



LITTLE QUALICUM RIVER VILLAGE

Minutes of a Regular Council Meeting

Strata Corporation VIS 4673
Lighthouse Community Centre
240 Lions Way, Qualicum Beach, B.C.
September 23, 2019

Council Present:

Brian Gallagher, Trish Curtin, Doedy Reisler, Earl O'Hara

Lorraine Webb and Mike McDowell are away

Observers Present:

Mike Kervel and Reidun McDonald Lot 180, Judy Lewis lot 190, Steve and Jody Lapp Lot 193, Garry Fisher and Anita Timm Lot 264, Harry Oppenlander Lot 266, Andy Oppenlander Lot 128, Mark Reimer Lot 056.

1. Call to Order

Brian Gallagher, President, called the meeting to order at 6:40 p.m.

2. Approval of Agenda

Moved: Trish

Second: Doedy

CARRIED UNANIMOUSLY

3. Approval of minutes from the previous Strata Council meeting of August 26, 2019

Moved: Trish

Second: Brian

CARRIED UNANIMOUSLY

4. Reports

a. Policies and Procedures

b. Design Review Committee

- i. DRC applications & construction – SL 244 and SL 245 was issued a letter advising the prior DRC approval was rescinded for breaching the conditions of approval by failing to secure the required permit. A meeting followed and the next day, the owner had equipment working on the lots. Doedy was notified by a resident. She attended the site and work was ceased. The DRC application by SL 260 to remove trees was not approved because some of the trees were on a steep slope and thus, the Ministry of

Forests requires an arborist and/or geotech review. The Ministry of Forests reviewed the common property adjacent SL 257 on September 13, 2019 in response to SL 257 making a Development Permit Application. It was recommended to council that an independent geotech be hired to assess the steep slope and watercourse on the common property and make recommendations to safeguard watercourse over the winter and stabilize slope over long term. The DRC application submitted by SL 041 for a deer fence was approved, on the condition that the height does not exceed six feet.

- ii. Inspections and maintenance schedules – Culverts are being checked and cleared as necessary, and reflective posts being installed in preparation for snow clearing. The culvert blockage reported by SL 15 could not be addressed as the inflow (problem) end is on the owner's lot, which has a fence and a locked gate. Ditches are being trimmed and checked for blockages, which will be addressed next.
- iii. Special Projects – Warn Way Culvert: An owner did unauthorized and counter-productive work on the Wallace Wood Way culvert. They cut a path through private property and filled in the ditch. A plan was in place, a qualified crew had been hired, material had been order and the work was scheduled for the next week, but the planned work could not proceed due to the changes made and use of material that was already on site. A letter will be issued to the owner directing them not to perform any unauthorized work in the future.
- iv. The insurance payout for the storage units is sufficient to cover the estimate cost of the collapsed areas, only. Nothing else is covered. Drawings are required to secure the necessary permit for the repairs and as the developer advised he does not have them anymore, we must have someone prepare the drawings.

c. Financial Report & Expenditures for Approval

- i. Year to Date Revenue and Review of Receivables – Financial reports are attached.

- ii. Report on Collection Decisions &/or Directives – Doedy and Trish will review all collection and fine details once the AGM preparations are complete.
- iii. Depreciation Report – Storage unit roof replacements are scheduled for the next 2 years. Pumps and electrical components on the strata operated septic fields are up this year.
- iv. Gate Cameras – Two gate cameras were damaged by the storm. Replacement costs will be confirmed and it was noted there is \$500 remaining in the budget that would apply to such an expenditure.

5. Unfinished Business

- a. Notice of Civil Claim Suit – Noel Stephen & Judith Munkholm – An update was received from the lawyer representing the strata which relates the province and district have made recent submissions, while the developer and plaintiff have not. A request by the province and district for a summary judgment was being anticipated.
- b. CRT Cases. The owner with the RV on Common property case, strata requested time to consult with a lawyer three weeks ago. The matter should proceed the first week of October. The phone/internet case proceeded to adjudication, but that will be put into abeyance pending a decision by owners, should a resolution be placed on the AGM agenda regarding acceptance of a proposal from Telus or Shaw.
- c. Waste and recycling – We are still hoping someone can take over the (paid) job of opening and closing the bins, as well as squishing down the bin contents.
- d. Telus and Shaw Proposals - Proposals from Telus and Shaw are expected.
- e. Drainage Geotech assessment for Abbey Road – Dunwurkin and the area of Abbey Road by the fire hydrant also require assessment. We are looking for an appropriate professional to provide input.
- f. Water system reporting – The current water restrictions reflect the fact that well 13 is not a desirable source due to the arsenic. It is only when the approved wells cannot meet demand that well 13 is used, at great expense due to required weekly testing. New signage for water conservation and fire status notices are in the works. A back-up generator is scheduled for installation at well #2 in October.

- g. AGM – Two quotes for SPA-compliant depreciation reports just arrived this afternoon and will be sent around. Brian thought we may be able to avoid the \$10,000 assessment by McElhanney Engineering in order to provide a quote for the engineering to connect well 15 to the water system, by securing engineering by Newcastle Engineering. The work on common property adjacent to SL 257 requires approval of owners by way of a $\frac{3}{4}$ vote at an AGM or SGM. Cost estimates may not be available in time for the AGM.

6. New Business

- a. Changes to common property by lot 257 – The details are provided under item 4 (b) (i) above. It was moved that we have a geotech assess the situation.

Moved: Doedy

Second: Brian

CARRIED UNANIMOUSLY

- b. Letter from SL 264 and SL 266 – These owners emailed a letter requesting it be presented at the hearing and included in the meeting minutes. Council President, Brian Gallagher read the letter at the meeting. It presents itself as serving to explain to all owners why the strata corporation is being sued in the Supreme Court (not the CRT). The letter asserts Council members are not enforcing the bylaws, are catering to the bylaw breakers, picking and choosing which complaints it acts on and not fulfilling their obligations regarding the best interests of the strata corporation. SL 264 and SL 266 allege that as a result, the strata corporation is losing thousands of dollars a week in revenue from fines, the council is undermining the sale of homes and negatively impacting their quality of life.

This letter reflects a bylaw violation complaint campaign by SL 264 and SL 266 aimed at Cameron Crescent and Pady Place owners, with the RV lots receiving special attention. The actions of SL 264 and SL 266 have created significant discord between them and the other area owners. Council has received complaints from numerous lots claiming harassment and bullying type of behaviour by SL 264 and SL 266. SL 264 and SL 266 have developed interpretations of strata and RDN bylaws, and have their own ideas about

appropriate remedies for bylaw violations. Although Council sought legal advice on how best to resolve the situation, our legal budget is horribly inadequate, particularly given that our strata has never retained a strata lawyer in the past. There is a significant volume of documents the lawyer must review before they can be familiar enough with our strata to provide sound legal advice. The initial review will take significant time and will incur significant legal costs. Accordingly, we are unable to proceed further on the matter until additional funds are available.

The statement that the strata is being sued through the Supreme Court is not accurate. We have not received notice of any proceedings being brought against the strata by SL 264 and/or SL 266, or by any other owner for the failure to enforce bylaws. In addition, the Civil Resolution Tribunal Act relates it is the Civil Resolution Tribunal (CRT) and not the Supreme Court of B.C. that has jurisdiction over bylaw issues under the Strata Property Act. The Civil Resolution Tribunal Act, Division 4 "Claims within jurisdiction of tribunal for strata property claims", section 121 (1) states that; "the tribunal has jurisdiction over a claim, in respect of the Strata Property Act, concerning one or more of the following": "(a) the interpretation or application of the Strata Property Act or a regulation, bylaw or rule under that Act" and "(f) a decision of a strata corporation, including the council, in relation to an owner or tenant."

Council actions in years past are not a reflection of the current council, which, with one exception, currently consists of new council members. This council has put significant time and effort into ensuring its bylaw enforcement is in accordance with section 135 of the Strata Property Act. SL 264 and SL 266 are demanding specific action be taken immediately, that this Council has been advised requires a CRT order. The fact SL 264 and SL 266 are not satisfied with the bylaw enforcement action of this council does not mean this council is failing to perform its duties.

Some of the SL 264 and SL 266 complaints depict symptoms of much larger and much more significant problems. Our strata plan itself and several features of our strata are not compliant with the Strata Property Act (SPA). Situations exist

here that are not even possible according to the SPA and thus, we have problems the SPA has no remedies for. These problems are not going to go away and we can't change the SPA. The only clear way is to determine what legal changes can be made to the problematic aspects of our strata and proceed accordingly. Details shall be provided in the AGM Notice Package and during the AGM itself. Council urges all owners to attend the AGM in person. The only way owners can truly protect their financial investment, is to become informed about the issues and participate directly in the decision-making process to resolve those issues.

7. Events

- a. There are no events on the calendar.

8. Correspondence

SL 001 email inquiring about tree removal on their lot.

SL 15/16 email notifying council of culvert/drainage issues.

SL 079 emails regarding email to CBC and CHEK News about riparian area issues, emergency response folder and document requests.

SL 173 requesting extension of time to comply with bylaw 37 (6).

SL 178 email requesting permission to park on common property.

SL 182 requesting a meeting with a council member about parking.

SL 209 email about a piano being dumped in her storage unit.

SL 228 email advising they cannot provide garbage services after September, 2019.

SL 231 email offering bidding process advice and ideas and requesting service provider drive with more caution.

SL 246 email inquiring about gate security.

SL 257 email requesting hearing before council.

SL 260 email requesting DRC information.

SL 264 emails regarding document requests, requesting riparian area signage, threatening human rights action against the strata, stating they are taking legal action against the strata, deep pot holes on Cameron Crescent, that people evicted from elsewhere are moving here, complaining about council parking decision on a lot unrelated to theirs and providing letter from Cleveland Doan saying council must enforce bylaws.

SL 279 email requesting council take another look at bylaw 3 (5) (a) issues.

Various correspondence regarding keys, Form K, F and B issues, general inquiries by the public and realtors, was also received.

9. Bylaw Enforcement decisions and actions (discussion held in-camera)

SL 172 was issued a warning letter for violation of bylaw 37 (4).

SL 173 was issued an extension to comply with bylaw 37 (6).

SL 273 was issued one \$100 fine for violation of bylaw 38 (1).

SL 274 was issued one \$100 fine for violation of bylaw 38 (1) and a \$50 fine for violation of bylaw 1 (2). Weekly fines of \$100 for each apply for violations of bylaws 3 (5) (a) and 37 (10). A reminder was given regarding bylaw 3 (5) (a).

SL 282 was issued a warning letter for violation of bylaw 38 (1).

10. Next Meeting Date

The next meeting is scheduled for October 7, 2019 at 6:30.

11. Adjournment

Meeting was adjourned at 9:15 pm

Moved: Brian

Second: Trish

UNANIMOUS

AUG. 2 2019 Daily Reservoir Readings

Date	Time	depth	Temp.	Well#1	Well#2	Well#9	Well#13	Res.Flow	total
Meter					67973	65735		197064	
1	7:45	10.9						197212	
2	7:35	10.9						197351	
3	8:15	10.6						197500	
4	8:15	10.6						197683	
5	8:00	10.7						197848	
6	7:30	10.6						198031	
7	7:05	10.8						198218	
8	6:45	10.8						198385	
9	7:15	10.6						198566	
10	7:35	10.7						198753	
11	6:50	10.9						198925	
12	7:30	10.8						199103	
13	6:35	10.9						199272	
14	8:15	10.6						199453	
15	7:40	10.7						199631	
16	7:50	10.4						199809	
17	8:45	10.6						199987	
18	8:10	10.8						200159	
19	7:50	10.7						200330	
20	6:00	10.9						200496	
21	7:00	10.9	13.75				5965	200719	
22	8:45	10.7	13.75				5965	200845	7.5-8.1
23	9:00	10.8	13.75			25	5990	201025	205 7.6-8.1
24	8:55	10.7	13.75			-	5990	201188	163 7.3-8.1
25	8:00	10.7	13.75			-	5990	201345	157 7.6-8.5
26	8:10	10.6	13.75			27	6017	201522	204 7.1-8.3
27	8:00	10.7	14.00			47	6064	201700	225 7.4-8.1
28	8:05	10.7	14.00			48	6112	201878	226 7.0-8.2
29	7:50	10.4	14.0			41	6153	202048	211 7.2-8.0
30	1:pm	10.9	14.0			64	6217	202167	183 7.3-8.1
31	7:50	10.6	-					202395	
Meter Readings				69839	67848				
Total consumption				1866	2113	TOTAL = 5331 cm			
comments									
Don Buchner									

- TOTAL CONSUMPTION for August 2019 was 5331 cm or 1,172,820 IMP GAL.
- AVERAGE DAILY USAGE WAS - 171.97 cm or 37,833 IMP GAL
- All ARSENIC TEST THIS MONTH WERE WELL BELOW THE MAC levels AND ALL BACTERIA TESTS HAVE BEEN CLEAN.
- All is GOOD AND THE SYSTEM IS RUNNING SMOOTHLY!!

Thanks

Don Buchner
 OPERATOR # 6464

AUG. 2019 Daily Residual Chlorine Readings

Date	reservoir	SL 51	SL 27	Washrooms	SL 201	SL 177	SL 269
1	.2				.2		
2	.2			.2			
3	.2						.2
4	.2				.2		
5	.2			.2			
6	.2				.2		
7	.2						.2
8	.2			.2			
9	.2				.2		
10	.2			.2			
11	.2						.2
12	.2				.2		
13	.2			.2			
14	.2				.2		
15	.2						.2
16	.2			.2			
17	.2				.2		
18	.2			.2			
19	.2						.2
20	.2				.2		
21	.2						
22	.2						
23	.2						
24	.2						
25	.2			1690 Kimmys Court .2			
26	.2			" .2			
27	.2			" .2			
28	.2			1617 Lewis Lane .2			
29	.2			.2			
30	.2			.2			
31	.2			.2			

AUG 2019		Daily Arsenic test on Reservoir outflow				
Date		Well #1	Well#2	Well#9	Well#13	Reservoir
1	5525					2 2
2	11					2 1
3	11					—
4	5544					—
5	5572					—
6	5625					1>
7	5680					2
8	5711					1>
9	5734					—
10	11					—
11	5751					—
12	5769					—
13	5786					—
14	11					—
15	5829					—
16	5844					—
17	5884					—
18	5899					—
19	5929					—
20	5965					—
21	5965					—
22	5965					—
23	5990				25 m ³	—
24	5990					—
25	5990					—
26	6017				27 m ³	2
27	6064				47 m ³	2
28	6112				48 m ³	2
29	6153				41 m ³	2
1 PM! 30	6217				64 m ³	2
31	6225					<2

Qualicum Beach, BC
V9K 2S3

----- Forwarded message -----

From: **garry fisher** <garryffisher@hotmail.com>
Date: Sun, Sep 22, 2019 at 8:15 PM
Subject: Fwd: Pending lawsuit
To: VIS4673@gmail.com <VIS4673@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: Anita Timm <anita_timm@hotmail.com>
Date: September 22, 2019 at 7:39:21 PM PDT
To: Garry Fisher <garryffisher@hotmail.com>, Harry Oppenlander <haropp@sasktel.net>
Subject: Pending lawsuit

We would like to see this letter included in the correspondence and strata minutes of the September 2019 strata meeting.

This letter is being written to explain to all owners in vis4673 why their strata corporation is being sued, through the Supreme Court and not the CRT.

Our strata bylaws MUST be enforced accordingly within a timely manner when there are valid complaints issued.

The strata council caters to the bylaw breakers at the expense of the owners who follow the bylaws on a regular basis. The strata council puts more effort into NOT enforcing bylaw complaints than they do in enforcing them.

There have been many valid complaints issued over a 2 year period with many not being resolved in a timely manner or resolved at all, with many owners suffering loss of value on their property, undue stress on their well being and lives and exposing owners to liabilities because of the strata councils actions. From home owners, residents, tenants and guests not having proper control of their dogs on common property, unlicensed and licensed vehicles parking on

common property for over 8 hours, to rvs being lived in full time as permanent residences, illegal work being done on private yard areas, squatters living on common property and stealing water, and everything in between. We have bylaws in this strata for everyone to follow so everyone has peace of mind within this strata that all people are respected and listened to with their wishes to keep this Village a respectful, enjoyable and legally correct place for all that reside here.

We will not be listing all bylaws and complaints that are on the table as this letter would be 10 pages long if we did so. If more information is needed, email your strata.

The bylaws were voted in by the owners, that's what they wanted, and legally must be enforced.

Our strata council is not fulfilling their obligation to work for their strata members by doing what is in the BEST INTEREST OF THE STRATA CORPORATION.

When there is a valid complaint issued, the strata MUST enforce the bylaw pertaining to the complaint with following procedures of warning, fines, liens and foreclosures as stated in our bylaws and the Strata Property Act. The strata corporation is losing up to a thousand dollars per week in fines that they should be collecting. These monies would be going into Strata's account and could be used to offset increases in strata fees. The strata council decides which bylaws to enforce and which not to enforce. Enforcement is MANDATORY on ALL valid bylaw complaints. They also pick and choose whose complaints they are going to act on. This is unacceptable and illegal.

The strata vis4673 is being sued by some strata owners. There is also a possibility of human rights complaints being filed against the strata.

This means that all homes and land being sold within this strata could have problems securing financing towards mortgages, lines of credit and so on as long as this lawsuit is in the courts.

Our quality of life is continually being negatively impacted due to the strata councils refusal to act in the best interests of the strata and strata owners.

This is not personal, we do not want to sue. We have tried all possible avenues to solve the issues with strata council for the last year and half/two years but they continually fight us every step of the way and refuse to do their job. We have no option left to solve this other than suing. This is a failing of your strata council to legally do their duty as set out in our strata bylaws and within

| the Strata Property Act.

| Lot 266

Lot 264

| Sent from my iPhone

Strata Corporation VIS4673

Comparative Income Statement

August 2019	Actual 11/01/2018 to 08/31/2019	Estimate 11/01/2018 to 08/31/2019	Annual Estimate 11/01/2018 to 10/31/2019
REVENUE			
Strata Fees	338,244.00	338,227.00	338,227.00
Strata Forms	1,237.00	0.00	0.00
Interest Revenue	393.39	0.00	0.00
Fines	462.50	0.00	0.00
Water Utility Fees	(140.25)	0.00	0.00
Garbage Fees	33,428.00	34,600.00	34,600.00
Other/Extraordinary Income	(1.25)	0.00	0.00
TOTAL REVENUE	373,623.39	372,827.00	372,827.00
EXPENSE			
Non Maintenance Expenses			
Worksafe BC	66.29	0.00	0.00
Accounting	0.00	3,333.30	4,000.00
Legal & Consulting	4,007.39	10,125.00	12,150.00
Courier & Postage	2,119.88	0.00	0.00
Strata Administration	13,663.58	20,423.30	24,508.00
Computer Hardware & Software	1,389.48	416.60	500.00
Hydro - Utilities	7,411.25	7,500.00	9,000.00
Gate Equipment	0.00	12,500.00	15,000.00
Garbage Collection	24,469.44	28,833.30	34,600.00
Property Taxes - Lot 13 & 14	1,217.86	1,250.00	1,500.00
Insurance	13,421.20	17,595.80	21,115.00
Insurance - Claims Recovery	7,982.57	0.00	0.00
Interest & Bank Charges	348.82	416.60	500.00
Telephone	1,536.67	2,500.00	3,000.00
Gate Monitoring	1,215.21	2,916.60	3,500.00
Bookkeeper	11,407.14	11,250.00	13,500.00
Strata Meetings & Supplies	3,817.36	0.00	0.00
Miscellaneous Committees	0.00	1,666.60	2,000.00
Membership	575.00	0.00	0.00
Capital - Culvert Replacement	11,062.96	20,833.30	25,000.00
Capital - Phone Line/Move	0.00	3,750.00	4,500.00
Capital - Generator	0.00	10,833.30	13,000.00
Repairs Misc. Equipuipment	433.89	8,166.60	9,800.00
Non Maintenance Expenses Total	106,145.99	164,310.30	197,173.00
Maintenance Expenses Total	142,263.21	149,951.00	175,654.00
TOTAL EXPENSE	248,409.20	314,261.30	372,827.00
NET INCOME	125,214.19	58,565.70	0.00

Strata Corporation VIS4673
Cheque Log for 10350 CCCU Chequing from 08/01/2019 to 08/31/2019

Cheque No.	Cheque Type	Payee	Amount	Cheque Date	Times Printed	Entered into system	JE#	JE Date
233	Payment	Candice Pady	331.25	08/09/2019	0	Yes	J2526	08/09/2019
234	Payment	Roto-Rooter	226.80	08/09/2019	0	Yes	J2528	08/09/2019
235	Payment	Big Island Power Sweeping...	3,696.00	08/09/2019	0	Yes	J2524	08/09/2019
236	Payment	Don's Home Repair & Plum...	4,901.56	08/09/2019	0	Yes	J2537	08/09/2019
237	Payment	Ozzie Jimmo	50.00	08/09/2019	0	Yes	J2530	08/09/2019
238	Payment	Dana Mellway	10.00	08/10/2019	0	Yes	J2532	08/10/2019
240	Payment	McCormack and Company ...	1,332.80	08/24/2019	0	Yes	J2671	08/24/2019
241	Payment	Candice Pady	202.85	08/24/2019	0	Yes	J2669	08/24/2019
242	Payment	Sims Associates, Land Sur...	1,684.46	08/24/2019	0	Yes	J2667	08/24/2019
243	Payment	Candice Pady	1,040.00	08/24/2019	0	Yes	J2665	08/24/2019
244	Payment	Dana Mellway	20.00	08/24/2019	0	Yes	J2673	08/24/2019
245	Payment	Condominium Home Owner...	575.00	08/24/2019	0	Yes	J2663	08/24/2019
246	Payment	BC Hydro	242.00	08/24/2019	0	Yes	J2676	08/24/2019
247	Payment	Waste Management	2,062.64	08/24/2019	0	Yes	J2657	08/24/2019
248	Payment	TELUS Communications	266.11	08/24/2019	0	Yes	J2655	08/24/2019
239-1	Payment	Jonathan Chmilar	146.00	08/10/2019	0	Yes	J2683	08/10/2019



No. S1611350
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NOEL STEPHEN and JUDITH MUNKHOLM

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS THE
MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE, CITY OF NANAIMO,
REGIONAL DISTRICT OF NANAIMO, JOHN DOE GOVERNMENT ENTITY 1-3, 0528872 BC
LTD., 0761349 BC LTD., TIMOTHY BRUCE PELIGREN, JOHN DOE CORP 1-10, JOHN DOE 1-5,
AND THE OWNERS STRATA PLAN VIS4673

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Timothy Bruce Peligren ("Peligren") and 0528872 BC Ltd. ("528872") jointly referred to in this response to civil claim as the "defendants".

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The facts alleged in paragraphs 7, 9 and 30 of Part 1 of the amended notice of civil claim are admitted.
2. The facts alleged in paragraphs 12 to 29 and 31 to 42 of Part 1 of the amended notice of civil claim are denied.
3. The facts alleged in paragraphs none of Part 1 of the amended notice of civil claim are outside the knowledge of the defendants.

Division 2 – Defendants' Version of Facts

1. The only party that was a developer of the Strata Property was 528872. At all times, in relation to the subject property and the surrounding land, 528872 complied with all existing rules and regulations relating to the development of the Strata Property and complied with all applicable standards relating to the development of the Strata Property.
2. 528872 did not know of any risk relating to landslide and could not have known of any risk relating to landslide.
3. 528872 denies that it caused or created any condition that contributed to the landslide and in particular denies the allegations that it installed inadequate or inappropriate water lines or drainage pipelines or that it installed 3 to 4 metres of soil fill material at the top of the slopes adjacent to the hill referred to in the amended notice of civil claim.

05SEP19 1921946 RDSB
21472 81611350

25.00

Division 3 – Additional Facts

1. Prior to the landslide the plaintiffs conducted excavation to the subject property which changed a previously sloped area to a flat area of approximately 20 feet in one direction and 60 feet in another direction. This required the removal of up to approximately eight feet depth of soil adjacent to the hill side resulting in a loss of subsidence and support for the hillside above and was either the sole cause of the landslide or a contributory cause to the landslide.
2. Prior to the purchase of the subject property the plaintiffs did not take any steps to determine whether any risk of landslide existed. After the purchase of the subject property the plaintiffs took no steps to prevent a landslide.
3. The plaintiffs have not suffered any damage as a result of having received payment from government assistance programs and voluntary contributions from charitable sources organized by the defendant Peligren's spouse.
4. The plaintiffs have failed to mitigate any loss they suffered.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The defendants consent to the granting of the relief sought in paragraphs none of Part 2 of the amended notice of civil claim.
2. The defendants oppose the granting of the relief sought in paragraph 1 of Part 2 of the amended notice of civil claim.
3. The defendants take no position on the granting of the relief sought in paragraphs none of Part 2 of the amended notice of civil claim.
4. The defendants submit the claim against them be dismissed with costs.

Part 3: LEGAL BASIS

1. The plaintiffs caused or contributed to the landslide and as such are not entitled to compensation for any damages suffered. *Negligence Act*, RSBC 1996, c. 333.
2. The defendants did not owe any duty of care to the plaintiffs. If the defendants did owe a duty of care they met the required standard.
3. 528872 did not take any action which caused or contributed to the landslide and is therefore not liable.
4. Peligren was not a developer and has taken no action in his personal capacity which caused or contributed to the landslide and is therefore not liable.

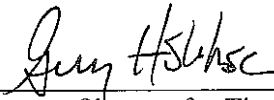
Defendants' address for service:

Attention: Guy Holeksa
Jenkins Marzban Logan LLP
900 – 808 Nelson Street
Vancouver, B.C., V6Z 2H2
Tel: (604) 681-6564

Fax number address for service: (604) 681-0766

E-mail address for service: gholeksa@jml.ca

Date: September 4, 2019



Signature of lawyer for Timothy Bruce
Peligren, and 0528872 BC Ltd. - Guy Holeksa

Rule 7-1 (1) of the Supreme Court Civil Rules states:

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 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

THIS RESPONSE OF CIVIL CLAIM in Form 2 is filed by the law firm of Jenkins Marzban Logan LLP, of Suite 900-808 Nelson Street, Vancouver, B.C., V6Z 2H2. Tel: (604) 681-6564 / Fax: (604) 681-0766. File No. 300135-004/GPH.

30-Aug-19

REGISTRY

No. VLC-S-S-1611350
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NOEL STEPHEN AND JUDITH MUNKHOLM

PLAINTIFFS

AND

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS
THE MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE, CITY OF NANAIMO,
REGIONAL DISTRICT OF NANAIMO, JOHN DOE GOVERNMENT ENTITY 1-3, 0528872
BC LTD., 0761349 BC LTD., TIMOTHY BRUCE PELIGREN, JOHN DOE CORP 1-10, JOHN
DOE 1-5, AND THE OWNERS STRATA PLAN VIS4673

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Regional District of Nanaimo ("RDN") and the City of Nanaimo (the "City")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. None of the facts alleged in Part 1 of the amended notice of civil claim are admitted.
2. The facts alleged in paragraphs 4, 5, 12, 15, 21, 27, 29 - 31 and 38-42 of Part 1 of the amended notice of civil claim are denied.
3. The facts alleged in paragraphs 1-3, 6-11, 13-14, 16-20, 22-26, 28 and 32-37 of Part 1 of the notice of civil claim are outside the knowledge of the RDN. The City never had jurisdiction over the lands at issue and has no knowledge of any of the facts alleged in the amended notice of civil claim other than paragraph 4.

Division 2 – Defendant's Version of Facts

4. For the purposes of this response to civil claim, RDN and the City adopt the terms defined in the notice of civil claim unless otherwise stated herein.
5. In response to paragraph 2 of the amended notice of civil claim, RDN and the City agree that the Strata Property is a “building strata”.
6. In response to paragraph 4 of the amended notice of civil claim, the City is a municipality pursuant to the provisions of the *Local Government Act*, RSBC 2015, c. 1.
7. In response to the whole of the amended notice of civil claim, the Strata Property was located at all material times within the boundaries of the RDN. As such, the City is not a proper defendant in this action.
8. In response to paragraph 5 of the notice of civil claim, the RDN is a regional district pursuant to the provisions of the *Local Government Act*, RSBC 2015, c. 1.
9. In response to paragraph 12 of the notice of civil claim, at no material time was the City or RDN the owner of the Strata Property, nor was either responsible or had authority to grant subdivision approval of the land that is now the Strata Property.
10. In further response to paragraph 12, 15 and the whole of the notice of civil claim, the City and RDN had no role in the approval or registration of the subdivision of the Strata Property.
11. In further response to paragraph 16-19 and 22-26 of the amended notice of civil claim, the City and RDN had no role in the development.
12. In response to paragraph 28 of the amended notice of civil claim, the City and RDN had no role in the construction of the House.

Division 3 – Additional Facts

13. The Plaintiff's property is one of 286 building strata lots within Strata Plan VIS 4673, which was registered in the Land Title Office on October 7, 1998 pursuant to the *Condominium Act* (the “Development”).
14. The Development is located in Electoral Area F within the RDN, and at the time of development, it was un-zoned area.
15. The building strata was registered prior to the adoption of the Electoral Area F Official Community Plan in 1999 and Area F Zoning Bylaw, which was adopted in 2002. The RDN had no role in approval of the subdivision of the land at issue.

16. Building inspection services were not established in Electoral Area F until November 1, 2010. Construction of the House took place prior to the establishment of building inspection services in Area F.

Part 2: RESPONSE TO RELIEF SOUGHT

17. The City and RDN opposes the granting of the relief sought in Part 2 of the notice of civil claim.
18. The City and RDN seek dismissal of this action as against them with costs.

Part 3: LEGAL BASIS

19. The City had no jurisdiction at any time which could give rise to a legal duty of care owed to the plaintiffs.
20. There is no proximity of relationship between RDN and the plaintiffs such that RDN owed the plaintiffs a duty of care.
21. If RDN did owe the plaintiffs a duty of care, which is denied, then RDN met the standard of care imposed on it in the circumstances.
22. If the plaintiffs sustained damage and loss as alleged or at all in respect of the House, none of which is admitted, the same was caused solely by the negligence, breach of duty or breach of contract (as the case may be) of any one of or a combination of the plaintiffs, the other defendants or other persons for whom RDN is not responsible or, in the alternative, such negligence, breach of duty, or breach of contract were contributing causes in which case RDN seeks an apportionment of liability pursuant to the provisions of the *Negligence Act*, RSBC 1996, c. 333.
23. Particulars of the plaintiffs' negligence include:
 - a. failing to investigate the circumstances giving rise to the Development;
 - b. failing to read the disclosure statements for the Development;
 - c. failing to retain a competent House inspector to conduct an inspection of the House prior to their purchasing it;
 - d. failing to maintain the House adequately or at all;
 - e. failing to take any or adequate steps to inspect the House on a regular basis to determine what, if any, maintenance was required;

- f. failing to remediate the alleged deficiencies in a timely matter; and
- g. such further and other particulars as may become known to RDN.

24. Particulars of the Developers' negligence include:

- a. failing to retain competent contractors and geotechnical engineers to design and construct the Development and the House;
- b. failing to ensure the Development and the House were built in accordance with the applicable requirements of the British Columbia Building Code, the Bylaw, other bylaws, enactments and prudent construction practices;
- c. failing to disclose all known construction deficiencies to the plaintiffs prior to the plaintiffs' purchasing the House; and
- d. such further and other particulars as may become known to RDN.

25. In the alternative, RDN adopts as additional allegations of negligence, breach of duty, or breach of contract the allegations made against the other defendants in the notice of civil claim.

26. The plaintiffs have not taken reasonable steps to mitigate their damages.

27. RDN further pleads and relies on the provisions of the *Local Government Act*, RSBC 2015 c. 1.

Defendant's address for service:

Carfra Lawton LLP
6th Floor - 395 Waterfront Crescent
Victoria BC V8T 5K7

Fax number address for service (if any):

(250) 381-7804

E-mail address for service (if any):

N/A

Dated: 30/Aug/2019



Signature of

☐ defendant ☒ lawyer for defendants RDN and City;

Aron M. Bookman

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