for the Board to reasonably conclude that the two remaining buildings were structurally unsound and therefore were in an unsafe condition, and further that unpermitted work had been done on those buildings.

[33] Even before me, more than six months after the June Reconsideration Decision, the promised engineering assurances have not been provided. What has been provided is insufficient to reassure this Court that work done even since the

June Reconsideration Decision does anything more than lessen the extent of the severely compromised structural integrity of one of the buildings. At best, this report indicates that with substantially more unspecified and as yet incomplete work, that Mr. Ferstel would be able to ask for a reconsideration of the 2024 demolition recommendation made by that same engineer. Mr. Ferstel concedes that the middle building, which is building #3, is still not in a position where he could get an engineer to say even that much.

[34] Therefore, I am satisfied on the record, that even had I adjourned this hearing to allow Mr. Ferstel to put further information more properly before this Court, that buildings #2 and #3 were and remain structurally unsound. It was reasonable for the Board to conclude that the buildings were unsound on the record before them at the time of the June Reconsideration Decision which is, of course, the record that is the most pertinent to my decision today.

[35] To be reasonable it is not necessary that this Court agree with that decision or even that reasonable people would not disagree. In this case, there is evidence that three of the directors opposed the RAR. That does not make the decision unreasonable in the legal sense.

[36] I find that the Regional District of Nanaimo's decision to confirm the March Resolution with respect to the demolition of the two remaining buildings on the property was reasonable in the legal sense. Therefore, I would dismiss the petition.

[37] The Regional District also asks that I lift the stay imposed by Justice Young in December 2025, and allow the Regional District to proceed with the demolition at the landowner's cost, which would then, as I understand it, be added to the taxes owing on the Property. I understand Mr. Ferstel would then have to pay off those taxes in order to redeem the Property from the Crown.

[38] Mr. Ferstel argues that he still needs two to three months more to demolish the buildings himself at this point and that he has now invested significantly in trying to repair the buildings since the RAR was imposed. He has installed new windows

and doors. He argues that the concrete slab under both buildings is still good and he worries that the Regional District would remove the still good concrete slabs as well and charge him a considerable amount for breaking up those slabs and disposing of them, when they are not unsafe.

[39] Before me, the Regional District concedes that the slabs are not the safety concern on the Property, and that they do not have to be removed. However, they say that Mr. Ferstel has been given a great deal of grace and many opportunities beyond the initial 30 days he was given after the June Reconsideration Decision, and they say he should not be given more time at this point. Whenever he is given more time, they suggest he simply uses it to try to improve the Property rather than comply with the RAR and demolish the buildings.

[40] I am lifting the stay imposed by Justice Young. That was an interim stay that was pending the determination of this judicial review. However, I am going to impose a very limited and interim stay on the actual demolition by the Regional District, largely on compassionate grounds, to allow Mr. Ferstel 30 days to remove the most valuable things from that Property to a place that he considers safe. I know he has added windows. He may wish to remove those windows. He may wish to do as much work as he possibly can to lessen the cost that might be imposed on the Property if he can demolish the structures himself with appropriate permits. He should be issued those permits and allowed to do that within those 30 days should he apply.

[41] I am going to direct a 30-day stay solely for the purpose of allowing Mr. Ferstel to demolish the buildings with permits. I want to be very clear, Mr. Ferstel, this is not an opportunity for you to try again to save the buildings. I want to let the Regional District know that if Mr. Ferstel comes and asks for renewal or an extension of his demolition permits, that those should be granted within that 30-day period so that he can go ahead and try to get as much of that done as he possibly can.

[42] I want to also be clear that that interim stay does not in any way prevent the Regional District from beginning the preliminary steps of acting upon the RAR, which may include inspections of the Property, having contractors come and look at the Property, that sort of thing, but there will be no demolition conducted by the Regional District within 30 days of this decision.

[43] With the consent of the Regional District, I also expressly exclude from the scope of the RAR the concrete slabs under the two buildings. Those may remain and they do not have to be removed either by Mr. Ferstel or by the contractor, if it comes to that.

[SUBMISSIONS ON COSTS]

[44] THE COURT: I find that the Regional District has been substantially successful with respect to this matter and I award it tariff costs on the ordinary scale.

“Marzari J.”