

**Municipality of North Cowichan
Special Council
Public Hearing
AGENDA**

Monday, December 9, 2019, 6:00 p.m.
Cowichan Performing Arts Centre - Theatre
2687 James Street
Duncan, BC

Pages

1. CALL TO ORDER

2. APPROVAL OF AGENDA

Recommendation:

That Council approve the December 9, 2019 Council agenda as circulated [or as amended].

3. REPORTS

3.1 Second Public Hearing for Zoning Amendment Bylaw No. 3761

3 - 154

Purpose: To outline the rationale and purpose of a second public hearing for Zoning Amendment Bylaw No. 3761.

4. PUBLIC HEARING

4.1 Reconsideration of Third Reading for Rezoning Application No. ZB000064 for "Zoning Amendment Bylaw No. 3761, 2019"

4.1.1 Mayor Siebring to call the Public Hearing to order and explain the Public Hearing process

4.1.2 Acting Corporate Officer to provide a summary of correspondence received (as of Friday, December 6, 2019 at 2:00 p.m.) as well as acceptance of any petitions and late correspondence

4.2 Mayor to call for submissions from the public on the proposed site specific zoning amendment

4.3 Final call for submissions

4.4 Adjournment of the Public Hearing

5. **BYLAWS**

5.1 "Zoning Amendment Bylaw No. 3761, 2019" (reconsideration of third reading) 155 - 158

Purpose: To reconsider giving third reading to "Zoning Amendment Bylaw No. 3761, 2019" - a bylaw to rezone three properties at Cowichan Valley Highway and Drinkwater Road to a new Comprehensive Development Zone.

Recommendation:

That Council give third reading to "Zoning Amendment Bylaw No. 3761, 2019" - a bylaw to rezone three properties at Cowichan Valley Highway and Drinkwater Road to a new Comprehensive Development Zone and direct staff to work with the municipal solicitor to prepare the legal documentation to secure the written commitment made by VIMC in their September 25, 2019 letter and the additional commitments/agreements made by VIMC at the public hearing.

6. **ADJOURNMENT**

Recommendation:

That Council adjourn the December 9, 2019 Special Council meeting at ____ p.m.

Report

Date December 9, 2019

File: ZB00064

To Council

From Ted Swabey, Chief Administrative Officer

Endorsed:



Subject Second Public Hearing for Zoning Amendment Bylaw No. 3761

Purpose

To outline the rationale and purpose of a second public hearing for Zoning Amendment Bylaw No. 3761.

Background

"Zoning Amendment Bylaw No. 3761, 2019" (Bylaw 3761) is a bylaw that, if passed, would rezone three properties at the Cowichan Valley Highway and Drinkwater Road to a new comprehensive development zone. The Bylaw is associated with a rezoning application submitted by the Vancouver Island Motorsport Circuit (VIMC) to rezone its existing motor vehicle testing and driver training facility (Phase 1) and lands it owns north of the existing facility for a proposed expansion (Phase 2).

A lengthy public hearing for Bylaw 3761 was held in early October 2019. Following the close of the hearing, Council defeated a motion to give third reading to Bylaw 3761. On October 25, 2019, Mayor Siebring gave notice, exercising his authority under Section 131 of the *Community Charter*, requiring Council to reconsider third reading of Bylaw 3761. On November 6, 2019, Council resolved to conduct a second public hearing for Bylaw 3761 before reconsidering third reading.

On December 5, 2019, the Municipality received correspondence from Farris LLP, representing VIMC stating that they no longer wish to proceed with the rezoning application that is the subject of Bylaw 3761 (Attachment E). Even though VIMC has withdrawn its rezoning application, it is still procedurally necessary for Council to conduct a public hearing before it reconsiders third reading of Bylaw 3761.

Summary

As indicated above, the December 9, 2019 public hearing will allow the public an opportunity to comment on information that was not available before the October 2019 public hearing, including the recent letter from Farris LLP withdrawing the application. Additional new information and previously presented information regarding the VIMC rezoning application was provided in a November 6, 2019 staff report to Council (Attachment A). Other staff reports related to the subject properties provided to Council following the October 2019 public hearing (Attachments B and C) are also included, as is information about the potential financial implications to the District associated with the reconsideration of Bylaw 3761 (Attachment D). Information about the rezoning application, Bylaw 3761 and correspondence provided to Council following public notification of the December 9, 2019, public hearing was made available for viewing by the public at North Cowichan's Municipal Hall and will be available to the public at the public hearing.

Attachments: (5)

Attachment A – November 6, 2019 staff report re: Reconsideration of Zoning Amendment Bylaw No. 3761

Attachment B – November 6, 2019 staff report re: Reconsideration of Development Permit Application DP000155

Attachment C – December 4, 2019 staff report re: Reconsideration of Development Permit Application DP000155

Attachment D – December 4, 2019 staff report re: VIMC Claim for Damages and Property Tax Implications

Attachment E – December 5, 2019 letter from Farris LLP

Report

Date November 6, 2019

File: ZB00064

To Council

From Ted Swabey, Chief Administrative Officer

Endorsed:



Subject Reconsideration of Zoning Amendment Bylaw No. 3761, 2019

Purpose

To provide Council with information, options and a recommendation on the reconsideration of "Zoning Amendment Bylaw No. 3761, 2019" ("Bylaw No. 3761"), a bylaw to rezone three properties at Cowichan Valley Highway and Drinkwater Road to a new comprehensive development zone.

Background

On October 4, 2019 Council voted 5-2 to deny third reading of Bylaw No. 3761, (Attachment A) following a lengthy public hearing.

Under Section 131 of the *Community Charter* the Mayor may require Council to reconsider a resolution and vote again on a matter that was already the subject of a vote. On October 25, 2019, Mayor Siebring gave notice to the Corporate Officer and Council exercising his authority under Section 131 requiring that Council reconsider third reading of Bylaw No. 3761 (Attachment B). As a result, third reading of Bylaw No. 3761 will be before Council at the November 6, 2019 meeting for reconsideration of third reading.

Discussion

Zoning Amendment Application Status:

The zoning amendment application associated with Bylaw No. 3761 was presented in a staff report at the August 21, 2019 Council meeting (Attachment C). Various commitments offered by the applicant as part of the application were identified in the report, but were subsequently amended by the applicant in a letter dated September 25, 2019 (Attachment D) and summarized in a second staff report (Attachment E). At the October 1-4 public hearing for Bylaw No. 3761, additional commitments were made by the applicant, including:

- an archaeological monitor present during the entire construction of the project;
- the \$600,000 contribution towards habitat and environmental enhancement and trail construction to Mount Prevost can also be used to study elk herd impacts;
- granting an option for the sale of the A4 zone lands (north of the proposed Phase 2 expansion) to North Cowichan.

In his memo to the Corporate Officer, Mayor Siebring advised that his reason for having Council reconsider Bylaw No. 3761 is that there is information available relevant to Council's consideration of the bylaw that was not available prior to the close at the public hearing on October 4, 2019 being the following:

- October 15, 2019 Letter from Lorenzo G. Oss-Cech, Hutchinson Oss-Cech Marlatt (Attachment F)
- October 25, 2019 letter from R. Conway, Director of Planning and Building (Attachment G)
- October 29, 2019 letter from Lorenzo G. Oss-Cech, Hutchinson Oss-Cech Marlatt (Attachment H)
- October 30, 2019 letter from Mayor Siebring to Chief Seymour (Attachment I)
- October 30, 2019 letter from Sean Hern, Farris LLP (Attachment J)

Since Council's decision to defeat third reading of Bylaw No. 3761, VIMC has also advised that, instead of granting an option to North Cowichan to purchase the A4 lands, it is prepared to transfer the A4 lands to North Cowichan or Cowichan Tribes, at no cost, for environmental and cultural protection purposes. All of the commitments made by VIMC in association with its zoning amendment application, as well as the commitments referenced above, are part of the proposal before Council and would be secured by a covenant should Council decide to grant third reading to Bylaw No. 3761.

Procedural Considerations:

Zoning bylaw amendment procedures require that Council not receive new information regarding a bylaw under consideration following the close of the public hearing and before Council's decision to adopt or defeat the bylaw. By receiving new information and not holding a public hearing, any further decision by Council regarding Bylaw No. 3761 could be quashed by the Courts if challenged.

Zoning bylaw amendment procedures require that the principles of procedural fairness are followed. One such principle commonly enforced by the Courts is that the public is given the opportunity to review and comment on the same information available to Council. As Council has received additional new information following the public hearing, Council is strongly advised to undertake another public hearing before reconsidering Bylaw No. 3761. A second public hearing would protect against a procedural challenge to Council's decision, whatever that may be. It would also provide the public an opportunity to comment on the new information received since the close of the first public hearing.

Options

1. That reconsideration of third reading of Bylaw No. 3761 be deferred until after a further public hearing has been held, and that staff be directed to schedule a public hearing and give notice in accordance with the requirements of the *Local Government Act*, with the public hearing to be held at the Cowichan Performing Arts Centre.
2. That a further public hearing not be held prior to reconsideration of third reading of Bylaw No. 3761, and the following motion be considered:

"That Council give third reading to "Zoning Amendment Bylaw No. 3761, 2019" - a bylaw to rezone three properties at Cowichan Valley Highway and Drinkwater Road to a new Comprehensive Development Zone and direct staff to work with the municipal solicitor to prepare the legal documentation to secure the written commitment made by VIMC in their September 25, 2019 letter and the additional commitments/agreements made by VIMC at the public hearing."

Recommendation

That reconsideration of third reading of Bylaw No. 3761 be deferred until after a further public hearing has been held, and that staff be directed to schedule a public hearing and give notice in accordance with the requirements of the *Local Government Act*, with the public hearing to be held at the Cowichan Performing Arts Centre.

Attachments: (10)

Attachment A – Zoning Amendment Bylaw No. 3761

Attachment B - Mayor's Memo to Corporate Officer

Attachment C – August 21, 2019 Staff Report

Attachment D – September 25, 2019 Amended Commitment Letter

Attachment E – October 1, 2019 Staff Report

Attachment F – October 15, 2019 Letter from Lorenzo G. Oss-Cech, Hutchinson Oss-Cech Marlatt

Attachment G – October 25, 2019 Letter from Director of Planning and Building

Attachment H – October 29, 2019 Letter from Lorenzo G. Oss-Cech, Hutchinson Oss-Cech Marlatt

Attachment I – October 30, 2019 Letter from Mayor Siebring to Chief Seymour

Attachment J – October 30, 2019 Letter from Sean Hern, Farris LLP



The Corporation of the District of North Cowichan
Zoning Amendment Bylaw (Motorsport Circuit), 2019
Bylaw 3761

The Council of The Corporation of The District of North Cowichan enacts as follows:

1. ***This Bylaw may be cited as "Zoning Amendment Bylaw No. 3761, 2019".***
2. ***Section 12 of Zoning Bylaw 1997, No. 2950 is amended by adding the following definitions:***

"go-kart use" means the use of buildings, structures, or land for the maintenance, repair, operation and racing of go-karts.

"motor vehicle testing and driver training facility" means the use of land for a motorsport circuit and off-road circuit that hosts a variety of motor vehicle driving programs in different configurations with different groups, including but not limited to

- (a) motor vehicles driving the circuit to achieve and improve lap times;
- (b) motor vehicles practicing emergency braking, lane changes, cornering and other procedures including some at high speed;
- (c) multiple motor vehicles using the facility simultaneously including during club or manufacturer activities to achieve and improve their driving skills;
- (d) facilities and repair areas to change settings of motor vehicles, change tires, conduct minor maintenance and repairs, and set up motor vehicles;
- (e) club with restaurant, office, retail store, the sale of food and beverages, change rooms and ancillary amenities;
- (f) parking, off-street parking, covered parking, maintenance, warehouse and storage facilities.

"motor vehicle presentation centre" means the use of a building, structure or land for the display, storage and sales of motor vehicles, motor vehicle parts, accessories and merchandise, including ancillary offices and facilities.

"motion picture and television filming" means the filming and production of motion pictures or television shows or series.

3. ***Zoning Bylaw 1997, No 2950, is amended in section 43 [Zones] by adding***
"Motorsport Circuit Comprehensive Development Zone (CD21)".
4. ***Zoning Bylaw 1997, No 2950, is amended by adding the following section after 80.20:***

Motorsport Circuit Comprehensive Development Zone (CD21)

Permitted Uses

- 80.21** (1) The permitted uses in the CD21 zone are as follows:

- Accessory Building
- Accessory Fueling Installation
- Accessory Restaurant
- Accessory Use
- Assembly Hall
- Fitness Centre/Gymnasium
- Go-kart Use
- Motion Picture and Television Filming
- Motor Vehicle Autobody Repair
- Motor Vehicle Parts and Accessories Sales
- Motor Vehicle Presentation Centre
- Motor Vehicle Repairs
- Motor Vehicle Sales
- Motor Vehicle Storage Yard
- Motor Vehicle Testing and Driver Training Facility
- Recreation Area
- Warehouse

Minimum Lot Size

- (2) The minimum lot size for the CD21 zone is 2.5 ha.

Minimum Frontage

- (3) The minimum permitted frontage for the CD21 zone is 30 m (98.43').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the CD21 zone is 50% of the lot area.

Maximum Floor Space Ratio of All Buildings and Structures

- (5) The maximum permitted floor space ratio for the CD21 zone is 0.5:1.

Minimum Setbacks

- (6) The minimum setbacks for all buildings are as follows:

Front yard - 6 m (19.7'); 18 m (59') from an arterial highway

Side yard - 3m (9.8')

Rear yard - 6m (19.7')

Maximum Building Height

- (7) The maximum building height for the CD21 zone is 15 m (49.2').

5. ***Schedule "C" of Zoning Bylaw 1997, No 2950 is amended by reclassifying, to Motorsport Circuit Comprehensive Development Zone (CD21), the lands shown as the "Subject Properties" (PIDs: 009-751-297; 029-201-675; 014-104-067), and outlined in bold on the Schedule attached to and forming part of this bylaw.***
-

READ a first time on August 21, 2019

READ a second time on August 21, 2019

CONSIDERED at a Public Hearing on October 1, 3 and 4, 2019

READ a third time on

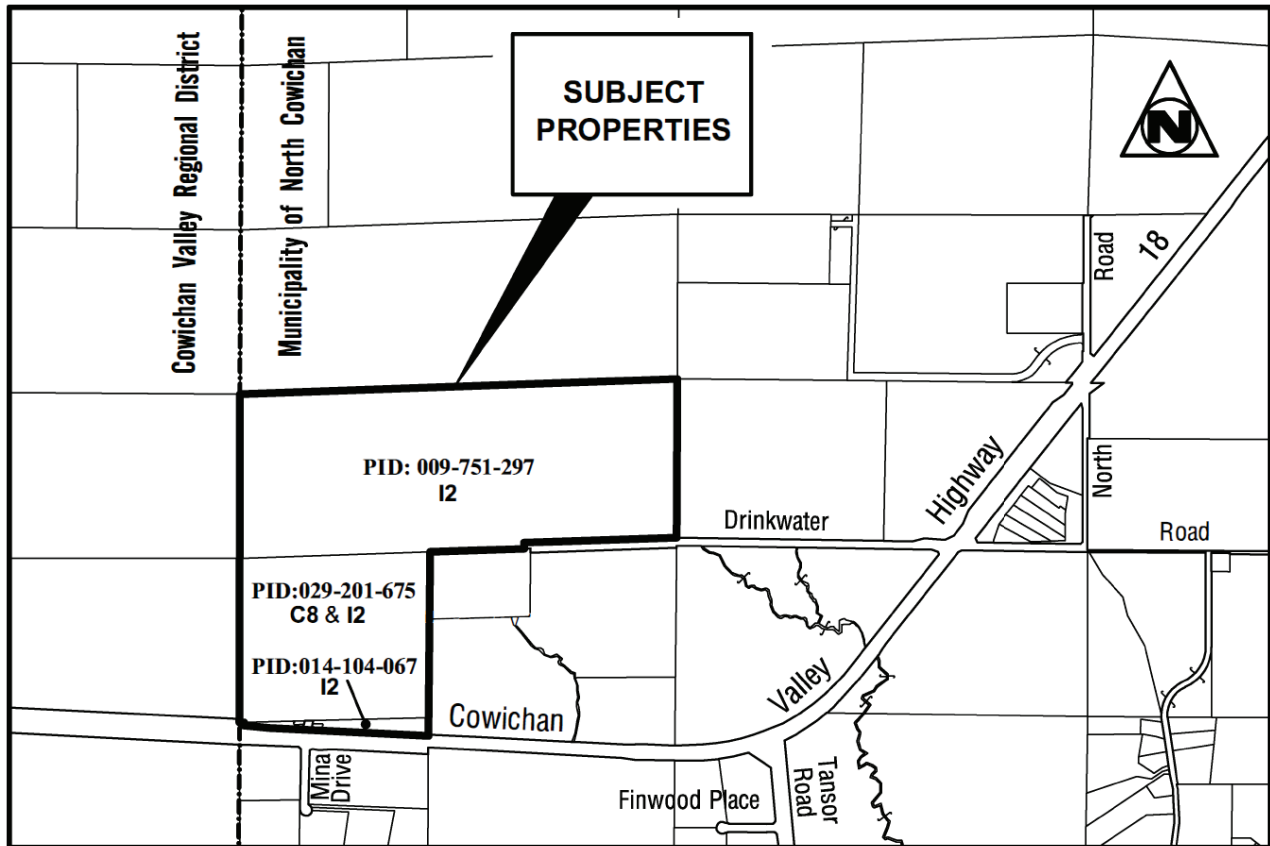
APPROVED by Ministry of Transportation and Infrastructure on

ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

Schedule



Memo

Date October 25, 2019

To Karen Robertson, Corporate Officer

From Al Siebring, Mayor

Subject Section 131 of the Community Charter

Please be advised that per Section 131 of the Community Charter, this email will serve as notice that I am initiating a reconsideration of the motion on 3rd reading of (Bylaw #), to wit:

"That Council give third reading to "Zoning Amendment Bylaw No. 3761, 2019" - a bylaw to rezone three properties at Cowichan Valley Highway and Drinkwater Road to a new Comprehensive Development Zone and direct staff to work with the municipal solicitor to prepare the legal documentation to secure the written commitment made by VIMC in their September 25, 2019 letter and the additional commitments/agreements made by VIMC at the public hearing. "

Please be further advised that - given the new (financial) information contained in the October 15, 2019 "demand letter" from *Hutchinson-Oss-Cech-Marlatt* - it is my intention to have the actual vote on reconsideration postponed until after the scheduling and holding of a second public hearing on this matter.

A handwritten signature in blue ink, appearing to be "Al Siebring", written over a horizontal line.

Al Siebring
Mayor

cc: Nelda Richardson, Deputy Corporate Officer, District of the Corporation of
 North Cowichan
 Ted Swabey, Chief Administrative Officer, District of the Corporation of North Cowichan

Report

Date August 21, 2019

File: ZB000064

To Council

From Rob Conway, Director of Planning

Endorsed:



Subject Zoning Amendment Application No. ZB000064 (VIMC)

Purpose

To provide Council with information, analysis and a recommendation regarding an application to rezone three properties at Cowichan Valley Highway and Drinkwater Road to a new comprehensive development zone.

Background

Vancouver Island Motorsport Circuit (VIMC) operates a motor vehicle testing and driver training facility consisting of a paved motor vehicle circuit and clubhouse at 4063 Cowichan Valley Highway. The property on which the facility is located is "split zoned" with a portion of the site zoned Industrial Heavy (I2) and a portion zoned Commercial Recreational (C8). Development and building permits were issued for the facility in 2014/2015 and construction of the facility was substantially completed in 2016.

The owner of the VIMC has purchased land north of the 4063 Cowichan Valley Highway site with the intention of building a second motor vehicle circuit and associated works ("Phase 2") and has applied for a zoning amendment and a development permit to facilitate the expansion.

The I2 zoning that applies to much of the existing facility had previously been interpreted as allowing a motor vehicle circuit and clubhouse as a permitted use such that the existing facility was approved as compliant with Zoning Bylaw No. 2950. However, as the I2 zone does not explicitly permit "motor vehicle circuit facility" or a similar-type use, the applicant wishes to confirm conclusively that a motor vehicle circuit and related uses are permitted on the subject lands. The zoning application is intended to expressly define the uses that can occur on the subject lands and to establish zoning for the lands that is expressly aligned with the current and intended use of the subject lands as a motor vehicle circuit facility and related uses.

The rezoning application that is the subject of this report was originally submitted in July, 2017. After conducting public open houses in the spring and fall of 2018, the applicant amended the Phase 2 development plan and rezoning application to address issues and concerns identified by the public during the community consultation process. One noteworthy feature of the amendments made by the applicant is to the design of the proposed motor vehicle circuit. The applicant has changed the design of the four proposed crossings of Menzies Creek from crossings based on the installation of culverts in the creek to crossings based on pre-constructed bridge spans that will be placed over top of the creek. This approach is expected to have less impact on the creek and riparian zone adjacent to it, and will require less alteration to the landscape.

This report is primarily intended to provide a summary and analysis of the rezoning application as it currently stands, and provide options and recommendations for Council's consideration.

Discussion

Site Context:

The company that operates the VIMC facility owns five parcels of land (Table 1) located approximately north of the Cowichan Valley Highway and west of Drinkwater Road (See Attachment 1).

Table 1

Property Identification Number	Property Size	Zoning
023-918-217	8.6 ha. (21.25 ac.)	A4
009-751-327	43.04 ha. (106.36 ac.)	A4
009-751-297 (Section 4)	42.47 ha. (104.93 ac.)	I2
029-201-675 (Parcel A)	18.74 ha. (46.30 ac.)	I2 & C8
014-104-067 (Lot 3)	1.04 ha. (2.58 ac.)	I2

The proposed zoning amendment only applies to the three southerly parcels that are zoned I2 and C8 (See Attachment 2). The application does not propose any zoning change to the two northerly parcels that are zoned A4. The lands that are proposed for rezoning (PIDs 009-751-297, 029-201-675 and 014-104-067) are collectively referred to in this report as the "subject lands".

The subject lands are on the lower slope of Mount Prevost, on the Municipality of North Cowichan's western boundary, abutting land that is within Electoral E of the Cowichan Valley Regional District. They are comprised of (1) an 18.74 ha. parcel where the existing motor vehicle circuit and clubhouse are situated, (2) a 1.03 hectare parcel between the Cowichan Valley Highway and the existing facility that is primarily used for storm water management, a water storage pond and a highway buffer, and (3) a vacant 42.47 ha. parcel north of the existing facility where the Phase 2 expansion is proposed.

Land uses in the vicinity of the subject lands include:

- Heavy industrial uses to the east and south, including a waste transfer station, soil and landscape material processing, concrete and asphalt batch plants, sawmilling, storage yards, aggregate mining and processing as well as other light and heavy industrial uses;
- Forestry and resource uses to the north and west;
- Agricultural uses (vineyards) to the north-east; and
- Rural residential uses to the south and south-west, including the Mina Drive neighbourhood and the community of Sahtlam.

Proposed Development:

The rezoning application proposes an amendment to Zoning Bylaw 2950 that, if adopted, would change the zoning designation on the subject lands from I2 and C8 to a new comprehensive development zone (CD21). The zoning amendment itself does not authorize development on the subject lands, and development and building permits would be required before development on the lands can proceed. Although the zoning amendment that is requested in the application primarily requests a change to the list of uses permitted on the subject lands, the applicant has provided a detailed design of the Phase 2 expansion plans and a number of reports and technical documents in support of the application. Materials provided by the applicant include engineering designs of the motor vehicle circuit expansion, a sound impact assessment, a geotechnical assessment, land use servicing reports, an environmental impact assessment, a fire interface plan and a traffic impact assessment.

A list of application support documents is provided in Attachment 3, with the documents available on the Municipality of North Cowichan's website at:

<https://www.northcowichan.ca/EN/main/community/current-topics/vancouver-island-motorsport-circuit/vimc-related-records.html>

The Phase 2 expansion is expected to include a new 5.0 km paved motor vehicle circuit, an off-road motor vehicle circuit, a new clubhouse structure, and buildings for maintaining, repairing and storing motor vehicles. A plan showing the proposed development and existing facility is provided in Attachment 4. Descriptions of the Phase 2 design and development approach are provided in the support documents and the reader is directed to those documents for a detailed description of the proposed expansion.

Community Amenities and Applicant's Commitments:

The applicant has provided a letter (Attachment 5) that outlines a number of commitments associated with the rezoning application that are intended to respond to community concerns about noise and potential environmental impacts and other issues identified in the applicant's community consultation process. The commitment letter also identifies community amenities offered in association with the rezoning application. Among the commitments are:

- Restrictions on the hours of operation;
- Restrictions on operating on statutory holidays;
- Restrictions on maximum permitted sound output;
- The installation and maintenance of sound monitoring stations;
- A procedure for enforcing violations of the maximum permitted sound thresholds should they be exceeded;
- The transfer of land to the Municipality for a water storage reservoir;
- Funding for the construction of a water storage the reservoir, with an ability to partially recoup from future users;
- A lease over the A4 zoned lands (north of subject lands) for a hiking trail;
- The offer of the use of the facility (on commercially reasonable terms) to the Vancouver Island Karting Association for up to 6 events per year;
- The transfer of lands adjacent to Bings Creek to the Municipality;

- The transfer of \$600,000 to the Municipality for environmental and habitat enhancement and for construction of a trail up Mount Prevost;
- Improvements to Drinkwater Road

The applicant's commitment with respect to limiting noise associated with the motorsport circuit facility is based on the Cowichan Valley Regional District's Noise Control Bylaw No. 3723. Bylaw No. 3723 specifies a maximum standard for "continuous sound" of 60 decibels, measured at the point of reception. The Bylaw defines "continuous noise" to be any noise other than construction noise that continues for a period or periods of totalling 3 minutes or more in any 15 minute period. The applicant is proposing a comparable standard (with some exceptions) with a maximum standard of 59 decibels (59 dB LA_{20, 15min}).

Details regarding the applicant's commitments are set-out in the applicant's commitment letter and the reader should refer to that document regarding the specific commitments.

Should the application advance, the applicant's commitments, including the commitment for bridge crossings, will be secured by a covenant prior to consideration of bylaw adoption.

Policy Context – Official Community Plan:

The Official Community Plan (Bylaw No. 3450) includes the subject lands within the "South End Industrial" designation. The OCP does not contain specific policies regarding this designation, but Section 2.4.6 of the OCP includes a number of policies applicable to industrial designations through-out the Plan area. Policies considered relevant to the subject application include:

- 2.4.6.1 *The Municipality will promote a healthy industrial sector.***
(d) *The Municipality will encourage and attract new and emerging forms of industrial enterprise to the community.*
- 2.4.6.3 *Ensure availability of industrially zoned land.***
(a) *The Municipality will encourage the infill and maximum use of existing industrial land ...*
- 2.4.6.4 *The Municipality supports sensitive integration of industry into the community.***
b) *Industrially zoned lands are designated as a Development Permit Area to maintain orderly and attractive industrial development and to reduce conflict with adjacent land uses.*

Economic Development objectives and polices are outlined in Section 2.4 of the OCP. This section of the Plan acknowledges that the local economy continues to shift away from resource-based industry to new and emerging sectors. The Plan promotes supporting and sustaining existing job opportunities but also actively seeking new opportunities. It also recognizes that lifestyle and access to the natural environment are economic assets for the region and that economic development opportunities need to be balanced with sustainable development practices. This is clearly articulated in the stated objective of, "Establishing a welcoming atmosphere for economic development in North Cowichan while maintaining a high quality of life and high environmental quality" (s. 2.4.1).

Economic development polices considered relevant to the rezoning application include:

2.4.1.1 *The Municipality will exercise leadership for economic development in North Cowichan.*

- a) *Based on North Cowichan's many assets, including quality of life, the Municipality will pursue strategic business attraction and development opportunities to diversify the local economy.***
- b) *The Municipality will ensure that local permitting is transparent and timely, with a solution-based, customer driven philosophy.***

2.4.1.3 *The Municipality will link economic development with Community Planning.*

- c) *The Municipality commits to developing clear and predictable land use policies that will result in consistent decision-making and improved certainty of investors.***
- j) *The Municipality will make land available for commercial and industrial purposes in a manner consistent with good planning practices and with the goals of the OCP.***

2.4.1.4 *The Municipality will balance economic growth with other community priorities.*

- a) *The Municipality will communicate openly with prospective investors and the community about how economic development initiatives are balanced with other Community priorities.***

Policy Context – Zoning Bylaw:

A zoning map referencing the subject lands is provided in Attachment 6.

The Commercial Rural Recreation Zone (C8) that applies to 6.07 ha. of the subject lands permits the following uses:

Accessory Dwelling Unit; Amusement Park; Archery Range; Drive-in Theatre; Microlite Aircraft and Glider Landing Strips; Mobile Food Service; Racetrack; Recreational Facility; Shooting Range.

The Industrial Heavy Zone (I2) applies to the remaining 56.18 ha. of the subject lands. It permits the following uses:

Accessory Office; Accessory Dwelling Unit; Accessory Restaurant; Autobody Repair; Dry-cleaning Plant or Laundry; Cannabis Production Facility; Commercial Cardlock Facility; Custom Workshop; Fitness Centre/Gymnasium; Food and Beverage Processing; Fueling Installations; Laboratory; Industrial Use; Machine Shop; Mini-Warehousing; Mobile Food Service; Motor Vehicle Repair; Motor Vehicle Sales and Repair; Recycling Depot; Repair Shop; Resource Use; Retail Lumber and Building Supply Yard; Retail of Motor Vehicle Parts and Accessories; Service Industry; Sign Shop; Temporary Trailer; Tools and Equipment Sales Rentals and Services; Trade School, Truck Depot; Truck Trailer and Heavy Equipment Sales, Rentals and Services; Veterinary Clinic; Warehouse; Wholesale; Automobile Wrecking and Salvage Yard; Bulk Storage of Flammable and Combustible Liquids; Boat Terminals and Dock; Helicopter Landing Pad; Municipal/Regional Government Office; Pier, Wharf and Related Facility; Private Airplane Landing Strip; Railway Yard; Recycling Industrial Use; Sawmill, Pulpmill and Planing Mill, Slaughterhouse, Works Yard.

Copies of the C8 and I2 zones are provided in Attachment 7.

Draft Zoning Amendment Bylaw No. 3761:

Zoning Amendment Bylaw No. 3761 (Attachment 8) has been drafted with the intention of capturing what has been requested in the rezoning application. If adopted, the amendment bylaw would create a new "CD21" zone that is specific to the subject lands. Uses presently permitted on the lands by the C8 and I2 zones would be replaced by a new list of CD21 permitted uses:

Accessory Building; Accessory Fueling Installation; Accessory Restaurant; Accessory Use; Assembly Hall; Fitness Centre/Gymnasium; Go-Kart Use; Motion Picture and Television Filming; Motor Vehicle Autobody Repair, Motor Vehicle Parts and Accessories Sales; Motor Vehicle Presentation Centre; Motor Vehicle Repairs; Motor Vehicle Sales; Motor Vehicle Storage Yard; Motor Vehicle Testing and Training Facility; Recreation Area; Warehouse.

The list of CD21 permitted uses does not include a number of uses previously permitted on the subject lands (e.g., Racetrack, Shooting Range, Helicopter Landing Pad, Private Airplane Landing Strip and Sawmill, Pulpmill and Planing Mill).

As some of the uses proposed for the CD21 Zone are new uses that are not defined in Zoning Bylaw 2950, Zoning Amendment Bylaw No. 3761 will also add the following definitions:

"motor vehicle and driver training facility" means the use of land for a motorsport circuit and off-road circuit that hosts a variety of motor vehicle driving programs in different configurations with different groups, including but not limited to (a) motor vehicles driving the circuit to achieve and improve lap times; (b) motor vehicles practicing emergency braking, lane changes, cornering and other procedures including some at high speed; (c) multiple motor vehicles using the facility simultaneously including during club or manufacturers activities to achieve and improve their driving skills; (d) facilities and repair areas to change settings of motor vehicles, change tires, conduct minor maintenance and repairs, and set up motor vehicles ; (e) club with restaurant, office, retail store, the sale of food and beverages, change rooms and ancillary amenities; (f) parking, off-street parking, covered parking, maintenance, warehouse and storage facilities.

"motor vehicle presentation centre" means the use of a building or structure or land for the display, storage and sale of motor vehicles, motor vehicle parts, accessories and merchandise, including ancillary offices and facilities.

"motion picture and television filming" means the filming and production of motion pictures or television shows or series.

"go-kart use" means the use of buildings, structures, or land for the maintenance, repair, operation and racing of go-karts.

Development regulation in the CD21 zone are comparable to what currently exist in the I2 zone. A comparison of the regulations is summarized in Table 2.

Table 2

Zoning Regulation:	I2 Zone	C8 Zone	Proposed CD21 Zone
Minimum Lot Size	1.6 ha.	4.0 ha.	2.5 ha.
Minimum Frontage	90 m.	150 m.	30 m.
Maximum Lot Coverage	50%	30%	50%
Minimum Setbacks	8.0 m. front/0 m. side and rear/ 46 m. when abutting another zone/18 m from arterial Highway	30 m. front, side and rear	6 m. front, 3 m. side, 6 m. rear./ 18 metre from Arterial Highway
Maximum Permitted Height	None identified 1.04 ha. (2.58 ac.)	12.0 m.	15.0 m.
Max. Floor Space Ratio	None identified	None identified	0.5:1

Planning Department Comments:

Land Use Considerations:

Much of the subject lands are presently zoned Industrial Heavy (I2). The I2 zone is where the Municipality has generally permitted commercial and industrial uses that generate or have the potential to generate excessive noise, odour or other nuisance that are unsightly or otherwise objectionable to nearby non-commercial/industrial uses. Examples of such uses in the I2 zone are mills for primary wood processing, slaughterhouses and auto wrecking yards. By clustering such uses together in a zoning district, the overall impact of nuisance generating activities can be better contained and managed, and the community will have a better understanding where such activities can be expected.

The I2 zone accommodates traditional industrial activities such as the manufacture of goods, warehousing, distribution and raw material processing. It also permits uses that are more commercial or service-oriented such as fitness centres, veterinary clinics and government offices. Transportation uses that are potentially disruptive are also included in the I2 zone (Helicopter landing pad, private airplane landing strip, railway yard).

"Motor vehicle and driver training facility" and other principal and accessory uses proposed in the CD21 zone are not inconsistent with an industrial designation. As such a facility will inevitably emit noise and impose some level of impact on surrounding properties, industrially designated lands would seem an appropriate location for activities of this nature.

Noise impacts from the existing VIMC facility have been an ongoing issue for some residents of North Cowichan and the Regional District. This rezoning application provided an opportunity and process for noise mitigation measures to be publicly discussed. In support of the rezoning application the applicant has committed to a number of measures that are intended to reduce the impact that noise from the facility is having on residents in the area. The measures include sound attenuation structures, a systematic sound monitoring program, establishment of maximum permitted offsite sound levels, and restrictions on hours and days of operation. While the noise concerns are unlikely to be fully resolved through the zoning amendment process, the applicant's commitments would establish an enforceable baseline standard for noise levels and would provide the public with greater certainty over the level of noise to be expected, and some recourse should that agreed-upon standard be exceeded. The baseline standard for acceptable noise levels is consistent with levels permitted by the Cowichan Valley Regional District under its noise regulation bylaw applicable in the Sahtlam area.

Compliance with OCP Policy:

Protecting the industrial land base and optimizing its use is a stated objective of the OCP (2.4.6.3). Industrial activities often require large parcels to conduct operations and the amount of employment and economic activity resulting from any particular industrial business can vary considerably. The subject lands and adjacent industrially designated lands have been zoned for industrial use for decades, but much of it has remained vacant or has been used for low level industrial uses. The current and proposed VIMC facilities involve substantial capital investments in site and infrastructure improvements and are expected to generate ongoing direct and indirect economic benefits for the local economy in the form of jobs and spending associated with the operation of the facility. It should also be noted that VIMC's commitment to provide land and funding for a new water supply reservoir is expected to promote the more intensive use of industrially zoned lands in the area as it will become easier for property owners to comply with building code requirements for fire protection and eliminate the need for land intensive on-site water storage.

A pervasive theme throughout the economic development and industrial land use sections of the OCP is the desire to balance economic development opportunities with protection of the natural environment while maintaining the quality of life that residents of North Cowichan and the region so highly value. It is apparent from the extensive site assessment and design work undertaken for Phase 2 and the commitments made to address issues that the proponent has gone to considerable effort and expense to identify and address community concerns in the application and balance competing OCP objectives and policy.

Communications and Engagement:

On November 1 2017, Council passed a resolution directing staff to refer the subject rezoning application and OCP amendment application (since withdrawn) to the City of Duncan, the Cowichan Valley Regional District, Cowichan Tribes, School District 79, the Sahtlam Neighbourhood Association and the Environmental Advisory Committee. The application referral has not yet been sent, largely because the application was amended significantly and only recently has there been enough certainty about the application that it can be accurately described to the referral agencies. Now that there is a specific bylaw to comment on, staff propose that the application referral proceed but that Council reconsider the list of referral agencies. As a referral to the School District is no longer required because the OCP amendment application has been withdrawn, it is recommended that the application and draft bylaw be referred to the City of Duncan, the CVRD, Cowichan Tribes, and the Sahtlam Neighbourhood Association in accordance with standard practice. It is further recommended that a 30 day referral response time be given, which is the standard referral response timeframe given for rezoning applications.

Should Council grant first and second reading to Zoning Amendment Bylaw No. 3761, a public hearing would be scheduled to allow the public an opportunity to provide input on the proposed Zoning Bylaw amendment. Prior to the hearing, adjacent owners and occupiers of land would be notified and notice would be published in the local newspaper, as required by the *Local Government Act*.

Conclusion and Recommendation:

Staff consider the rezoning application and proposed zoning amendment bylaw to be generally compliant with applicable Municipal policy and are supportive of the proposed zoning amendment and associated covenant for that reason.

The extent of the assessment, planning and design work for Phase 2 well exceeds what is typical for a land use application demonstrates sincere efforts to address issues and concerns raised during the course of the application review while still achieving the intended use of the lands and to balance community values with economic interests. In order to determine if community values have been adequately addressed, it is necessary to hear from the community and now that the detailed information regarding the proposed Phase 2 expansion is now compiled and the proposed zoning amendment bylaw and commitments from the applicant are documented and available for review, the application has progressed to the stage in the application process where it can be presented to the public at a public hearing. Staff's recommendation is to approve first and second reading of Zoning Amendment Bylaw No. 3761, refer the application and zoning amendment bylaw to select agencies and organizations, and that a public hearing be scheduled.

Options

Option 1 (Staff Recommendation):

1. That Council approve first and second reading of Zoning Amendment Bylaw No. 3761 to rezone three properties at Cowichan Valley Highway and Drinkwater Road (PIDs 009-751-297, 029-201-675 & 014, 104-067) from I2 and C8 to a new CD21 zone;

2. That referrals be sent to the City of Duncan, the Cowichan Valley Regional District, Cowichan Tribes and the Sahtlam Neighbourhood Association and referral agencies be given a minimum of 30 calendar days to provide a response before a public hearing is held;
3. That a Public Hearing be scheduled for Zoning Amendment Bylaw No. 3761 and notification issued in accordance with the requirements of the *Local Government Act*.

Option 2 (Alternate Recommendation):

That Council deny Zoning Amendment Application ZB000064 to rezone three properties at Cowichan Valley Highway and Drinkwater Road (PIDs 009-751-297, 029-201-675 & 014, 104-067) from I2 and C8 to a new CD21 zone.

Recommendation

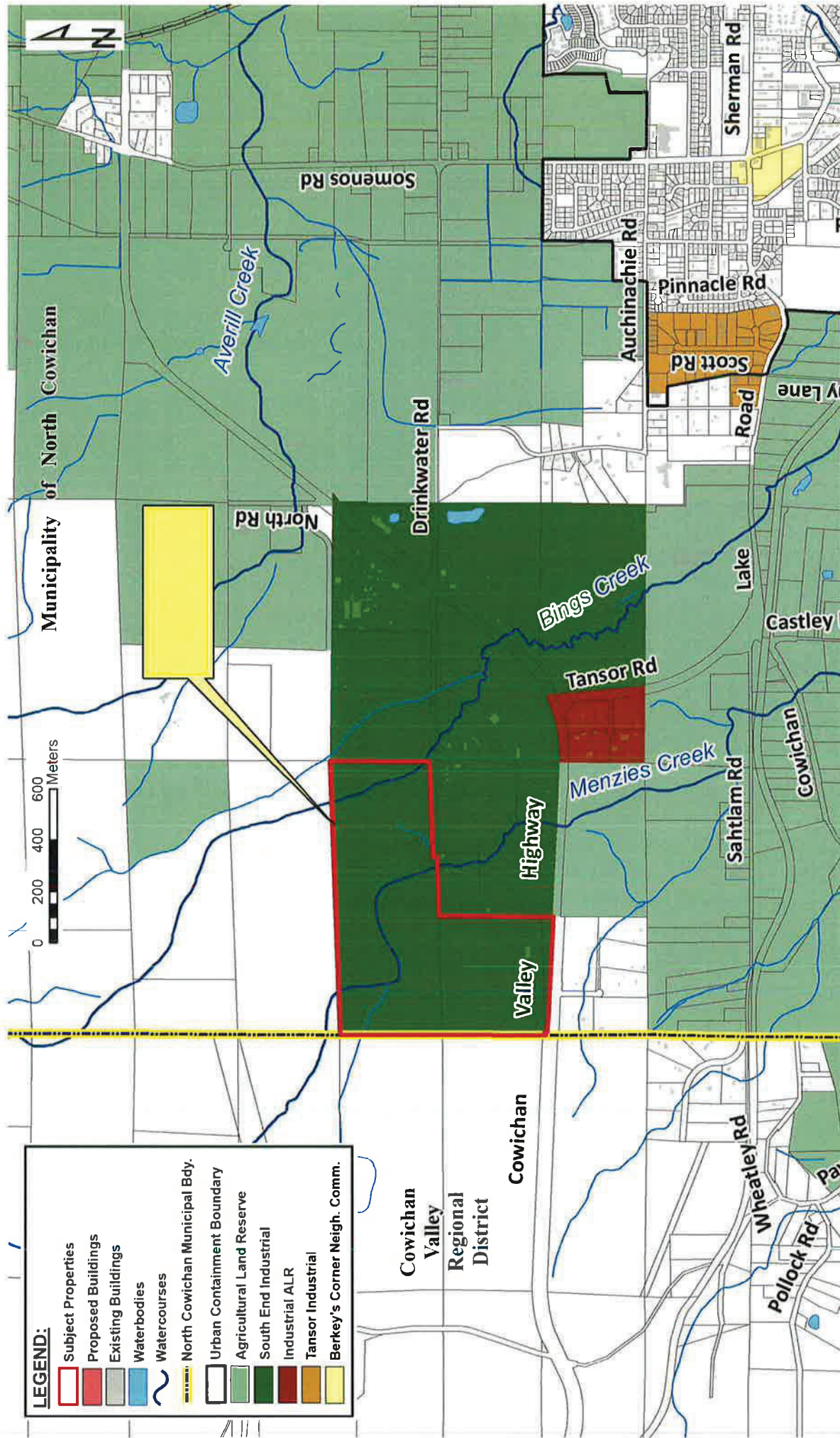
- 1. That Council approve first and second reading of Zoning Amendment Bylaw No. 3761 to rezone three properties at Cowichan Valley Highway and Drinkwater Road (PIDs 009-751-297, 029-201-675 & 014, 104-067) from I2 and C8 to a new CD21 zone;**
- 2. That referrals be sent to the City of Duncan, the Cowichan Valley Regional District, Cowichan Tribes and the Sahtlam Neighbourhood Association and referral agencies be given a minimum of 30 calendar days to provide a response before a public hearing is held; and**
- 3. That a Public Hearing be scheduled for Zoning Amendment Bylaw No. 3761 and notification issued in accordance with the requirements of the *Local Government Act*.**

Attachments:

1. Map of VIMC Lands
2. Map of VIMC Lands Proposed for Rezoning
3. List of Application Support Documents
4. Phase 2 Development Plan
5. Applicant's Commitment Letter
6. Zoning Map
7. C8 and I2 Zone
8. Draft Zoning Amendment Bylaw No. 3761



Attachment 1 - Map of VIC Lands - ZB0000064



VIMC Rezoning Application (ZB000064) – Application Support Documents

	Document	Prepared By:	Date
1.	Rezoning Application and Community Consultation Report	Applicant	January, 2019
2.	Letter withdrawing OCP Amendment Application	Applicant	April 3, 2019
3.	Civil Design of VIMC Phase 2	Tilke GmbH & Co. KG Engineers and Architects	October 2, 2018
4.	Revised Sound Impact Assessment	BeSB GMBH Acoustical Consulting	October 2, 2018
5.	Letter re: Measuring Noise Impact in Neighbourhood	BeSB GMBH Acoustical Consulting	October 2, 2018
6.	Potential Noise Mitigation Measures	RWDI	September 24, 2018
7.	Geotechnical Assessment Letter	Ryzuk Geotechnical	September 21, 2018
8.	VIMC Phase 2 Design Drawing	J.E. Anderson and Associates	June 13, 2018
9.	Storm Water and Rain Water Management Report	J.E. Anderson and Associates	June 13, 2019
10.	Sewage Disposal Assurance Letter	J.E. Anderson and Associates	June 14, 2019
11.	Building Servicing Report	J.E. Anderson and Associates	June 14, 2019
12.	Environmental Impact Assessment Report	Aquaparian Environmental Consulting	Revised June 18, 2019
13.	Traffic Impact Assessment	Watt Consulting Group	June 20, 2019
14.	VIMC Environmental Initiatives Summary	Applicant	May 9, 2019
15.	Third Party Review of Environmental Impact Assessment	Golder Associates Ltd.	April 26, 2019
16.	Response to Third Party Review of Environmental Impact Assessment	Aquaparian Environmental Consulting	May 27, 2019
17.	Fire Interface Plan	Econ Consulting	June 18, 2019
18.	Summary of Applicant's Commitments	Applicant	August 6, 2019
19.	VIMC Responses to Community Values and Concerns	Applicant	July, 2019
20.	Summary Application Changes	Applicant	No Date
21.	Summary of Economic Benefits	Applicant	No Date
22.	Summary of Support to Local Businesses and Organizations	Applicant	No Date



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Attachment 4 - Phase 2 Development Plan - ZB0000064

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/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tf: +1844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

August 6, 2019

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan, BC, V9L 6A1

Attention: Mr. Rob Conway, MCIP, RPP
Director of Planning

Re: Comprehensive Development Rezoning Application –
Vancouver Island Motorsport Circuit

Please accept this letter as evidence of our commitments in support of our application for a comprehensive development rezoning (the "Comprehensive Development Application") as follows:

1. We commit to comply with the following requirements in relation to the operation of the motorsport and the off-road circuit, as presently constructed or as expanded from time to time (including the expansion contemplated under the Comprehensive Development Application):
 - (a) To restrict their hours of operation on days other than statutory holidays to 9:00 a.m. to 5:00 p.m. on Mondays to Saturdays and to 11:00 a.m. to 5:00 p.m. on Sundays;
 - (b) To not operate them on statutory holidays;
 - (c) To not operate them in a manner that exceeds 59 dB LA_{20,15min} when received at sound monitors of a type acceptable to North Cowichan and us, acting reasonably, located off the subject lands at four sites (the "Offsite Sound Monitors"), with one site being at or near 6278 Mina Drive, North Cowichan,



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tf: +1.844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

British Columbia and the other three sites being at locations acceptable to North Cowichan and us, acting reasonably;

- (d) In conjunction with North Cowichan, to install and maintain in good and accurate operating condition, including through replacement whenever necessary, the Offsite Sound Monitors;
- (e) To install and maintain in good and accurate operating condition, including through replacement whenever necessary, sound monitors of a type acceptable to North Cowichan and us, acting reasonably, located on the subject lands (the "Onsite Sound Monitors") 15 m from the shoulder of the driving surface of the Circuit in 2 locations acceptable to North Cowichan and us, acting reasonably;
- (f) To maintain the Offsite Sound Monitors and the Onsite Sound Monitors as time synced; and,
- (g) To provide to North Cowichan, in real time, all noise measurements from the Offsite Sound Monitors and the Onsite Sound Monitors in a format that is readily capable of review for compliance with item (c) above.

As a condition of the approval of the Comprehensive Development Application, we agree to register against title to the subject lands a covenant under section 219 of the *Land Title Act* securing its commitments as set out above. We also agree that the covenant shall include a provision that imposes on it the obligation to make a monetary payment to North Cowichan in the amount of \$5,000.00 in the event of a breach by us of the requirement set out in



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tel: +1.844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

item 1(c) above. In support of this provision, we will deliver to North Cowichan an irrevocable standby letter of credit in a form satisfactory to North Cowichan in the amount of \$25,000.00 to be drawn down by North Cowichan to satisfy any amount payable under the covenant.

We also agree that the covenant shall include provisions in relation to the requirements of item 1(c) above that require us to advise all operators of vehicles on the motorsport or off-road circuit of the sound limit under that item, to immediately warn the operator of any vehicle on the motorsport or off-road circuit that is involved in an exceedance of the sound limit under that item, to immediately remove from the motorsport or off-road circuit any vehicle that is involved in a second exceedance of the sound limit under that item on the same day, to immediately remove from the motorsport or off-road circuit the operator of any vehicle who is involved in a third exceedance of the sound limit under that item on the same day, and to consider, acting reasonably, refusing access to the motorsport or off-road circuit to any vehicle or operator involved in 5 or more exceedances of the sound limit under that item in a one year period.

Item 1(c) above will not apply to:

- (a) The A4/I2 Lands, the Lease Lands, and/or the Bings Creek Lands;
- (b) Any Vancouver Island Karting Association event under Item 2(c) below; and
- (c) Up to six days per calendar year for special events, subject to us giving North Cowichan a minimum of two months written notice of the dates and times of a proposed event and us using our best efforts to



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tel: +1.844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

not operate on those days in a manner that exceeds 59 dB LA_{20, 15min} when received at the Offsite Sound Monitors.

For the purposes of the special event days, up to three of those days, when used for special events for vehicle manufacturers, will also be exempt from Items 1(a) and (b) above, except that the hours of operation on those days shall be limited to 9:00 a.m. to 5:00 p.m., and we shall use its best efforts to not hold such events on Sundays (except between 11:00 a.m. and 5:00 p.m.) and statutory holidays.

2. In further support of the Comprehensive Development Application, we commit to provide to North Cowichan the following amenities:

- (a) To transfer to North Cowichan a portion of our lands that are currently zoned A4 and I2, as set out in the plan attached as Schedule "A" to this letter (the "A4/I2 Lands") for use as a site for a water storage reservoir of up to 500,000 gallon capacity, and all ancillary and related controls, piping, and appurtenances (the "Water Reservoir"), including use for access to the Water Reservoir, and for use as park, subject to a covenant under section 219 of the Land Title Act agreeable to North Cowichan and us, acting reasonably, recognizing the impact of the use of the subject lands for the motorsport or off-road circuit in accordance with all applicable requirements;
- (b) To offer, for nominal consideration on reasonable commercial terms, to North Cowichan or the Cowichan Trail Stewardship Society a lease of the



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tel: +1844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

remainder of our lands zoned A4 (the "Lease Lands");

- (c) To make the motorsport circuit available to the Vancouver Island Karting Association for its use for a minimum of 6 events a year, on commercially reasonable terms to be negotiated between us and the Vancouver Island Karting Association (including the requirement that the Vancouver Island Karting Association make best efforts to ensure that its events comply with item 1(c) above), subject to us giving North Cowichan a minimum of two months written notice of a proposed event, and subject to North Cowichan giving written approval for the event;
- (d) To transfer to North Cowichan a corridor of our land along Bings Creek, including its tributaries, acceptable to North Cowichan, which corridors shall at least consist of the riparian zone for Bings Creek and its tributaries, as determined by a Qualified Environmental Professional, which corridor shall be generally as set out in the plan attached as Schedule "A" to this letter (the "Bings Creek Lands");
- (e) To make a cash contribution to North Cowichan of \$600,000.00 for:
 - (i) Environmental and habitat enhancement projects for streams and other waterbodies (e.g., the construction of a water storage facility to provide summer flows for Bings Creek); and,
 - (ii) The construction of a trail up Mount Prevost.



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tel: +1844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

As a condition of the approval of the Comprehensive Development Application, we agree to register against title to the subject lands a covenant under section 219 of the *Land Title Act* securing its commitments as set out above.

3. In further support of the Comprehensive Development Application, we commit to the following in relation to the provision of services:

- (a) To construct, to the satisfaction of North Cowichan, the Water Reservoir; and,
- (b) To construct, to the satisfaction of North Cowichan, Drinkwater Road from Highway 18 to its end bordering on the Development Lands to North Cowichan's Industrial Road Standard (R6), including all required culverting and drainage works.

As a condition of the approval of the Comprehensive Development Application, we agree to enter into a binding agreement with North Cowichan securing our commitments as set out above, subject to us being entitled to consideration of a development cost charge frontender agreement or development cost charge credits, if either is applicable, or alternatively being entitled to a latecomer agreement pursuant to sections 507 and 508 of the *Local Government Act* under which agreement we would be reimbursed for all or part of the costs of the excess or extended services provided by us, which reimbursement would be from properties benefitting from the services when those properties connect to or commence using the services.

4. Lastly, in support of the Comprehensive Development Application, we commit to provide to North Cowichan, as soon as practicable, the following:

6

ONCE SOMETHING IS A PASSION,
THE MOTIVATION IS THERE.



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

/ TELEPHONE

tf: +1.844.856.0122

/ ONLINE

islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

- (a) Written confirmation of all required approvals in principle of all creek crossings by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the Department of Fisheries and Oceans;
- (b) An acceptable wildfire hazard risk assessment for the Development Lands;
- (c) An acceptable geotechnical overview assessment for the Development Lands; and,
- (d) An acceptable visual impact/landscape assessment for the Development Lands.

We trust that our commitments set out above demonstrate our sincere intention and desire to be a valuable contributor to the success of North Cowichan and its community members.

On behalf of the landowner,

Yours truly,

A handwritten signature in black ink, appearing to read "Mark Holland", with a stylized flourish at the end.

Mark Holland, RPP

Holland Planning Innovations Inc



/ ADDRESS

4063 Cowichan Valley Hwy
Cowichan, BC V9L 6K4, Canada

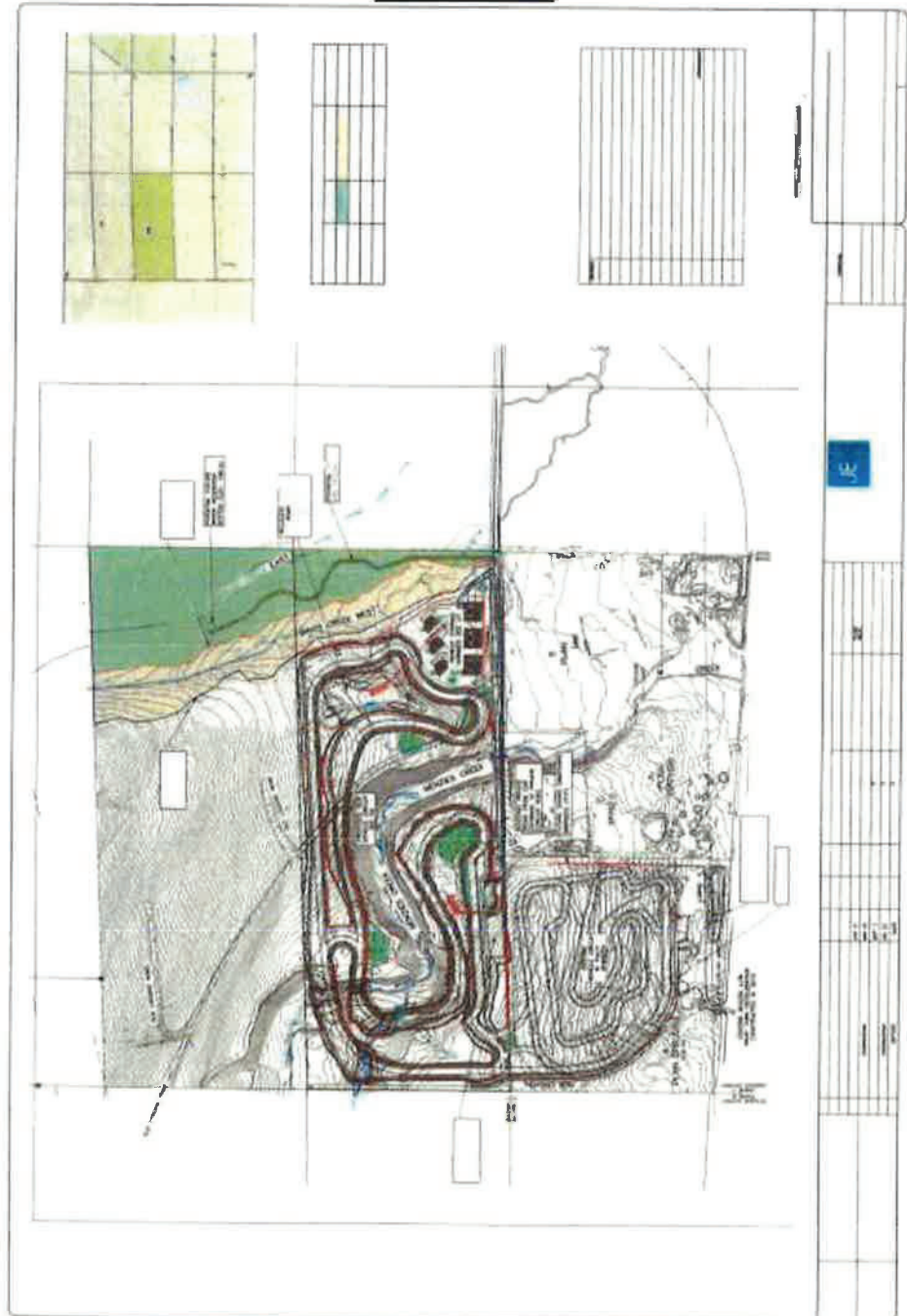
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tf: +1.844.856.0122

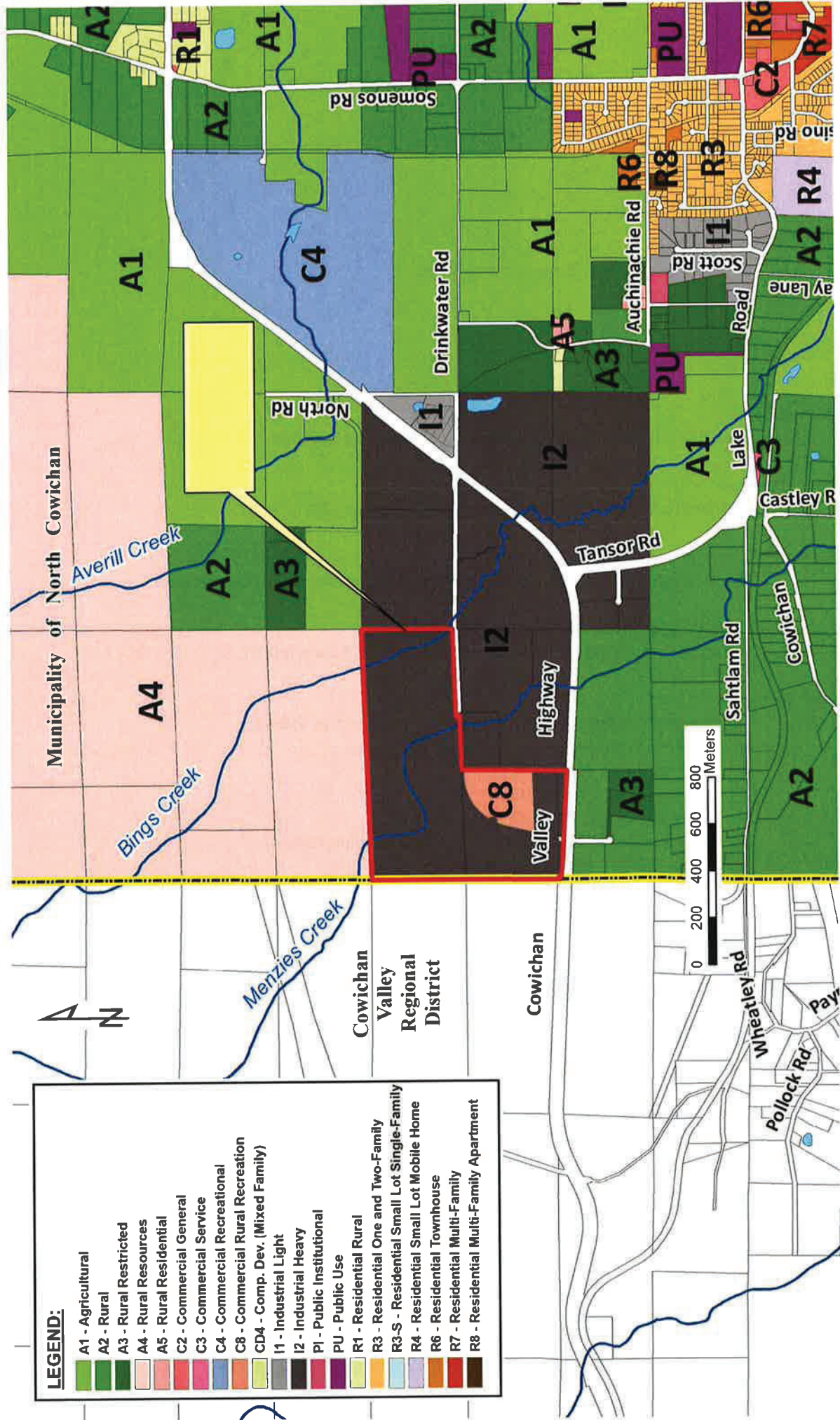
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islandmotorsportcircuit.com
info@islandmotorsportcircuit.com

SCHEDULE "A"



ONCE SOMETHING IS A PASSION,
THE MOTIVATION IS THERE.



Page 1 of 2
Commercial Rural Recreation Zone (C8)

Permitted Uses

- 74** (1) The permitted uses for the C8 zone are as follows:
- Accessory Dwelling Unit
 - Amusement Park
 - Archery Range
 - Drive-in Theatre
 - Microlite Aircraft and Glider Landing Strips
 - Mobile Food Service
 - Racetrack
 - Recreational Facility
 - Shooting Range [BL3657]

Minimum Lot Size

- (2) The minimum permitted lot size for the C8 zone is 4 hectares (9.88 acres).

Minimum Frontage

- (3) The minimum permitted frontage for the C8 zone is 150 m (492.13').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the C8 zone is 30% of the lot area.

Maximum Floor Space Ratio of All Buildings and Structures

- (5) The maximum permitted floor space ratio for the C8 zone is 0.5:1.

Minimum Setbacks

- (6) The minimum permitted setbacks for the C8 zone are as follows:
- (a) Principal Buildings
 - Yard, Front, 30 m (98.43')
 - Yard, Side, 30 m (98.43')
 - Yard, Rear, 30 m (98.43')
 - (b) Accessory Buildings and Structures (Excluding Fences)
 - Yard, Front, 8.0 m (26.25')
 - Yard, Side, 5.0 m (16.4')
 - Yard, Rear, 5.0 m (16.4')

Maximum Building Height

- (7) The maximum permitted building heights for the C8 zone are as follows:
- (a) Principal Building, 12.0 m (39.37')
 - (b) Accessory Building, 12.0 m (39.37')

Page 2 of 2
Industrial Heavy Zone (I2)

Permitted Uses

- 77** (1) The permitted uses for the I2 zone are as follows:
- All Industrial Light Zone (I1) Permitted Uses
 - Automobile Wrecking or Salvage Yard
 - Bulk Storage of Flammable and Combustible Liquids
 - Boat Terminals and Dock
 - Cannabis Production Facility
 - Helicopter Landing Pad
 - Mobile Food Service
 - Municipal/Regional Government Offices
 - Pier, Wharf, and Related Facility
 - Private Airplane Landing Strip
 - Railway Yard
 - Recycling Industrial Use
 - Sawmills, Pulpmills, and Planing Mills
 - Slaughterhouse
 - Temporary Mobile Home (subject to the Temporary Mobile Home Permit Bylaw)
 - Works Yard [BL2996, BL3000, BL3457, BL3467, BL3512, BL3657, BL3741, BL3754]

Minimum Lot Size

- (2) The minimum permitted lot size for the I2 zone is 16,000 m² (3.95 acres).

Minimum Frontage

- (3) The minimum permitted frontage for the I2 zone is 90 m (295.27').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the I2 zone is 50% of the lot area.

Minimum Setbacks

- (5) The minimum permitted setbacks for the I2 zone are as follows:
- (a) Principal Buildings
 - Yard, Front, 8.0 m (26.25'); 46 m (150.91') when abutting any Other Zone
 - Yard, Side, 0 m; 46 m (150.91') when abutting any Other Zone
 - Yard, Rear, 0 m; 46 m (150.91') when abutting any Other Zone
 - (b) Accessory Buildings and Structures (Excluding Fences)
 - Yard, Front, 8.0 m (26.25'); 46 m (150.91') when abutting any Other Zone
 - Yard, Side, 0 m; 46 m (150.91') when abutting any Other Zone
 - Yard, Rear, 0 m; 46 m (150.91') when abutting any Other Zone
 - (c) Despite the foregoing, the minimum permitted setback for any Lot Line which abuts an Arterial Highway is 18 m (59.05').
 - (d) Slaughterhouses
 - Yard, Front, 92 m (301.84')
 - Yard, Side, 92 m (301.84')
 - Yard, Rear, 92 m (301.84')



The Corporation of the District of North Cowichan
Zoning Amendment Bylaw (Motorsport Circuit), 2019
Bylaw 3761

The Council of The Corporation of The District of North Cowichan enacts as follows:

1. ***This Bylaw may be cited as "Zoning Amendment Bylaw No. 3761, 2019".***
2. ***Section 12 of Zoning Bylaw 1997, No. 2950 is amended by adding the following definitions:***

"go-kart use" means the use of buildings, structures, or land for the maintenance, repair, operation and racing of go-karts.

"motor vehicle testing and driver training facility" means the use of land for a motorsport circuit and off-road circuit that hosts a variety of motor vehicle driving programs in different configurations with different groups, including but not limited to

- (a) motor vehicles driving the circuit to achieve and improve lap times;
- (b) motor vehicles practicing emergency braking, lane changes, cornering and other procedures including some at high speed;
- (c) multiple motor vehicles using the facility simultaneously including during club or manufacturer activities to achieve and improve their driving skills;
- (d) facilities and repair areas to change settings of motor vehicles, change tires, conduct minor maintenance and repairs, and set up motor vehicles;
- (e) club with restaurant, office, retail store, the sale of food and beverages, change rooms and ancillary amenities;
- (f) parking, off-street parking, covered parking, maintenance, warehouse and storage facilities.

"motor vehicle presentation centre" means the use of a building, structure or land for the display, storage and sales of motor vehicles, motor vehicle parts, accessories and merchandise, including ancillary offices and facilities.

"motion picture and television filming" means the filming and production of motion pictures or television shows or series.

3. ***Zoning Bylaw 1997, No 2950, is amended in section 43 [Zones] by adding "Motorsport Circuit Comprehensive Development Zone (CD21)".***
4. ***Zoning Bylaw 1997, No 2950, is amended by adding the following section after 80.20:***

Motorsport Circuit Comprehensive Development Zone (CD21)

Permitted Uses

- 80.21** (1) The permitted uses in the CD21 zone are as follows:

- Accessory Building
- Accessory Fueling Installation
- Accessory Restaurant
- Accessory Use
- Assembly Hall
- Fitness Centre/Gymnasium
- Go-kart Use
- Motion Picture and Television Filming
- Motor Vehicle Autobody Repair
- Motor Vehicle Parts and Accessories Sales
- Motor Vehicle Presentation Centre
- Motor Vehicle Repairs
- Motor Vehicle Sales
- Motor Vehicle Storage Yard
- Motor Vehicle Testing and Driver Training Facility
- Recreation Area
- Warehouse

Minimum Lot Size

- (2) The minimum lot size for the CD21 zone is 2.5 ha.

Minimum Frontage

- (3) The minimum permitted frontage for the CD21 zone is 30 m (98.43').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the CD21 zone is 50% of the lot area.

Maximum Floor Space Ratio of All Buildings and Structures

- (5) The maximum permitted floor space ratio for the CD21 zone is 0.5:1.

Minimum Setbacks

- (6) The minimum setbacks for all buildings are as follows:

Front yard - 6 m (19.7'); 18 m (59') from an arterial highway

Side yard - 3m (9.8')

Rear yard - 6m (19.7')

Maximum Building Height

- (7) The maximum building height for the CD21 zone is 15 m (49.2').

5. ***Schedule "C" of Zoning Bylaw 1997, No 2950 is amended by reclassifying, to Motorsport Circuit Comprehensive Development Zone (CD21), the lands shown as the "Subject Properties" (PIDs: 009-751-297; 029-201-675; 014-104-067), and outlined in bold on the Schedule attached to and forming part of this bylaw.***
-

READ a first time on

READ a second time on

CONSIDERED at a Public Hearing on

READ a third time on

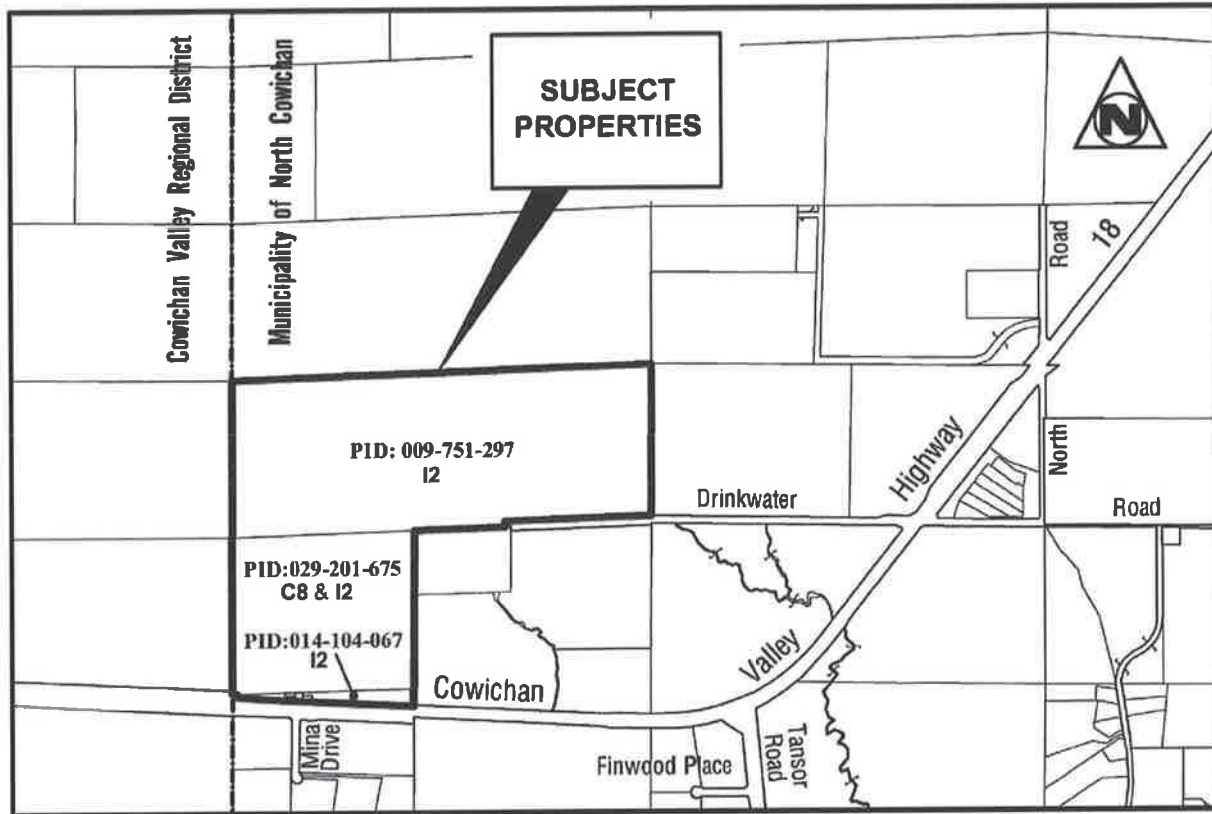
APPROVED by Ministry of Transportation and Infrastructure on

ADOPTED on

CORPORATE OFFICER

PRESIDING MEMBER

Schedule



September 25th, 2019

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan, BC V9L 6A1

Attention: Mr. Rob Conway, MCIP, RPP
Director of Planning

Re: Comprehensive Development Rezoning Application –
Vancouver Island Motorsport Circuit

Please accept this letter as evidence of our commitments in support of our application for a comprehensive development rezoning (the "Comprehensive Development Application"). Please note that we have updated our commitments to address concerns raised with respect to the Comprehensive Development Application during Council's consideration of 1st and 2nd reading of the proposed bylaw. Our revised commitments are as follows:

1. We commit to comply with the following requirements in relation to the operation of the motorsport and the off-road circuit, as presently constructed or as expanded from time to time (including the expansion contemplated under the Comprehensive Development Application):

- (a) To restrict their hours of operation to 9:00 a.m. to 5:00 p.m. on Mondays to Saturdays and to 11:00 a.m. to 5:00 p.m. on Sundays;
- (b) To not operate them on statutory holidays, other than where the operation is solely for a special international event for vehicle manufacturers, and where we have given written notice to North Cowichan of such operation at least a month in advance, and in no event to operate them on Christmas Day or Boxing Day or for more than two statutory holidays in a calendar year;
- (c) To not operate them in a manner that exceeds 59 dB LA_{20, 15min}, 59 dB LA_{Eq, 15min}, or 79 dB LA_{Max}, when received at any location within North Cowichan, other than the A4/I2 Lands, the Lease Lands, the Bings Creek Lands, (all as defined below), and/or any lands zoned Heavy Industry (I2) Zone under North Cowichan's zoning bylaw;
- (d) In conjunction with North Cowichan;
 - (i) to install sound monitors of a type acceptable to North Cowichan and us, acting reasonably, (the "Offsite Sound Monitors"), at three sites located off the subject lands, with one site being near 6278 Mina Drive, North Cowichan, British Columbia and the other three sites being at locations acceptable to North Cowichan and us, acting reasonably;
 - (ii) to engage a third party sound monitoring consultant, the cost of which is to be shared by North Cowichan and us, to monitor, maintain in good and accurate working condition, and replace the Offsite Sound Monitors whenever necessary;
- (e) To maintain the Offsite Sound Monitors as time synced; and,
- (f) To provide to North Cowichan, in real time, all noise measurements from the Offsite Sound Monitors in a format that is readily capable of review for compliance with item (c) above.

As a condition of the approval of the Comprehensive Development Application, we agree to register against title to the subject lands a covenant under section 219 of the *Land Title Act* securing our commitments as set out above. We also agree that the covenant shall include a provision that imposes on us the obligation to make a monetary payment to North Cowichan in the amount of \$5,000.00 in the event of a breach by us of the requirement set out in item 1(c) above. In support of this provision, we will deliver to North Cowichan an irrevocable standby letter of credit in a form satisfactory to North Cowichan in the amount of \$25,000.00 to be drawn down by North Cowichan to satisfy any amount payable under the covenant, and will deliver to North Cowichan further letters of credit upon the depletion of any previously provided letter of credit. We also agree that the covenant shall include provisions in relation to the requirements of item 1(c) above that require us to advise all operators of vehicles on the motorsport or off-road circuit of the sound limit under that item, to immediately warn the operator of any vehicle on the motorsport or off-road circuit that is involved in an exceedance of the sound limit under that item, to immediately remove from the motorsport or off-road circuit any vehicle that is involved in a second exceedance of the sound limit under that item on the same day, to immediately remove from the motorsport or off-road circuit the operator of any vehicle who is involved in a third exceedance of the sound limit under that item on the same day, and to consider, acting reasonably, refusing access to the motorsport or off-road circuit to any vehicle or operator involved in 5 or more exceedances of the sound limit under that item in a one year period.

2. In further support of the Comprehensive Development Application, we commit to provide to North Cowichan the following amenities:

(a) To transfer to North Cowichan a portion of our lands that are currently zoned A4 and I2, demarcated as "A" in the plan attached as Schedule "A" to this letter (the "A4/I2 Lands") for use as a site for a water storage reservoir of up to 500,000 gallon capacity, and all ancillary and related controls, piping, and appurtenances (the "Water Reservoir"), including use for access to the Water Reservoir, and for use as park, subject to a covenant under section 219 of the *Land Title Act* agreeable to North Cowichan and us, acting reasonably, recognizing the impact of the use of the subject lands for the motorsport or off-road circuit in accordance with all applicable requirements;

(b) To offer, for nominal consideration a licence, on reasonable terms, to North Cowichan or the Cowichan Trail Stewardship Society a portion of the lands demarcated as "B" in the plan attached as Schedule "A" to this letter (the "Lease Lands");

(c) To make the motorsport circuit available to the Vancouver Island Karting Association for its use for a minimum of 6 events a year, on commercially reasonable terms to be negotiated between us and the Vancouver Island Karting Association (including the requirement that the Vancouver Island Karting Association ensure that its events comply with item 1(c) above), subject to us giving North Cowichan reasonable notice of a proposed event, and subject to North Cowichan giving written approval for the event;

(d) To transfer to North Cowichan a corridor of our land along Bings Creek, including its tributaries, acceptable to North Cowichan, which corridors shall at least consist of the riparian zone for Bings Creek and its tributaries, as determined by a Qualified Environmental Professional, which corridor shall be generally as set out in the plan attached as Schedule "A" to this letter (the "Bings Creek Lands");

(e) To make a cash contribution to North Cowichan of \$600,000.00 for:

(i) Environmental and habitat enhancement projects for streams and other waterbodies (e.g., the construction of a water storage facility to provide summer flows for Bings Creek); and,

(ii) The construction of a trail up Mount Prevost.

As a condition of the approval of the Comprehensive Development Application, we agree to register against title to the subject lands a covenant under section 219 of the *Land Title Act* securing its commitments as set out above.

3. In further support of the Comprehensive Development Application, we commit to the following in relation to the provision of services:

- (a) To construct, to the satisfaction of North Cowichan, the Water Reservoir at a time that both we and North Cowichan deem it necessary; and,
- (b) To construct, to the satisfaction of North Cowichan, Drinkwater Road from Highway 18 to its end bordering on the Development Lands to North Cowichan's Industrial Road Standard (R6), including all required culverting and drainage works.

As a condition of the approval of the Comprehensive Development Application, we agree to enter into a binding agreement with North Cowichan securing our commitments as set out above, subject to us being entitled to consideration of a development cost charge frontender agreement or development cost charge credits, if either is applicable, or alternatively being entitled to a latecomer agreement pursuant to sections 507 and 508 of the *Local Government Act* under which agreement we would be reimbursed for all or part of the costs of the excess or extended services provided by us, which reimbursement would be from properties benefitting from the services when those properties connect to or commence using the services.

4. Lastly, in support of the Comprehensive Development Application, we commit to provide to North Cowichan, as soon as practicable, the following:

- (a) Written confirmation of all required approvals in principle of all creek crossings by the Ministry of Forests, Lands, Natural Resource Operations and Rural Development and the Department of Fisheries and Oceans;
- (b) An acceptable wildfire hazard risk assessment for the Development Lands;
- (c) An acceptable geotechnical overview assessment for the Development Lands; and,
- (d) An acceptable visual impact/landscape assessment for the Development Lands.

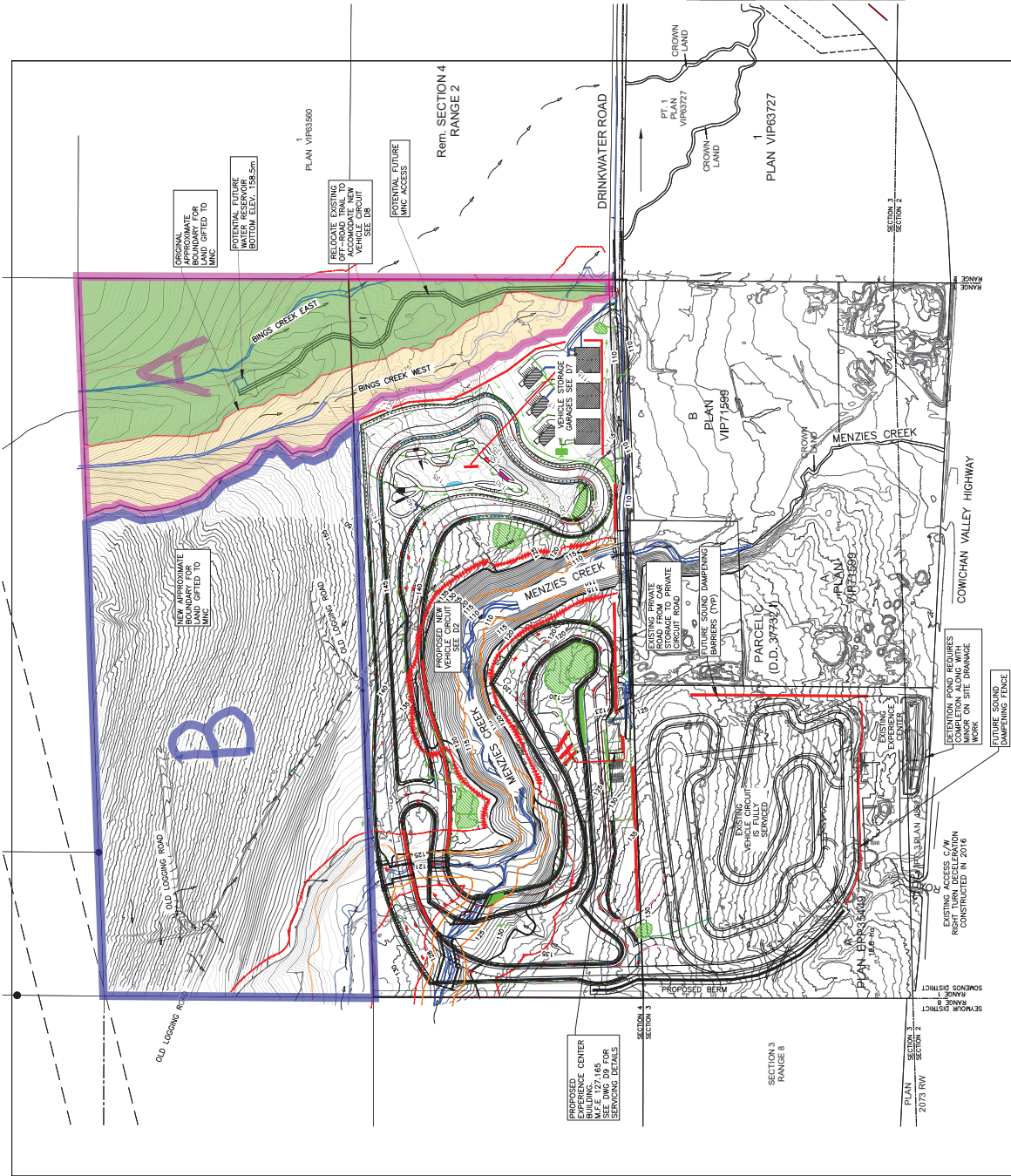
We trust that our commitments set out above demonstrate our sincere intention and desire to be a valuable contributor to the success of North Cowichan and its community members.

Yours truly,

Vancouver Island Motorsport Circuit

A handwritten signature in black ink, appearing to read "Sylvester Chuang", is written over the printed name.

Sylvester Chuang, per Vancouver Island Motorsport Circuit



		AREA TO BE GIFTED TO MUNICIPALITY		
		OLD AREA	NEW AREA INCLUDING CREEK	PERCENTAGE INCREASE
	SHADED AREA			
	PHASE 2 SECTION	2.46 ha	4.81 ha	95%
	NORTHERN SECTION	8.26 ha	11.92 ha	44%
	TOTAL AREA	10.72 ha	16.73 ha	56%

DRAWING LIST	
DRAWING NUMBER	DRAWING NAME
D1	OVERALL SITE PLAN
D2	LARGE SCALE SITE PLAN
D3	OS/STP SITE PLAN
D4	SITE CIRCULATION PLAN
D5	PLAN VIEW
D6	SOUTH WATERS CREEK BRIDGE CROSSINGS - PLAN VIEW
D7	NORTH WATERS CREEK BRIDGE CROSSINGS - PLAN VIEW
D8	CAR STORAGE AREA - SITE SERVING PLAN
D9	OFF-ROAD TRAIL - SERVING PLAN
D10	PROPOSED EXPERIENCE CENTER - SITE SERVING PLAN
S1	HEROLD ENGINEERING - GAIN PASE 2 BRIDGES - PRELIMINARY GENERAL ARRANGMENT
S2	HEROLD ENGINEERING - GAIN PASE 2 BRIDGES - BRIDGE 1
S3	HEROLD ENGINEERING - GAIN PASE 2 BRIDGES - BRIDGE 2
S4	HEROLD ENGINEERING - GAIN PASE 2 BRIDGES - BRIDGE 3
S5	HEROLD ENGINEERING - GAIN PASE 2 BRIDGES - BRIDGE 4

[illegible]

Report

Date	October 1, 2019	File: ZB000064
To	Council	
From	Rob Conway, Director of Planning	Endorsed:
Subject	October 1 Public Hearing for Zoning Amendment Bylaw 3761 (Motorsport Circuit)	

Purpose

To provide additional information associated with Zoning Amendment Application ZB000064 prior to the public hearing for Bylaw 3761 on October 1, 2019.

Background

Council, at its regular meeting of August 21, 2019, considered Zoning Amendment Application ZB000064 and passed the following motions:

That Council approve first and second reading of Zoning Amendment Bylaw No. 3761 to rezone three properties at Cowichan Valley Highway and Drinkwater Road (PIDs 009-751-297, 029-201-675 & 014, 104-067) from I2 and C8 to a new CD21 zone.

That referrals be sent to the City of Duncan, the Cowichan Valley Regional District, Cowichan Tribes, the Sahtlam Neighbourhood Association, the Somenos Marsh Society, and the Cowichan Watershed Board; And That those referral agencies be given a minimum of 30 calendar days to provide a response before a public hearing is held.

That a Public Hearing be scheduled for Zoning Amendment Bylaw No. 3761 and that notification be issued in accordance with the requirements of the *Local Government Act*.

The application referrals have been distributed, the public hearing scheduled, and the hearing notifications sent.

This report is intended to update Council with respect to additional information received regarding the zoning amendment application since the August 21, 2019 Council meeting.

Discussion

Amendments to Applicant's Commitments:

The August 21 staff report included a letter from the applicant dated August 6, 2019 that listed a number of commitments made by the applicant in association with the rezoning application. In response to concerns about the initial commitments for restricting sound associated with the existing motorsport facility and proposed expansion the applicant has submitted a new commitment letter dated September 25, 2019 that amends the commitments previously. The current commitments are described in detail in the amended commitment letter (**Attachment B**). Should Council decide to

grant third reading to Bylaw 3761, a covenant would be registered against the subject lands to secure the commitments.

Note: The August 21, 2019 staff report incorrectly identified one of the applicant's commitments as allowing the motor vehicle and driver training facility to be used by the Vancouver Island Karting Association for up to 6 days per year. The actual commitment was and remains to allow the Karting Association to use the facility for a minimum of 6 days in year. It should also be noted that the applicant's commitments with respect to restricting sound levels now also apply to the go-kart use.

Application Referral Responses:

Following Council direction, Zoning Amendment Application ZB000064 and Zoning Amendment Bylaw 3761 were referred to the City of Duncan, the Cowichan Valley Regional District, Cowichan Tribes, the Sahtlam Neighbourhood Association, the Somenos Marsh Wildlife Society and the Cowichan Watershed Board. To date responses have been received from the Sahtlam Neighbourhood Association (**Attachment C**), the City of Duncan (**Attachment D**), Cowichan Tribes (**Attachment E**) and the Cowichan Valley Regional District (**Attachment F**).

The remaining referral agencies have been advised that responses must be submitted before the close of the public hearing in order for them to be considered by Council. Any referral responses received prior to the close of the public hearing will be provided to Council and included in the public hearing binder.

Acoustic Studies:

Much of the public discussion about the subject rezoning application has been about sound associated with the existing facility and proposed expansion and the impact of sound on the surrounding community. A number of acoustical impact assessments have been undertaken, as well as third party reviews of those assessment. In addition to the reports referenced in the August 21, 2019 staff report, the following information also now available on the Municipality's website at:

(<https://www.northcowichan.ca/EN/main/community/current-topics/vancouver-island-motorsport-circuit/vimc-related-records.html>) :

- Navcon Peer Review Report – Phase 1
- Navcon Peer Review Report – Phase 2
- SNA Ambient Noise Report
- Response to Navcon Peer Review
- Review of SNA Noise Impact Report

Options

Following the close of the public hearing, Council can consider third reading of Zoning Amendment Bylaw No. 3761. Options available include:

1. That "Zoning Amendment Bylaw No. 3761 (Motorsport Circuit), 2019" be given third reading.
2. That "Zoning Amendment Bylaw No. 3761 (Motorsport Circuit), 2019" be denied.

Registration of the restrictive covenant at the Land Titles Office and approval from the Ministry of Transportation and Infrastructure is required before adoption of the bylaw can be considered.

Recommendation

For information purposes (no recommendation).

Attachments:

Attachment A – August 21, 2019 Staff Report
Attachment B – September 25, 2019 Amended Commitment Letter
Attachment C – Sahtlam Neighbourhood Association Referral Response
Attachment D – City of Duncan Referral Response
Attachment E – Cowichan Tribes Referral Response
Attachment F – Cowichan Valley Regional District Referral Response.

James S. Hutchison†
Lorenzo G. Oss-Cech†
Barri A. Marlatt†
Dana G. Quantz
Andrew W. Tomilson
Esteban T. Káhs



Telephone: (250) 360-2500
Facsimile: (250) 360-0208
1 – 505 Fisgard Street
Victoria, British Columbia
Canada V8W 1R3

Our File: 5469001

Reply To: Lorenzo G. Oss-Cech
E-mail address: lgo@hom-law.com

Tuesday, October 15, 2019

Young Anderson
Barristers and Solicitors
1616-808 Nelson Street
Box 12147 – Nelson Square
Vancouver, BC V6Z 2H2

Via Email & Hand Delivered

Attention: Suhkbir Manhas

Re: Development Permit Application – Phase Two

I write further to the public meetings of October 1st and 3rd 2019.

It would be an understatement to say that my client is frustrated and disappointed with the outcome, which we believe to be misguided in view of the project's history.

In 2016, with the consent and knowledge of the then North Cowichan Council, the North Cowichan Municipality ("NCM") sold a large part of the subject lands to my client and provided written assurances (**without any disclaimers**) that the zoning for my client's intended use was appropriate.

My client relied on those assurances in purchasing the properties.

Furthermore, based on those assurances, my client applied for and received a development permit and building permits. It then invested over \$37 million to construct Phase One of the facility. It did so, fully intending and expecting to build Phase Two on the adjacent lands.

In addition, my client paid \$266,500.00 to build a new water line off Drinkwater Road as part of the development agreement for Phase One.

At the well-publicized opening of Phase One in June 2016, the then Mayor and several councilors attended. Phase One has been operating ever since and is a highly successful enterprise, both in isolation and as an integral component of GAIN's interrelated businesses on Vancouver Island.

Shortly after the opening, three resident households (**two from outside NCM**), mounted a campaign against the facility, claiming that it was too noisy and it did not have the proper zoning.

My client made countless attempts to address the noise concerns, by: conducting extensive testing with the top sound experts; voluntarily restricting operating hours; and removing certain types of vehicles from the circuit.

Other than the controls and restrictions imposed by my client, the operation and business has not changed from the beginning.

My client has operated within the bounds of their legal rights at all times. It has had a good relationship with NCM and has never received any violation, charge or warning from NCM's staff.

In 2017 NCM asked my client to apply to rezone the properties under one comprehensive by-law. NCM's staff believed that the rezoning would provide greater clarity and establish operating rules for the circuit to provide NCM and the public certainty in that regard. Given its good relationship with NCM and most of the community, my client, in good faith, agreed. A rezoning application was submitted for Phase One and a Phase Two configuration that extended the circuit into both the I2 and A4 lands owned by my client.

On June 5, 2017, as the rezoning application was being prepared, the same above mentioned households, opposed to the circuit, filed a lawsuit against my client and NCM seeking to close Phase One by challenging the zoning for the facility and alleging that the noise from the circuit constituted a nuisance at law.

My client nevertheless carried on with the rezoning efforts in good faith, meeting with stakeholders and interested parties, and holding an open house in April 2018, which was attended by approximately 500 people. My client listened to concerns that were expressed and revised the rezoning application to address those concerns.

In September 2018, my client filed a revised rezoning application responding to the public's comments and concerns, moving all of Phase Two into the lands already zoned I2 and proposing extensive environmental and sound mitigation measures, and offering substantial community amenities.

My client also filed a development permit application at the same time, which is permitted by the existing I2 zoning and also consistent with the rezoning, if approved. At the request of NCM my client agreed, again as a matter of good faith, that NCM could wait to issue the development permit until after the rezoning application was addressed.

Meanwhile, in September 2018, my client, and subsequently NCM, applied to dismiss the lawsuit regarding the zoning and to remove NCM as a Defendant. During that application, NCM informed the Supreme Court of British Columbia that my client was operating lawfully and that both the I2 and C8 zoning were appropriate for the operation of the circuit. On October 11 2018, that application succeeded. The zoning claims were dismissed and NCM was removed as a Defendant.

The nuisance part of the lawsuit persisted until only shortly after examinations for discovery of the plaintiffs were held in early 2019, after which the plaintiffs agreed to the dismissal of the rest of the lawsuit.

After that, they focused their attention of a new series of complaints and opposing the rezoning application. Furthermore, after the dismissal of the lawsuit, my client became aware of the involvement of two of those same plaintiffs in NCM's elections, even though they were not residents of NCM.

As part of the rezoning application, my client was asked by NCM's staff to provide a variety of concessions. Those included:

1. A limit on sound;
2. Offsite monitors to gauge the sound within the community;
3. Real time readings for the sound;
4. A \$5,000.00 penalty for each breach of the sound limits;
5. A limit on hours of operation;
6. A limit on days of operation (statutory holidays); and
7. A limit on the type of cars allowed on the track (street legal).
(the "Concessions")

In addition to the Concessions, my client was also asked:

1. To transfer to NCM a portion of the lands for use as a site for a water storage reservoir;
2. To license to NCM or the Cowichan Trail Stewardship Society a significant portion of the lands (approximately 100 acres);
3. To make the circuit available to the Vancouver Island Karting Association for its use for a minimum of 6 events a year;
4. To transfer to NCM a corridor of the land along Bings Creek (approximately 40 acres);

5. To make a further financial contribution to NCM of \$600,000.00 for environmental and habitat enhancement projects for streams and other waterbodies and/or the construction of a trail up Mount Prevost;
6. To construct, to the satisfaction of NCM a Water Reservoir at a cost of approximately \$2.5 million;
7. To construct, to NCM's satisfaction, Drinkwater Road from Highway 18; and
8. To register all of the above in a covenant.
(the "Amenities").

Despite all of the above NCM council voted (5-2) against the rezoning, evidently on the basis of late submissions from the Cowichan Tribes (who had earlier indicated support, was otherwise disinterested and refused to meet with my client).

The rejection of the rezoning was surprising to my client as it is otherwise entitled to a development permit, and the Concessions and Amenities are only available by way of rezoning.

My client is, of course, content to save the millions of dollars that the Amenities would cost and to not have any Concessions apply, but is extremely disappointed that so much time has been wasted on a fruitless rezoning process.

In particular because the public discussion of the rezoning process was used by a small group of residents as a platform to spread numerous lies about the facility and to circulate personal and racist attacks against my client's owners and staff.

My client has followed the law slavishly. It went above and beyond what is required to be a good neighbor and citizen by committing to the Concessions and agreeing to provide the Amenities.

My client has issued contracts, booked clients and has mobilized equipment to the site to commence construction of Phase Two, based on the issuance of the development permit.

By copy of this letter to NCM my client requests that NCM now move forward and issue the development permit for Phase Two.

Be advised that should the development permit be refused or some other action be taken to interfere with my client's lawful rights to establish and operate its business, my client will pursue all legal remedies available.

In the circumstances, having invested so much time and money in reliance on NCM's assurances and conduct to date, it will be left with no other choice.

I remain

Yours truly,

HUTCHISON OSS-CECH MARLATT

Per:

A handwritten signature in black ink, appearing to be 'L. Oss-Cech', written over a horizontal line.

Lorenzo G. Oss-Cech

lgo/ed

cc. North Cowichan Building Department – by hand
Clients.
Sean Hern



October 25, 2019

Prospero No: DP000155

Folio No: 29019-030

File No: 3060-20 17.24

Mark Holland
Holland Planning Innovations Inc.
mark@hollandplan.com

Dear Mr. Holland

RE: Development Permit for Vancouver Island Motor Circuit - Lot A, Drinkwater Road¹

I am writing to advise that I am obliged to deny development permit application DP0000155 on the basis that the proposed land use does not comply with Zoning Bylaw 2950.

I have not come to this conclusion lightly. I appreciate that it is your client's position that the development proposed in the application is for the same land use as under the development permit issued by North Cowichan for Phase 1 of the Vancouver Island Motor Circuit and, as such, there has been a past determination that the land use is in compliance with Zoning Bylaw 2950. However, upon careful review, I have concluded that the proposed land use is not permitted under Zoning Bylaw No. 2950. "Motor vehicle testing and driver training facility" is not listed as a permitted use in the Industrial Heavy (I-2 zone), and I have found no permitted use within the I2 zone that includes that use.

Please be advised that Section 23 of Delegation of Authority Bylaw No. 3734 allows you to have my decision to deny the development permit application reconsidered by Council. Section 23 provides as follows:

"Land use approvals – reconsideration

23 (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.

¹ SECTION 4 RANGE 1 SOMENOS EXCEPT PLAN EPP60766. - PID: 009-751-297

(2) Where the owner wishes to have Council reconsider a decision made under the delegated authority under section 22 of this bylaw:

(a) The owner must, within 30 days of the decision having been communicated to the owner, make an application in writing to the Corporate Officer, which application must include the following:

- (i) A description of the decision sought to be reconsidered by Council;
- (ii) The date of the decision;
- (iii) The name of the delegate who made the decision;
- (iv) The grounds on which reconsideration is being requested; and,
- (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.

(b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.

(c) The Corporate Officer must:

- (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
- (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
- (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.

(d) In reconsidering the decision, the Council must consider all the material before it.

(e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.

(f) Council is entitled to adjourn the reconsideration of the decision; and,

(g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council."

A copy of Bylaw No. 3734 is enclosed for your reference.

Sincerely

A handwritten signature in blue ink, appearing to be 'Rob Conway', with a long horizontal flourish extending to the right.

Rob Conway, MCIP, RPP
Director
PLANNING AND BUILDING DEPARTMENT

James S. Hutchison†
Lorenzo G. Oss-Cech†
Barri A. Marlatt†
Dana G. Quantz
Andrew W. Tomilson
Esteban T. Kähs



Telephone: (250) 360-2500
Facsimile: (250) 360-0208
1 – 505 Fisgard Street
Victoria, British Columbia
Canada V8W 1R3

Our File: 5469001

Reply To: Lorenzo G. Oss-Cech
E-mail address: lgo@hom-law.com

Tuesday, October 29, 2019

Young Anderson
Barristers and Solicitors
1616-808 Nelson Street
Box 12147 – Nelson Square
Vancouver, BC V6Z 2H2

Via Email

Attention: Suhkbir Manhas

Re: Development Permit Application – Phase Two (the “DP”)

I write further to North Cowichan’s denial of my client’s request for the issuance of the DP.

My client is extremely disappointed with North Cowichan staff’s decision, as it is completely inconsistent with North Cowichan’s past and current positions, with respect to my client’s property.

My client purchased most of the property from North Cowichan. My client, and its financial partners, received several assurances from North Cowichan, without any form of disclaimer, that the property was zoned for use as a test facility.

My client sought and received a development permit and all associated building permits for Phase One on lands zoned I-2 and C-8. As required, the zoning was read down so that Phase One needed to be in compliance with the I-2 zoning.

Again, my client was assured that the I-2 zoning was appropriate for the intended uses. It relied on those assurances and spent almost \$40,000,000.00 to build Phase One.

The then North Cowichan council voted in favor of accepting all of the development requirements, including a new water pump and distribution system on Drinkwater road, which my client paid for as part of the permit requirements.

The DP was requested, based on the fact that the lands were identically zoned as Phase One (I-2 Heavy Industrial), which is the same zoning that covers most of the Phase One lands and the same zoning under which Phase One was approved.

We cannot understand how North Cowichan staff can simply issue a blanket denial based on zoning non-compliance, when it is clear that the intended uses for Phase Two are identical to the permitted uses under the I-2 zoning for Phase One.

You will recall that at North Cowichan staff's request, my client agreed to seek a comprehensive rezoning to clear up any uncertainties.

My Client at no time agreed, nor were told, that rezoning would be required to permit that which was already built on lands zoned I-2.

My client also, in good faith, participated in negotiating a number of conditions, within the comprehensive by-law, to address any and all public concerns from the first three (3) years of operation. To my client, and my surprise it was rejected by North Cowichan's council.

When my client requested that the DP be issued, it was denied as delineated above.

There seems to be no merit to these decisions and the basis for them smack of politics and unfortunately bad faith. In fact, North Cowichan's rejection does not even delineate what part of the DP's application does not meet compliance. At the very least, my client should be informed which specific intended uses do not comply with the I-2 zoning.

All my client wants is for North Cowichan to apply consistency and issue the DP based on the fact that it was issued a permit for Phase One, which the Municipality has said has been operating within the law for three (3) years.

We are faced with a serious inconsistency, which will have dire financial consequences for North Cowichan.

If the denial of the Development Permit is maintained, due to the intended uses allegedly being outside the ambit of the I-2 zoning, then my client is also operating Phase One in contravention of the I-2 zoning.

In that case, my client cannot continue to operate Phase One. Further, if the circuit is closed, then many of my client's interrelated business will also no longer be viable.

My client has executed a construction contract and several commitment contracts based on the DP being issued.

My client had no reason to believe that the North Cowichan's council would reject the rezoning, when it was North Cowichan that requested my client apply for such rezoning.

To date my client has never received any warning, notice or call suggesting that they are operating illegally.

I advise that patience within my client's ownership is running very thin. Should this matter land in court, by rough calculations my client's damages will exceed \$60 million. In fact, damages are presently accruing daily due to the unwarranted delays.

We urge North Cowichan's council to use common sense and recognize that most of those who spoke against the staff recommended rezoning by-law live outside North Cowichan, whereas most of those in support were voting residents from within North Cowichan.

Should you have any further question or concerns about the above noted please do not hesitate to contact me.

I remain

Yours truly,

HUTCHISON OSS-CECH MARLATT

Per:



Lorenzo G. Oss-Cech

lgo/ed

Cc. Clients
Sean Hern

October 30, 2019

Chief William Seymour
5760 Allenby Rd
Duncan BC V9L 5J1

(sent by email: chief@cowichantribes.com)

Dear Chief Seymour

Re: Reconsideration of Zoning Amendment for Vancouver Island Motorsport Circuit (VIMC)

Thank you so much for meeting with me on Monday to discuss the pending reconsideration of the zoning amendment for VIMC to be considered by Council on November 6, 2019. As I explained, the reconsideration of this issue has arisen because of new information based on the stated liabilities associated with the previous uncertainty around zoning and land sales associated with the development of phase 1.

I understand the challenges of coordinating a Council-to-Council meeting before a new public hearing related to the VIMC rezoning application and very much appreciate your efforts to discuss the applicant's response to Cowichan Tribes Referral at the upcoming environment meeting on Friday. It has always been my belief that because we didn't have a Council-to-Council meeting that the referral response provided by Tribes was misunderstood and did not provide an opportunity to act on Tribes concerns before the public hearing.

I have attached the Council report that outlines the original community contributions offered by VIMC should the rezoning be authorized. Since the writing of this report, and with further consideration to Tribe's concerns, VIMC has offered the following additional and/or modified responses to the issues raised.

1. VIMC will have an archaeological monitor present during the entire construction of the project.
2. VIMC will include in the financial contribution of \$600,000 for habitat enhancement projects for streams and other water bodies and the construction of a trail up Mount Prevost, a provision that these funds could also be spent to study elk herd impacts.
3. VIMC would protect all of the A4 (the 102.28 ha of forested land they own immediately to the north of the property that's subject to the comprehensive rezoning application, page 86 of Attachment A) lands for cultural purposes in their natural state to be gifted to Cowichan Tribes when requested. These lands would either transfer to the Municipality immediately and be held in trust for Cowichan Tribes or be gifted immediately upon receipt of a rezoning.

The vote on reconsideration of a third reading would be placed on the November 6 Council Agenda; however, third reading could not occur until the holding of a second (new) public hearing based on the new information that has been provided. We anticipate the public hearing, if it were to occur, would be scheduled by the end of November. We will inform you of the specific public hearing date as soon as it has been scheduled and invite you to provide further input based on the additional/amended amenities (items 1 through 3) noted above that hopefully address Cowichan Tribes concerns.

Although we hope that you can provide a response before the Council meeting on November 6, the critical date for submission of new information would be before the public hearing date, when it is set. I look forward to hearing from you at your earliest convenience. Should you require any further information, please let me know.

Sincerely



Al Siebring
Mayor

mayor@northcowichan.ca

Enclosure: October 1, 2019, Council Report and attachments

cc: MNC Council
Tracy Fleming Referral Coordinator Cowichan Tribes (tracy.fleming@cowichantribes.com)
Ted Swabey, Chief Administrative Officer, Municipality of North Cowichan

Reply Attention of: Sean Hern
Direct Dial Number: 250 405 1982
Email Address: shern@farris.com

FARRIS

File No: 041125-0001

October 30, 2019

BY EMAIL

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan BC V9L 6A1

Attention: Corporate Officer
(karen.robertson@northcowichan.ca)

Dear Sirs/Mesdames:

**Re: Development Permit for Vancouver Island Motor Circuit - Lot
A, Drinkwater Road, Section 4 Range 1 Somenos Except Plan
EPP60766 - PID: 009-751-297**

We write on behalf of 1909988 Ontario Limited ("**VIMC**") the owner of the above-noted lands and the applicant in development permit application DP0000155 ("**VIMC's Development Permit Application**").

Pursuant to section 23(1) of the Delegation of Authority Bylaw 3734, VIMC hereby requests a reconsideration by Council of the decision of Rob Conway, Director of Planning, dated October 25, 2019, a copy of which is attached hereto (the "**Decision**"). In the Decision, Mr. Conway denied VIMC's Development Permit Application on the basis that the proposed land use in did not comply with Zoning Bylaw 2950.

The grounds on which reconsideration is requested are three-fold:

1. First, a decision of whether to issue a development permit is an assessment of the application in light of the municipality's Official Community Plan. It is not a land use decision, as has been made in this case by the Director of Planning. To proceed otherwise is to exceed the statutory jurisdiction delegated in respect of development permit applications. There are many examples of the court's enforcement of this constraint on municipal jurisdiction in relation to development permit applications, including: *Westfair Foods Ltd v Saanich (District)* (1997), 49 BCLR (3d) 299 (C.A.); *Rocky Point Metalcraft Ltd. v. Cowichan Valley (Regional District)*, 2012 BCSC 756; and *0742848 B.C. Ltd. v. Squamish (District)*, 2011 BCSC 747.
2. Second, the suggestion that the VIMC Development Permit Application may not comply with the I2 zoning for the purposes of the development permit application analysis is arbitrary and irrational in light of VIMC having been issued a development permit in 2015 for the adjacent I2 lands and having operated without interference on those lands in essentially an identical manner as intended for the subject lands. Moreover, as you know, North Cowichan's Planning Department repeatedly confirmed in writing to VIMC that the uses on the adjacent I2 land were consistent with *both* the I2 zoning and the C8 zoning that is present there. A copy of that correspondence is enclosed for your reference. Further, North Cowichan's

FARRIS LLP

3rd Floor - 1005 Langley Street Victoria, BC Canada V8W 1V7
Tel 250 382 1100 farris.com

October 30, 2019

- 2 -

FARRIS

lawyer filed pleadings and made submissions to the BC Supreme Court on behalf of North Cowichan to the same effect.

3. Third, and alternatively, the planned use for the subject lands is not singular, but is rather a collection of a number of different uses, and even if North Cowichan were to be concerned that some of those uses may not be consistent with the I2 zoning, many of the uses clearly are (for example, motor vehicle storage, repair, sales, servicing, driving trade school and accessory uses). Accordingly, the matter of whether the user operates in compliance with the zoning in the future is, at most, a matter of municipal enforcement and not a basis to deny the development permit application: see the case authority cited in point 1, above. VIMC is committed to using the lands in accordance with the I2 zoning. If there is a difference of opinion at some point in the future about what precisely that is, it may have to be resolved, but clearly many of the planned and potential uses are expressly and directly authorized in the I2 zone, and VIMC will make use of circuit and facilities accordingly. As a result, in the process of considering the VIMC Development Permit Application, there is no basis to presume that the owner will not use the land in a manner consistent with the current zoning.

On the basis of the above, we hereby request that the VIMC Development Permit Application be reconsidered and the requested development permit issued forthwith.

Yours truly,

FARRIS LLP

Per:

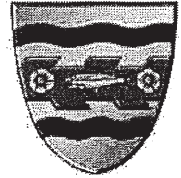


Sean Hern

Enclosures

cc. Sukhbir Manhas

Municipality of North Cowichan



7030 Trans Canada Highway, Box 278
Duncan, BC V9L 3X4

Telephone: (250) 746-3100
Fax: (250) 746-3139
www.northcowichan.ca

November 12, 2013

File: 0930-20 CVH

Mr. John D. Srebot, General Counsel
Auto World Imports
220 Steeles Avenue West
Thornhill, ON L4J 1A1

Dear Mr. Srebot

Re: Proposed Land Acquisition – Lot A, Section 3, Range 1, Somenos District, Plan EPP35449

The purpose of this letter is to clarify the Municipality's position regarding the proposed use of lands legally described as Lot A, Section 3, Range 1, Somenos District, Plan EPP35449.

The subject property is currently split-zoned I2 (Industrial Heavy Zone) and C8 (Rural Recreation Zone).

The prospective purchaser has verbally outlined their intended use of the properties as a "Recreational Testing Facility" for motor vehicles. While not specifically listed as permitted use under the *Zoning Bylaw*, No. 2950, it is the Municipality's position that the proposed "Recreational Testing Facility" would be considered a permitted use under the definitions of "Recreational Facility" (C8) and "Industrial Use" (I2) so this use is permitted on any portion of the subject property.

Secondary or accessory facilities, such as space for office and meetings, motor vehicle repair, food service, etc. are acceptable and would be permitted on any portion of the subject property. Any proposed use of the property is subject to issuance of a Development Permit as per the Municipality's *Official Community Plan Bylaw*, No. 3450, and *Zoning Bylaw*, No. 2950.

Any use of the subject property for racing, or as a "Race Track" for either go-karts or other motor vehicles must be contained to that portion of the property that has C8 zoning. Racing and "Race Track" are not permitted uses in the I2 zone.

Please feel to contact us directly if you require any additional clarification or supporting information.

Sincerely

Dave Devana
Chief Administrative Officer

devana@northcowichan.ca

pc P. Trzewik
S. Mack, Director of Planning and Development

ddnov12_2013Indt_Srebot_Highway 18

cowichan



GAIN
2546 Government Street
Victoria, BC V8T 4P7

November 4, 2015

Municipality of North Cowichan
7030 Trans-Canada Highway, Box 278
Duncan, British Columbia V9L 3X4

To Whom It May Concern,

We write with respect to our planned vehicle testing and driver training facility at 4063 Cowichan Valley Highway.

Because the property is split-zoned, and our facility design will have the driving track extending across both the I2 and C8 portions of the property, we are seeking further comfort that the activities proposed for the vehicle testing and driver training facility are compliant with local zoning. Please confirm that the following activities are permitted in both the I2 and C8 zones:

On the Driving Track:

1. Hold driving programs of up to 100 cars and drivers per day in different areas of the facility;
2. Use the track in different configurations with different groups;
3. Single vehicles driving the track with the goal to achieve and improve "fast lap" times;
4. Single vehicles practicing emergency braking, lane change, cornering, slalom and other emergency manoeuvres, some at high speed;
5. Multiple vehicles on the track simultaneously, driving during club or manufacturers activities to achieve and improve their "fast laps" however not to race each other or hold events that would be considered a race.
6. Change settings of the cars and guide the drivers to improve lap times further and further;

In the Pit Area:

7. Changing tires and conducting minor maintenance;
8. Set up work on cars to improve their lap times.

Should you have any questions, please do not hesitate to contact me. I can be reached by email at ptrzewik@gain-vi.ca or by phone at (250) 818-8038.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Trzewik', written over a faint, curved line.

Peter Trzewik

November 4, 2015

Mr. Peter Trzewik
GAIN
2546 Government Street
Victoria, BC V8T 4P7

Dear Mr. Trzewik

**Re: 4063 Cowichan Valley Highway - (Lot A, Section 3, Range 1, Somenos District,
Plan EPP35449 and Section 4, Range 1, Somenos District)**

We write to you further to your letter of November 4, 2015, in which you have requested confirmation of permitted activities on the above-noted lands owned by 1909988 ONTARIO LTD.

The Municipality of North Cowichan confirms that the eight activities (listed 1 through 8 in your letter), are permitted on the split-zoned C8 (Commercial Rural Recreation Zone) and I2 (Industrial Heavy Zone) properties as they are activities consistent with a vehicle testing facility.

We trust the above provides the information you require. If you have any questions or require any clarification please contact me as noted above.

Sincerely



Dave Devana
Chief Administrative Officer

dave.devana@northcowichan.ca

c: S. Mack, Director of Development Services



BC CLIMATE ACTION
COMMUNITY 2014

October 25, 2019

Prospero No: DP000155
Folio No: 29019-030
File No: 3060-20 17.24

Mark Holland
Holland Planning Innovations Inc.
mark@hollandplan.com

Dear Mr. Holland

RE: Development Permit for Vancouver Island Motor Circuit - Lot A, Drinkwater Road¹

I am writing to advise that I am obliged to deny development permit application DP0000155 on the basis that the proposed land use does not comply with Zoning Bylaw 2950.

I have not come to this conclusion lightly. I appreciate that it is your client's position that the development proposed in the application is for the same land use as under the development permit issued by North Cowichan for Phase 1 of the Vancouver Island Motor Circuit and, as such, there has been a past determination that the land use is in compliance with Zoning Bylaw 2950. However, upon careful review, I have concluded that the proposed land use is not permitted under Zoning Bylaw No. 2950. "Motor vehicle testing and driver training facility" is not listed as a permitted use in the Industrial Heavy (I-2 zone), and I have found no permitted use within the I2 zone that includes that use.

Please be advised that Section 23 of Delegation of Authority Bylaw No. 3734 allows you to have my decision to deny the development permit application reconsidered by Council. Section 23 provides as follows:

"Land use approvals – reconsideration

23 (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.

¹ SECTION 4 RANGE 1 SOMENOS EXCEPT PLAN EPP60766. - PID: 009-751-297

(2) Where the owner wishes to have Council reconsider a decision made under the delegated authority under section 22 of this bylaw:

(a) The owner must, within 30 days of the decision having been communicated to the owner, make an application in writing to the Corporate Officer, which application must include the following:

- (i) A description of the decision sought to be reconsidered by Council;
- (ii) The date of the decision;
- (iii) The name of the delegate who made the decision;
- (iv) The grounds on which reconsideration is being requested; and,
- (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.

(b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.

(c) The Corporate Officer must:

- (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
- (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
- (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.

(d) In reconsidering the decision, the Council must consider all the material before it.

(e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.

(f) Council is entitled to adjourn the reconsideration of the decision; and,

(g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council."

A copy of Bylaw No. 3734 is enclosed for your reference.

Sincerely

A handwritten signature in black ink, appearing to be 'Rob Conway', with a long horizontal stroke extending to the right.

Rob Conway, MCIP, RPP
Director
PLANNING AND BUILDING DEPARTMENT

Report

Date November 6, 2019

File: DP000155

To Council

From Rob Conway, Director of Planning and Building

Endorsed:



Subject Reconsideration of Development Permit Application DP000155

Purpose

To provide an outline of the process for Council's reconsideration of Development Permit Application DP000155.

Background

A development permit application for the expansion of the Vancouver Island Motorsport Circuit (VIMC) at the Cowichan Valley Highway and Drinkwater Road was received by the Municipality in December, 2018. With the concurrence of the applicant, consideration of the development permit application was deferred pending a decision on a zoning amendment application for the same site. If approved, the rezoning application would have explicitly permitted "motor vehicle testing and driver training" and related uses as permitted uses on the subject land.

On October 4, 2019, Council denied Zoning Amendment Bylaw No. 3761 ("Bylaw No. 3761"). The owner's representative, in a letter dated October 15, 2019 (Attachment A), subsequently requested that a development permit for the Phase 2 expansion be issued. After reviewing the development permit application the Director of Planning and Building, who is delegated the authority to issue development permits by Council, concluded that the proposed uses of land in the Phase 2 expansion is not permitted by Zoning Bylaw No. 2950 (the "Zoning Bylaw"). In a letter dated October 25, 2019 (Attachment B), the applicant was advised that development permit application DP000155 was denied and that the decision could, upon request to the Municipality's Corporate Officer, be reconsidered by Council. On October 30, 2019, the Corporate Officer received a letter from the property owner's representative requesting reconsideration of the development permit application (Attachment C).

Discussion

Delegation of Authority Bylaw No. 3734:

Delegation of Authority Bylaw No. 3734 (Attachment D) delegates specified powers, duties and decision making authorities to designated Municipal officers and employees. Section 22 of the Bylaw delegates the authority to issue development permits that do not involve variances to Municipal Bylaws to the Director of Planning and Building. The delegated authority allows the Director to issue development permits without Council authorization, provided the permit is compliant with applicable bylaws.

Section 23 of Bylaw No. 3734 allows the owner of land that is subject to a decision made by Council's delegate to have the delegate's decision reconsidered by Council. The terms and conditions for reconsideration are provided in Section 23. In reconsidering the delegate's decision, Council may confirm the decision, amend the decision, or set the decision aside and substitute a decision of Council.

Zoning Bylaw No. 2950:

Development Permit Application DP000155 was denied because the primary use associated with development proposed in the application was not considered to be compliant with the Zoning Bylaw and the uses the Zoning Bylaw permits on the subject property. Primary uses proposed in the application include a five kilometre paved motor vehicle circuit and an off-road motor vehicle circuit. Secondary uses include a clubhouse and structures for repairing maintaining and storing motor vehicles. A plan showing the proposed development is provided in Attachment E.

The subject parcel is zoned Industrial Heavy (I2). The I2 zone (Attachment F) does not include "motor vehicle circuit", "motor vehicle testing and driver training facility", or similar-type uses that reasonably describe the uses intended for the Phase 2 expansion. In the absence a use within the zoning that permits the proposed land use, I was compelled to deny the development permit application.

The applicant and lawyers representing the property owner note that the Municipality's Planning Department previously issued a development permit for the Phase 1 motorsport circuit and contend that it is "arbitrary and irrational" to deny the Phase 2 development permit application when the I2 zoning that applies to much of Phase 1 also applies to Phase 2. While it is true that a development permit was issued for Phase 1, and a determination was made at that time that the Phase 1 motorsport circuit was a permitted use in the I2 zone, I did not authorize that permit and my analysis of the Zoning Bylaw led me to conclude that the development proposed in application DP000155 is not compliant with the applicable I2 zoning and therefore cannot be authorized by development permit.

Procedural Considerations and Recommendations:

Mayor Siebring has required, under Section 131 of the *Community Charter*, that Council's October 4, 2019 decision to deny third reading of Bylaw No. 3761 be reconsidered. It has been recommended that Council conduct a public hearing prior to reconsideration of Bylaw No. 3761. As the basis for denying application DP000155 was non-compliance with the Zoning Bylaw and the zoning issue would be resolved should Council decide to adopt Bylaw No. 3761, it is recommended that reconsideration of refusal of development permit application DP000155 be deferred until the reconsideration of Bylaw No. 3761 is concluded.

Options

1. That Council confirm the Director of Planning and Building's decision to deny Development Permit Application DP000155 due to non-compliance the Zoning Bylaw.
2. That Council set-aside the Director of Planning and Building's decision to deny Development Permit Application DP000155 due to non-compliance with the Zoning Bylaw and direct staff to process the development permit application in accordance with applicable policies, regulations and development permit guidelines.

Recommendation

That reconsideration of Development Permit Application DP000155 be deferred until Council has concluded its reconsideration of Bylaw No. 3761.

Attachments: (6)

Attachment A - October 15, 2019 Letter from Lorenzo G. Oss-Cech, Hutchinson, Oss-Cech, Marlatt

Attachment B – October 25, 2019 Letter from Director of Planning and Building

Attachment C – October 30, 2019 Letter from Sean Hern, Farris LLP

Attachment D – Delegation of Authority Bylaw No. 3734

Attachment E – Development Plan

Attachment F – I2 Zone

James S. Hutchison†
Lorenzo G. Oss-Cech†
Barri A. Marlatt†
Dana G. Quantz
Andrew W. Tomilson
Esteban T. Káhs



Telephone: (250) 360-2500
Facsimile: (250) 360-0208
1 – 505 Fisgard Street
Victoria, British Columbia
Canada V8W 1R3

Our File: 5469001

Reply To: Lorenzo G. Oss-Cech
E-mail address: lgo@hom-law.com

Tuesday, October 15, 2019

Young Anderson
Barristers and Solicitors
1616-808 Nelson Street
Box 12147 – Nelson Square
Vancouver, BC V6Z 2H2

Via Email & Hand Delivered

Attention: Suhkbir Manhas

Re: Development Permit Application – Phase Two

I write further to the public meetings of October 1st and 3rd 2019.

It would be an understatement to say that my client is frustrated and disappointed with the outcome, which we believe to be misguided in view of the project's history.

In 2016, with the consent and knowledge of the then North Cowichan Council, the North Cowichan Municipality ("NCM") sold a large part of the subject lands to my client and provided written assurances (**without any disclaimers**) that the zoning for my client's intended use was appropriate.

My client relied on those assurances in purchasing the properties.

Furthermore, based on those assurances, my client applied for and received a development permit and building permits. It then invested over \$37 million to construct Phase One of the facility. It did so, fully intending and expecting to build Phase Two on the adjacent lands.

In addition, my client paid \$266,500.00 to build a new water line off Drinkwater Road as part of the development agreement for Phase One.

At the well-publicized opening of Phase One in June 2016, the then Mayor and several councilors attended. Phase One has been operating ever since and is a highly successful enterprise, both in isolation and as an integral component of GAIN's interrelated businesses on Vancouver Island.

Shortly after the opening, three resident households (**two from outside NCM**), mounted a campaign against the facility, claiming that it was too noisy and it did not have the proper zoning.

My client made countless attempts to address the noise concerns, by: conducting extensive testing with the top sound experts; voluntarily restricting operating hours; and removing certain types of vehicles from the circuit.

Other than the controls and restrictions imposed by my client, the operation and business has not changed from the beginning.

My client has operated within the bounds of their legal rights at all times. It has had a good relationship with NCM and has never received any violation, charge or warning from NCM's staff.

In 2017 NCM asked my client to apply to rezone the properties under one comprehensive by-law. NCM's staff believed that the rezoning would provide greater clarity and establish operating rules for the circuit to provide NCM and the public certainty in that regard. Given its good relationship with NCM and most of the community, my client, in good faith, agreed. A rezoning application was submitted for Phase One and a Phase Two configuration that extended the circuit into both the I2 and A4 lands owned by my client.

On June 5, 2017, as the rezoning application was being prepared, the same above mentioned households, opposed to the circuit, filed a lawsuit against my client and NCM seeking to close Phase One by challenging the zoning for the facility and alleging that the noise from the circuit constituted a nuisance at law.

My client nevertheless carried on with the rezoning efforts in good faith, meeting with stakeholders and interested parties, and holding an open house in April 2018, which was attended by approximately 500 people. My client listened to concerns that were expressed and revised the rezoning application to address those concerns.

In September 2018, my client filed a revised rezoning application responding to the public's comments and concerns, moving all of Phase Two into the lands already zoned I2 and proposing extensive environmental and sound mitigation measures, and offering substantial community amenities.

My client also filed a development permit application at the same time, which is permitted by the existing I2 zoning and also consistent with the rezoning, if approved. At the request of NCM my client agreed, again as a matter of good faith, that NCM could wait to issue the development permit until after the rezoning application was addressed.

Meanwhile, in September 2018, my client, and subsequently NCM, applied to dismiss the lawsuit regarding the zoning and to remove NCM as a Defendant. During that application, NCM informed the Supreme Court of British Columbia that my client was operating lawfully and that both the I2 and C8 zoning were appropriate for the operation of the circuit. On October 11 2018, that application succeeded. The zoning claims were dismissed and NCM was removed as a Defendant.

The nuisance part of the lawsuit persisted until only shortly after examinations for discovery of the plaintiffs were held in early 2019, after which the plaintiffs agreed to the dismissal of the rest of the lawsuit.

After that, they focused their attention of a new series of complaints and opposing the rezoning application. Furthermore, after the dismissal of the lawsuit, my client became aware of the involvement of two of those same plaintiffs in NCM's elections, even though they were not residents of NCM.

As part of the rezoning application, my client was asked by NCM's staff to provide a variety of concessions. Those included:

1. A limit on sound;
2. Offsite monitors to gauge the sound within the community;
3. Real time readings for the sound;
4. A \$5,000.00 penalty for each breach of the sound limits;
5. A limit on hours of operation;
6. A limit on days of operation (statutory holidays); and
7. A limit on the type of cars allowed on the track (street legal).
(the "Concessions")

In addition to the Concessions, my client was also asked:

1. To transfer to NCM a portion of the lands for use as a site for a water storage reservoir;
2. To license to NCM or the Cowichan Trail Stewardship Society a significant portion of the lands (approximately 100 acres);
3. To make the circuit available to the Vancouver Island Karting Association for its use for a minimum of 6 events a year;
4. To transfer to NCM a corridor of the land along Bings Creek (approximately 40 acres);

5. To make a further financial contribution to NCM of \$600,000.00 for environmental and habitat enhancement projects for streams and other waterbodies and/or the construction of a trail up Mount Prevost;
6. To construct, to the satisfaction of NCM a Water Reservoir at a cost of approximately \$2.5 million;
7. To construct, to NCM's satisfaction, Drinkwater Road from Highway 18; and
8. To register all of the above in a covenant.
(the "Amenities").

Despite all of the above NCM council voted (5-2) against the rezoning, evidently on the basis of late submissions from the Cowichan Tribes (who had earlier indicated support, was otherwise disinterested and refused to meet with my client).

The rejection of the rezoning was surprising to my client as it is otherwise entitled to a development permit, and the Concessions and Amenities are only available by way of rezoning.

My client is, of course, content to save the millions of dollars that the Amenities would cost and to not have any Concessions apply, but is extremely disappointed that so much time has been wasted on a fruitless rezoning process.

In particular because the public discussion of the rezoning process was used by a small group of residents as a platform to spread numerous lies about the facility and to circulate personal and racist attacks against my client's owners and staff.

My client has followed the law slavishly. It went above and beyond what is required to be a good neighbor and citizen by committing to the Concessions and agreeing to provide the Amenities.

My client has issued contracts, booked clients and has mobilized equipment to the site to commence construction of Phase Two, based on the issuance of the development permit.

By copy of this letter to NCM my client requests that NCM now move forward and issue the development permit for Phase Two.

Be advised that should the development permit be refused or some other action be taken to interfere with my client's lawful rights to establish and operate its business, my client will pursue all legal remedies available.

In the circumstances, having invested so much time and money in reliance on NCM's assurances and conduct to date, it will be left with no other choice.

I remain

Yours truly,

HUTCHISON OSS-CECH MARLATT

Per:

A handwritten signature in black ink, appearing to be 'L. Oss-Cech', written over a horizontal line.

Lorenzo G. Oss-Cech

lgo/ed

cc. North Cowichan Building Department – by hand
Clients.
Sean Hern

October 25, 2019

Prospero No: DP000155
Folio No: 29019-030
File No: 3060-20 17.24

Mark Holland
Holland Planning Innovations Inc.
mark@hollandplan.com

Dear Mr. Holland

RE: Development Permit for Vancouver Island Motor Circuit - Lot A, Drinkwater Road¹

I am writing to advise that I am obliged to deny development permit application DP0000155 on the basis that the proposed land use does not comply with Zoning Bylaw 2950.

I have not come to this conclusion lightly. I appreciate that it is your client's position that the development proposed in the application is for the same land use as under the development permit issued by North Cowichan for Phase 1 of the Vancouver Island Motor Circuit and, as such, there has been a past determination that the land use is in compliance with Zoning Bylaw 2950. However, upon careful review, I have concluded that the proposed land use is not permitted under Zoning Bylaw No. 2950. "Motor vehicle testing and driver training facility" is not listed as a permitted use in the Industrial Heavy (I-2 zone), and I have found no permitted use within the I2 zone that includes that use.

Please be advised that Section 23 of Delegation of Authority Bylaw No. 3734 allows you to have my decision to deny the development permit application reconsidered by Council. Section 23 provides as follows:

"Land use approvals – reconsideration

23 (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.

¹ SECTION 4 RANGE 1 SOMENOS EXCEPT PLAN EPP60766. - PID: 009-751-297

(2) Where the owner wishes to have Council reconsider a decision made under the delegated authority under section 22 of this bylaw:

(a) The owner must, within 30 days of the decision having been communicated to the owner, make an application in writing to the Corporate Officer, which application must include the following:

- (i) A description of the decision sought to be reconsidered by Council;
- (ii) The date of the decision;
- (iii) The name of the delegate who made the decision;
- (iv) The grounds on which reconsideration is being requested; and,
- (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.

(b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.

(c) The Corporate Officer must:

- (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
- (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
- (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.

(d) In reconsidering the decision, the Council must consider all the material before it.

(e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.

(f) Council is entitled to adjourn the reconsideration of the decision; and,

(g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council."

A copy of Bylaw No. 3734 is enclosed for your reference.

Sincerely

A handwritten signature in blue ink, appearing to be 'Rob Conway', with a long horizontal flourish extending to the right.

Rob Conway, MCIP, RPP
Director
PLANNING AND BUILDING DEPARTMENT

Reply Attention of: Sean Hern
Direct Dial Number: 250 405 1982
Email Address: shern@farris.com

FARRIS

File No: 041125-0001

October 30, 2019

BY EMAIL

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan BC V9L 6A1

Attention: Corporate Officer
(karen.robertson@northcowichan.ca)

Dear Sirs/Mesdames:

**Re: Development Permit for Vancouver Island Motor Circuit - Lot
A, Drinkwater Road, Section 4 Range 1 Somenos Except Plan
EPP60766 - PID: 009-751-297**

We write on behalf of 1909988 Ontario Limited ("**VIMC**") the owner of the above-noted lands and the applicant in development permit application DP0000155 ("**VIMC's Development Permit Application**").

Pursuant to section 23(1) of the Delegation of Authority Bylaw 3734, VIMC hereby requests a reconsideration by Council of the decision of Rob Conway, Director of Planning, dated October 25, 2019, a copy of which is attached hereto (the "**Decision**"). In the Decision, Mr. Conway denied VIMC's Development Permit Application on the basis that the proposed land use in did not comply with Zoning Bylaw 2950.

The grounds on which reconsideration is requested are three-fold:

1. First, a decision of whether to issue a development permit is an assessment of the application in light of the municipality's Official Community Plan. It is not a land use decision, as has been made in this case by the Director of Planning. To proceed otherwise is to exceed the statutory jurisdiction delegated in respect of development permit applications. There are many examples of the court's enforcement of this constraint on municipal jurisdiction in relation to development permit applications, including: *Westfair Foods Ltd v Saanich (District)* (1997), 49 BCLR (3d) 299 (C.A.); *Rocky Point Metalcraft Ltd. v. Cowichan Valley (Regional District)*, 2012 BCSC 756; and *0742848 B.C. Ltd. v. Squamish (District)*, 2011 BCSC 747.
2. Second, the suggestion that the VIMC Development Permit Application may not comply with the I2 zoning for the purposes of the development permit application analysis is arbitrary and irrational in light of VIMC having been issued a development permit in 2015 for the adjacent I2 lands and having operated without interference on those lands in essentially an identical manner as intended for the subject lands. Moreover, as you know, North Cowichan's Planning Department repeatedly confirmed in writing to VIMC that the uses on the adjacent I2 land were consistent with *both* the I2 zoning and the C8 zoning that is present there. A copy of that correspondence is enclosed for your reference. Further, North Cowichan's

FARRIS LLP

3rd Floor - 1005 Langley Street Victoria, BC Canada V8W 1V7
Tel 250 382 1100 farris.com

October 30, 2019

- 2 -

FARRIS

lawyer filed pleadings and made submissions to the BC Supreme Court on behalf of North Cowichan to the same effect.

3. Third, and alternatively, the planned use for the subject lands is not singular, but is rather a collection of a number of different uses, and even if North Cowichan were to be concerned that some of those uses may not be consistent with the I2 zoning, many of the uses clearly are (for example, motor vehicle storage, repair, sales, servicing, driving trade school and accessory uses). Accordingly, the matter of whether the user operates in compliance with the zoning in the future is, at most, a matter of municipal enforcement and not a basis to deny the development permit application: see the case authority cited in point 1, above. VIMC is committed to using the lands in accordance with the I2 zoning. If there is a difference of opinion at some point in the future about what precisely that is, it may have to be resolved, but clearly many of the planned and potential uses are expressly and directly authorized in the I2 zone, and VIMC will make use of circuit and facilities accordingly. As a result, in the process of considering the VIMC Development Permit Application, there is no basis to presume that the owner will not use the land in a manner consistent with the current zoning.

On the basis of the above, we hereby request that the VIMC Development Permit Application be reconsidered and the requested development permit issued forthwith.

Yours truly,

FARRIS LLP

Per:

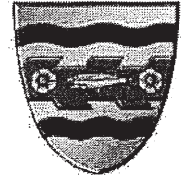


Sean Hern

Enclosures

cc. Sukhbir Manhas

Municipality of North Cowichan



7030 Trans Canada Highway, Box 278
Duncan, BC V9L 3X4

Telephone: (250) 746-3100
Fax: (250) 746-3139
www.northcowichan.ca

November 12, 2013

File: 0930-20 CVH

Mr. John D. Srebot, General Counsel
Auto World Imports
220 Steeles Avenue West
Thornhill, ON L4J 1A1

Dear Mr. Srebot

Re: Proposed Land Acquisition – Lot A, Section 3, Range 1, Somenos District, Plan EPP35449

The purpose of this letter is to clarify the Municipality's position regarding the proposed use of lands legally described as Lot A, Section 3, Range 1, Somenos District, Plan EPP35449.

The subject property is currently split-zoned I2 (Industrial Heavy Zone) and C8 (Rural Recreation Zone).

The prospective purchaser has verbally outlined their intended use of the properties as a "Recreational Testing Facility" for motor vehicles. While not specifically listed as permitted use under the *Zoning Bylaw*, No. 2950, it is the Municipality's position that the proposed "Recreational Testing Facility" would be considered a permitted use under the definitions of "Recreational Facility" (C8) and "Industrial Use" (I2) so this use is permitted on any portion of the subject property.

Secondary or accessory facilities, such as space for office and meetings, motor vehicle repair, food service, etc. are acceptable and would be permitted on any portion of the subject property. Any proposed use of the property is subject to issuance of a Development Permit as per the Municipality's *Official Community Plan Bylaw*, No. 3450, and *Zoning Bylaw*, No. 2950.

Any use of the subject property for racing, or as a "Race Track" for either go-karts or other motor vehicles must be contained to that portion of the property that has C8 zoning. Racing and "Race Track" are not permitted uses in the I2 zone.

Please feel to contact us directly if you require any additional clarification or supporting information.

Sincerely

Dave Devana
Chief Administrative Officer

devana@northcowichan.ca

pc P. Trzewik
S. Mack, Director of Planning and Development

ddnov12_2013Indt_Srebot_Highway 18

cowichan



GAIN
2546 Government Street
Victoria, BC V8T 4P7

November 4, 2015

Municipality of North Cowichan
7030 Trans-Canada Highway, Box 278
Duncan, British Columbia V9L 3X4

To Whom It May Concern,

We write with respect to our planned vehicle testing and driver training facility at 4063 Cowichan Valley Highway.

Because the property is split-zoned, and our facility design will have the driving track extending across both the I2 and C8 portions of the property, we are seeking further comfort that the activities proposed for the vehicle testing and driver training facility are compliant with local zoning. Please confirm that the following activities are permitted in both the I2 and C8 zones:

On the Driving Track:

1. Hold driving programs of up to 100 cars and drivers per day in different areas of the facility;
2. Use the track in different configurations with different groups;
3. Single vehicles driving the track with the goal to achieve and improve "fast lap" times;
4. Single vehicles practicing emergency braking, lane change, cornering, slalom and other emergency manoeuvres, some at high speed;
5. Multiple vehicles on the track simultaneously, driving during club or manufacturers activities to achieve and improve their "fast laps" however not to race each other or hold events that would be considered a race.
6. Change settings of the cars and guide the drivers to improve lap times further and further;

In the Pit Area:

7. Changing tires and conducting minor maintenance;
8. Set up work on cars to improve their lap times.

Should you have any questions, please do not hesitate to contact me. I can be reached by email at ptrzewik@gain-vi.ca or by phone at (250) 818-8038.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Trzewik', written over a faint, curved line.

Peter Trzewik

November 4, 2015

Mr. Peter Trzewik
GAIN
2546 Government Street
Victoria, BC V8T 4P7

Dear Mr. Trzewik

**Re: 4063 Cowichan Valley Highway - (Lot A, Section 3, Range 1, Somenos District,
Plan EPP35449 and Section 4, Range 1, Somenos District)**

We write to you further to your letter of November 4, 2015, in which you have requested confirmation of permitted activities on the above-noted lands owned by 1909988 ONTARIO LTD.

The Municipality of North Cowichan confirms that the eight activities (listed 1 through 8 in your letter), are permitted on the split-zoned C8 (Commercial Rural Recreation Zone) and I2 (Industrial Heavy Zone) properties as they are activities consistent with a vehicle testing facility.

We trust the above provides the information you require. If you have any questions or require any clarification please contact me as noted above.

Sincerely



Dave Devana
Chief Administrative Officer

dave.devana@northcowichan.ca

c: S. Mack, Director of Development Services



BC CLIMATE ACTION
COMMUNITY 2014

October 25, 2019

Prospero No: DP000155
Folio No: 29019-030
File No: 3060-20 17.24

Mark Holland
Holland Planning Innovations Inc.
mark@hollandplan.com

Dear Mr. Holland

RE: Development Permit for Vancouver Island Motor Circuit - Lot A, Drinkwater Road¹

I am writing to advise that I am obliged to deny development permit application DP0000155 on the basis that the proposed land use does not comply with Zoning Bylaw 2950.

I have not come to this conclusion lightly. I appreciate that it is your client's position that the development proposed in the application is for the same land use as under the development permit issued by North Cowichan for Phase 1 of the Vancouver Island Motor Circuit and, as such, there has been a past determination that the land use is in compliance with Zoning Bylaw 2950. However, upon careful review, I have concluded that the proposed land use is not permitted under Zoning Bylaw No. 2950. "Motor vehicle testing and driver training facility" is not listed as a permitted use in the Industrial Heavy (I-2 zone), and I have found no permitted use within the I2 zone that includes that use.

Please be advised that Section 23 of Delegation of Authority Bylaw No. 3734 allows you to have my decision to deny the development permit application reconsidered by Council. Section 23 provides as follows:

"Land use approvals – reconsideration

23 (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.

¹ SECTION 4 RANGE 1 SOMENOS EXCEPT PLAN EPP60766. - PID: 009-751-297

(2) Where the owner wishes to have Council reconsider a decision made under the delegated authority under section 22 of this bylaw:

(a) The owner must, within 30 days of the decision having been communicated to the owner, make an application in writing to the Corporate Officer, which application must include the following:

- (i) A description of the decision sought to be reconsidered by Council;
- (ii) The date of the decision;
- (iii) The name of the delegate who made the decision;
- (iv) The grounds on which reconsideration is being requested; and,
- (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.

(b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.

(c) The Corporate Officer must:

- (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
- (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
- (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.

(d) In reconsidering the decision, the Council must consider all the material before it.

(e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.

(f) Council is entitled to adjourn the reconsideration of the decision; and,

(g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council."

A copy of Bylaw No. 3734 is enclosed for your reference.

Sincerely

A handwritten signature in black ink, appearing to be 'Rob Conway', with a long horizontal stroke extending to the right.

Rob Conway, MCIP, RPP
Director
PLANNING AND BUILDING DEPARTMENT



The Corporation of the District of North Cowichan

Delegation of Authority Bylaw

Bylaw 3734

A bylaw to provide for the delegation of certain powers, duties and functions, including those specifically established by an enactment, to its officers and employees

Contents

1	Interpretation
2	Committee of the whole
3	Municipal audit
4	Parcel tax roll review panel
5	Notices
6	Business licenses
7	Business licenses – reconsideration
8	Outdoor burning ban
9	Personnel administration
10	Agreements – procurement
11	Agreements – miscellaneous
12	Settlement of claims
13	Bylaw enforcement
14	Land sales
15	Land purchases
16	Registration of statutory rights-of-way and covenants
17	Builders liens
18	Discharge of obsolete charges
19	Encroachments within road rights of way
20	Temporary municipal land and street use
21	Municipal Forest Reserve closures
22	Land use approvals
23	Land use approvals – reconsideration
24	Parcel frontage exemptions
25	Strata conversions
26	Works and services agreements
27	Excess or extended services
28	Petitions for local area services
29	Severability
30	Repeal
31	Title

WHEREAS Division 6 of Part 5 of the *Community Charter* empowers a municipal council, by bylaw, to delegate its powers, duties and functions, including those specifically established by an enactment, to the extent provided;

AND WHEREAS Council considers that there are a number of circumstances where delegation of certain of its powers, duties and functions would foster good government;

NOW THEREFORE, the Council of The Corporation of the District of North Cowichan enacts as follows:

Interpretation

1 (1) In this bylaw:

"Approving Officer" means the person so appointed under section 77 [*Appointment of municipal approving officers*] of the *Land Title Act*;

"Audit Committee" means the standing committee of Council established under section 170 [*Audit committee*] of the *Community Charter*;

"Chief Administrative Officer" means the municipal officer appointed under section 147 [*Chief administrative officer*] of the *Community Charter*;

"Corporate Officer" means the municipal officer appointed under section 148 [*Corporate officer*] of the *Community Charter*;

"Department Head" means the persons appointed by the Chief Administrative Officer as the Corporate Officer, the Deputy Corporate Officer, the Information Management Officer, the Municipal Forester, the Senior Manager of Engineering, and the Manager of Engineering Development and Capital Projects, and the persons appointed by the Chief Administrative Officer as a director, senior manager, or manager who reports directly to the Chief Administrative Officer or to the General Manager, Community Services, the General Manager, Development and Engineering Services, the General Manager, Financial and Protective Services, or the General Manager, Corporate Services.

"Director of Engineering" means the person so appointed by the Chief Administrative Officer;

"Director of Information Technology and GIS" means the person so appointed by the Chief Administrative Officer;

"Director of Parks and Recreation" means the person so appointed by the Chief Administrative Officer;

"Director of Planning and Building" means the person so appointed by the Chief Administrative Officer;

"General Manager, Community Services" means the person so appointed by the Chief Administrative Officer;

"General Manager, Development and Engineering Services" means the person so appointed by the Chief Administrative Officer;

"General Manager, Financial and Protective Services" means the municipal officer appointed under section 149 [*Financial officer*] of the *Community Charter*;

"General Manager, Corporate Services" means the person so appointed by the Chief Administrative Officer;

"Local Assistant to the Fire Commissioner" means a person authorized to exercise the powers of a local assistant under the *Fire Services Act*;

"Manager, Fire and Bylaw Services" means the person so appointed by the Chief Administrative Officer;

"Management Staff" means the persons appointed by the Chief Administrative Officer as the Fire Chief or Deputy Fire Chief of a municipal fire hall, the Chief Building Inspector, the Technical Services Specialist, the Business Applications Coordinator, the Senior Bylaw Compliance Officer, the Senior Environmental Specialist, the Community Planning Coordinator, the Development Planning Coordinator, the Human Resources Advisor, the Health, Safety and Disability Management Advisor, the Human Resources Coordinator, the Payroll Coordinator, the Executive Assistant, the Records and Information Management Assistant, the Administrative Assistant, the Communications and Public Engagement Coordinator, the Administrative Supervisor, the Assistant Manager of Operations, a Foreperson, the Facilities Supervisor, and all managers who report directly to a Department Head.

"Municipal Forester" means the person so appointed by the Chief Administrative Officer.

- (2) Where this bylaw delegates a power, duty or function of Council to a named position, the delegation is to the person who holds the position, and to any person who is the deputy of, or who is authorized to act for, that person.
- (3) Unless a power, duty or function of Council has been expressly delegated by this bylaw or another municipal bylaw, the powers, duties and functions of Council remain with Council.
- (4) A person to whom a power, duty or function has been delegated under this bylaw, or another bylaw, has no authority to further delegate to another person any power, duty or function that has been delegated to them by this bylaw.

Committee of the whole

- 2 Council delegates its powers to give direction to staff on matters being considered by the committee of the whole to the committee of the whole.

Municipal audit

- 3 Council delegates its powers, duties and functions under Division 2 of Part 6 of the *Community Charter* to the Audit Committee.

Parcel tax roll review panel

- 4 Council delegates its duty under section 204 (2) [*Parcel tax roll review panel*] of the *Community Charter* to the General Manager, Financial and Protective Services.

Notices

- 5 (1) Council delegates its duty to give notice under the following sections of the *Community Charter* to the Corporate Officer:

- (a) Section 26 (1) *[Notice of proposed property disposition]*;
 - (b) Section 40 (3) *[Permanent closure and removal of highway dedication]*;
 - (c) Section 59 (2) *[Powers to require and prohibit]*; and
 - (d) Section 127 (1) (b) *[Notice of council meetings]*.
- (2) Council delegates its duty to give notice under the following sections of the *Community Charter* to the General Manager, Financial and Protective Services:
- (a) Section 99 (3) *[Annual meeting on report]*; and
 - (b) Section 227 (1) *[Notice of permissive tax exemptions]*.
- (3) Council delegates its duty to give and file notices under the following sections of the *Local Government Act* to the Director of Planning and Building:
- (a) Section 466 (1) *[Notice of public hearing]*;
 - (b) Section 467 (1) *[Notice if public hearing waived]*;
 - (c) Section 494 (1) *[Public notice and hearing requirements]*;
 - (d) Section 499 (1) *[Notice to affected property owners and tenants]*;
 - (e) Section 503 (1) and (3) *[Notice of permit on land title]*; and
 - (f) Section 594 (1) *[Notice on land titles]*.

Business licenses

- 6** Council delegates its powers, duties and functions under sections 8(6), 15 and 60 of the *Community Charter* to grant, refuse, suspend, or cancel a business license to the General Manager, Financial and Protective Services.

Business licenses - reconsideration

- 7**
- (1) A business license applicant or holder that is subject to a decision made under the delegated authority under section 6 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.
 - (2) Where a business license applicant or holder wishes to have Council reconsider a decision made under the delegated authority under section 6 of this bylaw:
 - (a) The business license applicant or holder must, within 30 days of the decision having been communicated to the business license applicant or holder, make an application in writing to the Corporate Officer, which application must include the following:
 - (i) A description of the decision sought to be reconsidered by Council;
 - (ii) The date of the decision;
 - (iii) The name of the delegate who made the decision;
 - (iv) The grounds on which reconsideration is being requested; and,
 - (v) A copy of any materials that the business license applicant or holder wishes Council to take into account when reconsidering the decision.

- (b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.
- (c) The Corporate Officer must:
 - (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above; and,
 - (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.
- (d) In reconsidering the decision the Council must consider all the material before it.
- (e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the business license applicant or holder. Council may then hear from staff in relation to any new information raised by the business license applicant or holder in its submissions to Council.
- (f) Council is entitled to adjourn the reconsideration of the decision; and,
- (g) After hearing from staff and the business license applicant or holder, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council.

Outdoor burning ban

- 8 Council delegates its powers under section 8(3)(g) of the *Community Charter* to ban outdoor burning in all or part of the municipality to the Local Assistant to the Fire Commissioner, subject to a fire hazard existing, the ban being for not more than 90 days, and the public promptly being notified of the ban.

Personnel administration

- 9
 - (1) Council delegates its powers to appoint an acting Chief Administrative Officer to temporarily act on behalf of the Chief Administrative Officer in the Chief Administrative Officer's absence to the Chief Administrative Officer.
 - (2) Council delegates its powers to appoint, promote, and discipline officers (other than the Chief Administrative Officer) and employees to the Chief Administrative Officer.
 - (3) Council delegates its power to approve compensation for officers (other than the Chief Administrative Officer) and employees to the Chief Administrative Officer, subject to sufficient funds having been allocated and approved by Council under the financial plan bylaw.
 - (4) Council delegates its powers to terminate the employment of employees for cause to the Chief Administrative Officer.
 - (5) Council delegates its powers to terminate the employment of employees without cause to the Chief Administrative Officer, subject to any severance paid to the employee being in accordance with the notice provisions of any applicable employment agreement or

the common law principles applicable to payments in lieu of notice on termination of employment, and sufficient funds having been allocated and approved by Council under the financial plan bylaw.

- (6) Council delegates its powers to settle labour grievances or disputes to the Chief Administrative Officer, subject to the settlement being in accordance with common law principles and sufficient funds having been allocated and approved by Council under the financial plan bylaw to satisfy the settlement.

Agreements - procurement

- 10**
- (1) Council delegates its powers to enter into agreements for the purchase of works, services, or chattels having a value of not more than \$500,000.00 to the Chief Administrative Officer.
 - (2) Council delegates its powers to enter into agreements for the purchase of works, services, or chattels having a value of not more than \$200,000.00 to the General Manager, Corporate Services, the General Manager, Financial and Protective Services, the General Manager, Community Services, the General Manager, Development and Engineering Services, the Director of Planning and Building, the Director of Engineering, the Director of Parks and Recreation, and the Director of Information Technology and GIS.
 - (3) Council delegates its powers to enter into agreements for the purchase of works, services, or chattels having a value of not more than \$75,000.00 to Department Heads.
 - (4) Council delegates its powers to enter into agreements for the purchase of works, services, or chattels having a value of not more than \$10,000.00 to Management Staff.
 - (5) For the purpose of subsections (1) to (4) above, the delegated authority to enter into an agreement is subject to the agreement not requiring the approval or consent of the electors and sufficient funds having been allocated and approved by Council under the financial plan bylaw, and, without limiting the substance of the discretion delegated therein, such discretion is subject to the delegate adhering to the procurement processes endorsed by Council from time to time.

Agreements - miscellaneous

- 11**
- (1) Council delegates the power to enter into agreements in relation to grant monies for approved projects to the General Manager, Financial and Protective Services.
 - (2) Council delegates its powers to enter into agreements for information sharing to the General Manager, Corporate Services.
 - (3) Council delegates its powers to enter into agreements for boat moorage at municipally-owned or operated wharves to the General Manager, Community Services.
 - (4) Council delegates its powers to enter into agreements for authorizing encroachments caused by road widening to the Director of Engineering.
 - (5) Council delegates its powers to enter into agreements for the following purposes to the Director of Parks and Recreation:
 - (a) Facility use or rental agreements for municipal recreation facilities;
 - (b) Rental agreements for parks and municipal forest reserve lands, subject to the agreement being for a term of not more than 3 months; and

- (c) Health promotion and rehabilitation service agreements, subject to sufficient funds having been allocated and approved by Council under the financial plan bylaw.
- (6) Council delegates its powers to amend, renew, extend or suspend agreements previously approved and authorized by Council or under a delegated authority under this bylaw to the Chief Administrative Officer.

Settlement of claims

- 12** Council delegates its powers to settle claims, whether legal proceedings have been commenced or not, to the Chief Administrative Officer, subject to the settlement being for not more than \$50,000.00 and sufficient funds having been allocated and approved by Council under the financial plan bylaw to satisfy the settlement.

Bylaw enforcement

- 13** (1) Council delegates its powers to commence and prosecute bylaw enforcement proceedings under section 274 [*Actions by municipality*] of the *Community Charter* to the General Manager, Financial and Protective Services, subject to there being urgency in the commencement of the proceedings, and the Chief Administrative Officer reporting to Council, as soon as reasonably practicable, at a regular meeting of Council as to the commencement of the proceedings, the urgency necessitating commencement of the proceedings, and the status of the proceedings.
- (2) Council delegates its duty under section 269 (1) [*Hearing of disputes*] of the *Community Charter* to refer disputed tickets to the Provincial Court for a hearing to the General Manager, Financial and Protective Services.

Land sales

- 14** Council delegates its powers to dispose of municipal land, or an interest in municipal land, to the Chief Administrative Officer, subject to Council having first passed a resolution authorizing the disposition of the land or interest in it, and the disposition being for a price that is not less than 95% of the value set by Council in its resolution authorizing the disposition of the land or interest in it.

Land purchases

- 15** Council delegates its powers to acquire land, or interests in land, to the Chief Administrative Officer, subject to the purchase being for a municipal project approved by Council and sufficient funds having been allocated and approved by Council under the financial plan bylaw.

Registration of statutory rights-of-way and covenants

- 16** Council delegates its powers to authorize the registration of statutory rights-of-way and covenants over municipal lands that are under development to the Approving Officer.

Builders liens

- 17** Council delegates its powers to file and discharge notices of interest under the *Builders Lien Act* to the General Manager, Corporate Services.

Discharge of obsolete charges

- 18** Council delegates its powers to discharge obsolete charges and legal notations from the title to real property to the Approving Officer.

Encroachments within road rights of way

- 19** Council delegates its powers to authorize encroachments within road rights-of-way to the Chief Administrative Officer.

Temporary municipal land and street use

- 20**
- (1) Council delegates its powers to issue licenses of occupation for non-exclusive uses of municipal land to the Chief Administrative Officer, subject to the license being for a term of not more than 12 months.
 - (2) Council delegates its powers to authorize sub-leases or sub-licenses of municipal property, and to assign municipal leases and licenses, to the Chief Administrative Officer.
 - (3) Council delegates its powers to issue special event permits for temporary, non-exclusive uses of municipal land, including temporary private uses of municipal streets for parades, walk-a-thons, fundraisers, races and similar events to the General Manager, Community Services, subject to the permit being for a term of not more than 72 hours.
 - (4) Council delegates its powers to authorize the installation of additional equipment on existing telecommunications towers on municipal property to the Chief Administrative Officer.
 - (5) For the purpose of subsections (1) to (4) above, the Chief Administrative Officer or Director of Engineering may set conditions, including conditions relating to compensation, indemnification, insurance, security, machinery, equipment, times of use, and compliance with applicable laws and any restrictions on title to property to which the license or permit relates.

Municipal Forest Reserve closure

- 21** Council delegates its powers to close or restrict use of all or part of the Municipal Forest Reserve, or lands managed for forestry purposes, to the Municipal Forester, subject to the closure or restriction as to use being for not more than 30 days, the closure or restriction as to use being during active forestry operations or being necessary to protect against a danger of fire or another danger, and the public being promptly notified of the closure or restriction.

Land use approvals

- 22**
- (1) Council delegates its powers, duties and functions under sections 490 [*Development permits*] and 491 [*Development permits: specific authorities*] of the *Local Government Act*, to the Director of Planning and Building, subject to there being no variances of municipal bylaws involved.
 - (2) Council delegates its powers under section 493(1)(a) [*Temporary use permits for designated and other areas*] of the *Local Government Act* to:
 - (i) Approve temporary use permits in order to allow property owners to continue to occupy an existing dwelling while a replacement dwelling is under construction; and
 - (ii) Sign temporary use permits approved by Council, to the Director of Planning and Building.
 - (3) Council delegates its powers to require security under section 502 [*Requirement for security as a condition of land use permit*] of the *Local Government Act* in respect of

matters delegated under subsections (1) and (2) above to the Director of Planning and Building.

Land use approvals – reconsideration

- 23** (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.
- (2) Where the owner wishes to have Council reconsider a decision made under the delegated authority under section 22 of this bylaw:
- (a) The owner must, within 30 days of the decision having been communicated to the owner, make an application in writing to the Corporate Officer, which application must include the following:
 - (i) A description of the decision sought to be reconsidered by Council;
 - (ii) The date of the decision;
 - (iii) The name of the delegate who made the decision;
 - (iv) The grounds on which reconsideration is being requested; and,
 - (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.
 - (b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.
 - (c) The Corporate Officer must:
 - (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
 - (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
 - (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.
 - (d) In reconsidering the decision the Council must consider all the material before it.
 - (e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.
 - (f) Council is entitled to adjourn the reconsideration of the decision; and,
 - (g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council.

Parcel frontage exemptions

- 24** Council delegates its powers to exempt a parcel from the minimum amount of frontage on a highway required under section 512 (2) *[Minimum parcel frontage on highway]* of the *Local Government Act* to the Approving Officer.

Strata conversions

- 25** Council delegates its powers under section 242(10)(a) *[Approval for conversion of previously occupied buildings]* of the *Strata Property Act* to approve strata conversions to the Approving Officer, subject to the conversion being in relation to a two-family residential building.

Works and services agreements

- 26** Council delegates its powers to enter into agreements for works and services under section 5 of the Works and Services Bylaw 1986, as amended or replaced from time to time, to the Director of Engineering.

Excess or extended services

- 27** Council delegates its powers, duties and functions under sections 507 *[Requirements for excess or extended services]* and 508 *[Latecomer charges and cost recovery for excess or extended services]* of the *Local Government Act* to the Director of Engineering.

Petitions for local area services

- 28** Council delegates its powers to require that petitions for local area services include information in addition to that which is required under section 212 (2) *[Petition for local area service]* of the *Community Charter* to the Director of Engineering.

Severability

- 29** If any provision of this bylaw is, for any reason, found invalid by a court of competent jurisdiction, the provision must be severed and the remainder of the bylaw left enforceable and in effect.

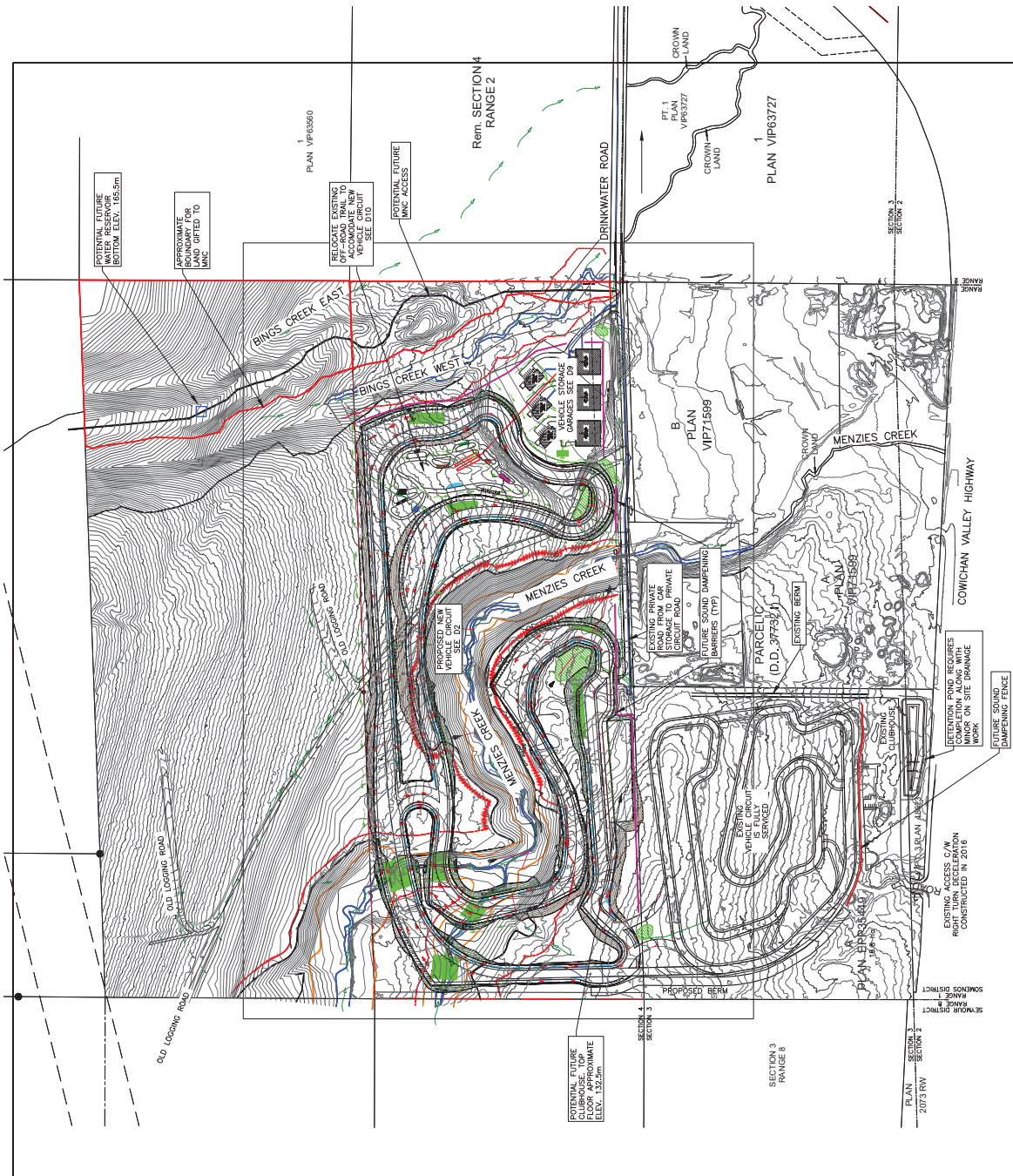
Repeal

- 30** Bylaw 3616, "Delegation of Authority Bylaw" is repealed.

Title

- 31** This bylaw may be cited as "Delegation of Authority Bylaw No. 3734, 2019".

Read a first, second and third time on September 18, 2019
Adopted on October 02, 2019



This information has been provided subject to the federal *Copyright Act* and in accordance with the provincial *Freedom of Information and Protection of Privacy Act*.

DRAWING LIST	
DRAWING NUMBER	DRAWING NAME
01	LARGE SCALE SITE PLAN
02	CIRCULAT DRIVEWAY SITE PLAN
03	SITE CLIPPING PLAN
04	RE-VEGETATION PLAN
05	SOUTH MENZIES CREEK CROSSING - PLAN AND SECTIONS
06	SOUTH MENZIES CREEK CROSSING - CULVERT PROFILE AND CALCULATIONS
07	NORTH MENZIES CREEK CROSSING - PLAN AND SECTIONS
08	NORTH MENZIES CREEK CROSSING - CULVERT PROFILE AND CALCULATIONS
09	OAR STORAGE AREA SERVING PLAN
10	OAR STORAGE AREA SERVING PLAN



CLIENT 1909988 ONTARIO LTD.

PROJECT	VIMC PHASE 2 DEVELOPMENT PLAN

88804	DP	D1
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MUN. FILE	SHEET 10
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JEA J.E. ANDERSON
& ASSOCIATES
SURVEYORS -- ENGINEERS

1A — 3411 SHENTON ROAD, NANAIMO, B.C. V9T 2H1
TEL: 250 — 758 — 4631 FAX: 250 — 758 — 4660
E-MAIL: nanaimo@jeanderson.com

1A - 3411 SHENTON ROAD, NANAIMO, B.C. V9T 2H1
TEL: 250 - 758 - 4631 FAX: 250 - 758 - 4660
E-MAIL : nanaimo@jeanderson.com

Attachment 4 - Phase 2 Development Plan - ZB0000064

[illegible]

Industrial Heavy Zone (I2)

Permitted Uses

- 77 (1) The permitted uses for the I2 zone are as follows:
- All Industrial Light Zone (I1) Permitted Uses
 - Automobile Wrecking or Salvage Yard
 - Bulk Storage of Flammable and Combustible Liquids
 - Boat Terminals and Dock
 - Cannabis Production Facility
 - Helicopter Landing Pad
 - Mobile Food Service
 - Municipal/Regional Government Offices
 - Pier, Wharf, and Related Facility
 - Private Airplane Landing Strip
 - Railway Yard
 - Recycling Industrial Use
 - Sawmills, Pulpmills, and Planing Mills
 - Slaughterhouse
 - Temporary Mobile Home (subject to the Temporary Mobile Home Permit Bylaw)
 - Works Yard [BL2996, BL3000, BL3457, BL3467, BL3512, BL3657, BL3741, BL3754]

Minimum Lot Size

- (2) The minimum permitted lot size for the I2 zone is 16,000 m² (3.95 acres).

Minimum Frontage

- (3) The minimum permitted frontage for the I2 zone is 90 m (295.27').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the I2 zone is 50% of the lot area.

Minimum Setbacks

- (5) The minimum permitted setbacks for the I2 zone are as follows:
- (a) Principal Buildings
 - Yard, Front, 8.0 m (26.25'); 46 m (150.91') when abutting any Other Zone
 - Yard, Side, 0 m; 46 m (150.91') when abutting any Other Zone
 - Yard, Rear, 0 m; 46 m (150.91') when abutting any Other Zone
 - (b) Accessory Buildings and Structures (Excluding Fences)
 - Yard, Front, 8.0 m (26.25'); 46 m (150.91') when abutting any Other Zone
 - Yard, Side, 0 m; 46 m (150.91') when abutting any Other Zone
 - Yard, Rear, 0 m; 46 m (150.91') when abutting any Other Zone
 - (c) Despite the foregoing, the minimum permitted setback for any Lot Line which abuts an Arterial Highway is 18 m (59.05').
 - (d) Slaughterhouses
 - Yard, Front, 92 m (301.84')
 - Yard, Side, 92 m (301.84')
 - Yard, Rear, 92 m (301.84')

Industrial Light Zone (I1)

Permitted Uses

- 76** (1) The permitted uses for the I1 zone are as follows:
- Accessory Office
 - Accessory Dwelling Unit
 - Accessory Restaurant
 - Autobody Repair
 - Dry-cleaning Plant or Laundry
 - Cannabis Production Facility
 - Commercial Cardlock Facility
 - Custom Workshop
 - Fitness Centre/Gymnasium
 - Food and Beverage Processing
 - Fueling Installations
 - Laboratory
 - Industrial Use
 - Machine Shop
 - Mini-warehousing
 - Mobile Food Service
 - Motor Vehicle Repair
 - Motor Vehicle Sales and Repair
 - Recycling Depot
 - Repair Shop
 - Resource Use
 - Retail Lumber and Building Supply Yard
 - Retail of Motor Vehicle Parts and Accessories
 - Service Industry
 - Sign Shop
 - Storage Yard
 - Temporary Mobile Home (subject to the Temporary Mobile Home Permit Bylaw)
 - Tool and Equipment Sales, Rentals, and Services
 - Trade School
 - Truck Depot
 - Truck, Trailer, and Heavy Equipment Sales, Rentals, and Services
 - Veterinary Clinic
 - Warehouse
 - Wholesale [BL2996, BL3083, BL3512, BL3657, BL3741, BL3754]

Minimum Lot Size

- (2) The minimum permitted lot size for the I1 zone is 1,675 m² (18,030 sq. ft.).

Minimum Frontage

- (3) The minimum permitted frontage for the I1 zone is 30 m (98.43').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the I1 zone is 50% of the lot area.

Report

Date December 4, 2019

File: DP000155

To Council

From Rob Conway, Director of Planning and Building

Endorsed:



Subject Reconsideration of Development Permit Application DP000155

Purpose

To provide additional information regarding Council's reconsideration of Development Permit Application DP000155.

Background

At the November 6, 2019 Council meeting, a request to reconsider development permit application DP000155 for the "Phase 2" expansion of the Vancouver Island Motorsport Circuit (VIMC) was presented. A staff report outlining application, staff's decision to deny the application and other related information was provided to Council at that time (Attachment 1).

Because Council was in the process of reconsidering Zoning Amendment Bylaw No. 3761 (Bylaw No. 3761) and had decided to conduct a second public hearing before reconsidering the bylaw, Council decided to defer reconsideration of Development Permit Application DP000155 until it concluded its reconsideration of Bylaw No. 3761.

A letter dated November 26, 2019 from the legal counsel representing VIMC was recently received that provides additional information related to the development permit reconsideration request. (Attachment 2). The letter also requests that Council reconsider staff's decision to deny development permit application DP000155 at the December 4, 2019 Council meeting.

Discussion

The second public hearing for Bylaw No. 3761 is scheduled for December 9, 2019. Based on Council's November 6, 2019 resolution, it is expected that Council will reconsider development permit application DP000155 at the Council meeting following the public hearing on December 18, 2019. Should Council wish to advance the reconsideration of the development permit application decision to the December 4, 2019 Council meeting, available options are:

1. That reconsideration of Development Permit Application DP000155 be deferred until Council has concluded its reconsideration of Bylaw No. 3761.
2. That Council confirm the Director of Planning and Building's decision to deny Development Permit Application DP000155 due to non-compliance the Zoning Bylaw.

3. That Council set-aside the Director of Planning and Building's decision to deny Development Permit Application DP000155 due to non-compliance with the Zoning Bylaw and direct staff to process the development permit application in accordance with applicable policies, regulations and development permit guidelines.

Recommendation


For Council's information (no recommendation).

Attachments (2)

Attachment 1 – Nov. 6 Staff Report

Attachment 2 – Nov. 26 Letter From Sean Hern

Report

Date	November 6, 2019	File: DP000155
To	Council	
From	Rob Conway, Director of Planning and Building	Endorsed: 
Subject	Reconsideration of Development Permit Application DP000155	

Purpose

To provide an outline of the process for Council's reconsideration of Development Permit Application DP000155.

Background

A development permit application for the expansion of the Vancouver Island Motorsport Circuit (VIMC) at the Cowichan Valley Highway and Drinkwater Road was received by the Municipality in December, 2018. With the concurrence of the applicant, consideration of the development permit application was deferred pending a decision on a zoning amendment application for the same site. If approved, the rezoning application would have explicitly permitted "motor vehicle testing and driver training" and related uses as permitted uses on the subject land.

On October 4, 2019, Council denied Zoning Amendment Bylaw No. 3761 ("Bylaw No. 3761"). The owner's representative, in a letter dated October 15, 2019 (Attachment A), subsequently requested that a development permit for the Phase 2 expansion be issued. After reviewing the development permit application the Director of Planning and Building, who is delegated the authority to issue development permits by Council, concluded that the proposed uses of land in the Phase 2 expansion is not permitted by Zoning Bylaw No. 2950 (the "Zoning Bylaw"). In a letter dated October 25, 2019 (Attachment B), the applicant was advised that development permit application DP000155 was denied and that the decision could, upon request to the Municipality's Corporate Officer, be reconsidered by Council. On October 30, 2019, the Corporate Officer received a letter from the property owner's representative requesting reconsideration of the development permit application (Attachment C).

Discussion

Delegation of Authority Bylaw No. 3734:

Delegation of Authority Bylaw No. 3734 (Attachment D) delegates specified powers, duties and decision making authorities to designated Municipal officers and employees. Section 22 of the Bylaw delegates the authority to issue development permits that do not involve variances to Municipal Bylaws to the Director of Planning and Building. The delegated authority allows the Director to issue development permits without Council authorization, provided the permit is compliant with applicable bylaws.

Section 23 of Bylaw No. 3734 allows the owner of land that is subject to a decision made by Council's delegate to have the delegate's decision reconsidered by Council. The terms and conditions for reconsideration are provided in Section 23. In reconsidering the delegate's decision, Council may confirm the decision, amend the decision, or set the decision aside and substitute a decision of Council.

Zoning Bylaw No. 2950:

Development Permit Application DP000155 was denied because the primary use associated with development proposed in the application was not considered to be compliant with the Zoning Bylaw and the uses the Zoning Bylaw permits on the subject property. Primary uses proposed in the application include a five kilometre paved motor vehicle circuit and an off-road motor vehicle circuit. Secondary uses include a clubhouse and structures for repairing maintaining and storing motor vehicles. A plan showing the proposed development is provided in Attachment E.

The subject parcel is zoned Industrial Heavy (I2). The I2 zone (Attachment F) does not include "motor vehicle circuit", "motor vehicle testing and driver training facility", or similar-type uses that reasonably describe the uses intended for the Phase 2 expansion. In the absence a use within the zoning that permits the proposed land use, I was compelled to deny the development permit application.

The applicant and lawyers representing the property owner note that the Municipality's Planning Department previously issued a development permit for the Phase 1 motorsport circuit and contend that it is "arbitrary and irrational" to deny the Phase 2 development permit application when the I2 zoning that applies to much of Phase 1 also applies to Phase 2. While it is true that a development permit was issued for Phase 1, and a determination was made at that time that the Phase 1 motorsport circuit was a permitted use in the I2 zone, I did not authorize that permit and my analysis of the Zoning Bylaw led me to conclude that the development proposed in application DP000155 is not compliant with the applicable I2 zoning and therefore cannot be authorized by development permit.

Procedural Considerations and Recommendations:

Mayor Siebring has required, under Section 131 of the *Community Charter*, that Council's October 4, 2019 decision to deny third reading of Bylaw No. 3761 be reconsidered. It has been recommended that Council conduct a public hearing prior to reconsideration of Bylaw No. 3761. As the basis for denying application DP000155 was non-compliance with the Zoning Bylaw and the zoning issue would be resolved should Council decide to adopt Bylaw No. 3761, it is recommended that reconsideration of refusal of development permit application DP000155 be deferred until the reconsideration of Bylaw No. 3761 is concluded.

Options

1. That Council confirm the Director of Planning and Building's decision to deny Development Permit Application DP000155 due to non-compliance the Zoning Bylaw.
2. That Council set-aside the Director of Planning and Building's decision to deny Development Permit Application DP000155 due to non-compliance with the Zoning Bylaw and direct staff to process the development permit application in accordance with applicable policies, regulations and development permit guidelines.

Recommendation

That reconsideration of Development Permit Application DP000155 be deferred until Council has concluded its reconsideration of Bylaw No. 3761.

Attachments: (6)

Attachment A - October 15, 2019 Letter from Lorenzo G. Oss-Cech, Hutchinson, Oss-Cech, Marlatt

Attachment B – October 25, 2019 Letter from Director of Planning and Building

Attachment C – October 30, 2019 Letter from Sean Hern, Farris LLP

Attachment D – Delegation of Authority Bylaw No. 3734

Attachment E – Development Plan

Attachment F – I2 Zone

James S. Hutchison†
Lorenzo G. Oss-Cech†
Barri A. Marlatt†
Dana G. Quantz
Andrew W. Tomilson
Esteban T. Káhs



Telephone: (250) 360-2500
Facsimile: (250) 360-0208
1 – 505 Fisgard Street
Victoria, British Columbia
Canada V8W 1R3

Our File: 5469001

Reply To: Lorenzo G. Oss-Cech
E-mail address: lgo@hom-law.com

Tuesday, October 15, 2019

Young Anderson
Barristers and Solicitors
1616-808 Nelson Street
Box 12147 – Nelson Square
Vancouver, BC V6Z 2H2

Via Email & Hand Delivered

Attention: Suhkbir Manhas

Re: Development Permit Application – Phase Two

I write further to the public meetings of October 1st and 3rd 2019.

It would be an understatement to say that my client is frustrated and disappointed with the outcome, which we believe to be misguided in view of the project's history.

In 2016, with the consent and knowledge of the then North Cowichan Council, the North Cowichan Municipality ("NCM") sold a large part of the subject lands to my client and provided written assurances (**without any disclaimers**) that the zoning for my client's intended use was appropriate.

My client relied on those assurances in purchasing the properties.

Furthermore, based on those assurances, my client applied for and received a development permit and building permits. It then invested over \$37 million to construct Phase One of the facility. It did so, fully intending and expecting to build Phase Two on the adjacent lands.

In addition, my client paid \$266,500.00 to build a new water line off Drinkwater Road as part of the development agreement for Phase One.

At the well-publicized opening of Phase One in June 2016, the then Mayor and several councilors attended. Phase One has been operating ever since and is a highly successful enterprise, both in isolation and as an integral component of GAIN's interrelated businesses on Vancouver Island.

Shortly after the opening, three resident households (**two from outside NCM**), mounted a campaign against the facility, claiming that it was too noisy and it did not have the proper zoning.

My client made countless attempts to address the noise concerns, by: conducting extensive testing with the top sound experts; voluntarily restricting operating hours; and removing certain types of vehicles from the circuit.

Other than the controls and restrictions imposed by my client, the operation and business has not changed from the beginning.

My client has operated within the bounds of their legal rights at all times. It has had a good relationship with NCM and has never received any violation, charge or warning from NCM's staff.

In 2017 NCM asked my client to apply to rezone the properties under one comprehensive by-law. NCM's staff believed that the rezoning would provide greater clarity and establish operating rules for the circuit to provide NCM and the public certainty in that regard. Given its good relationship with NCM and most of the community, my client, in good faith, agreed. A rezoning application was submitted for Phase One and a Phase Two configuration that extended the circuit into both the I2 and A4 lands owned by my client.

On June 5, 2017, as the rezoning application was being prepared, the same above mentioned households, opposed to the circuit, filed a lawsuit against my client and NCM seeking to close Phase One by challenging the zoning for the facility and alleging that the noise from the circuit constituted a nuisance at law.

My client nevertheless carried on with the rezoning efforts in good faith, meeting with stakeholders and interested parties, and holding an open house in April 2018, which was attended by approximately 500 people. My client listened to concerns that were expressed and revised the rezoning application to address those concerns.

In September 2018, my client filed a revised rezoning application responding to the public's comments and concerns, moving all of Phase Two into the lands already zoned I2 and proposing extensive environmental and sound mitigation measures, and offering substantial community amenities.

My client also filed a development permit application at the same time, which is permitted by the existing I2 zoning and also consistent with the rezoning, if approved. At the request of NCM my client agreed, again as a matter of good faith, that NCM could wait to issue the development permit until after the rezoning application was addressed.

Meanwhile, in September 2018, my client, and subsequently NCM, applied to dismiss the lawsuit regarding the zoning and to remove NCM as a Defendant. During that application, NCM informed the Supreme Court of British Columbia that my client was operating lawfully and that both the I2 and C8 zoning were appropriate for the operation of the circuit. On October 11 2018, that application succeeded. The zoning claims were dismissed and NCM was removed as a Defendant.

The nuisance part of the lawsuit persisted until only shortly after examinations for discovery of the plaintiffs were held in early 2019, after which the plaintiffs agreed to the dismissal of the rest of the lawsuit.

After that, they focused their attention of a new series of complaints and opposing the rezoning application. Furthermore, after the dismissal of the lawsuit, my client became aware of the involvement of two of those same plaintiffs in NCM's elections, even though they were not residents of NCM.

As part of the rezoning application, my client was asked by NCM's staff to provide a variety of concessions. Those included:

1. A limit on sound;
2. Offsite monitors to gauge the sound within the community;
3. Real time readings for the sound;
4. A \$5,000.00 penalty for each breach of the sound limits;
5. A limit on hours of operation;
6. A limit on days of operation (statutory holidays); and
7. A limit on the type of cars allowed on the track (street legal).
(the "Concessions")

In addition to the Concessions, my client was also asked:

1. To transfer to NCM a portion of the lands for use as a site for a water storage reservoir;
2. To license to NCM or the Cowichan Trail Stewardship Society a significant portion of the lands (approximately 100 acres);
3. To make the circuit available to the Vancouver Island Karting Association for its use for a minimum of 6 events a year;
4. To transfer to NCM a corridor of the land along Bings Creek (approximately 40 acres);

5. To make a further financial contribution to NCM of \$600,000.00 for environmental and habitat enhancement projects for streams and other waterbodies and/or the construction of a trail up Mount Prevost;
6. To construct, to the satisfaction of NCM a Water Reservoir at a cost of approximately \$2.5 million;
7. To construct, to NCM's satisfaction, Drinkwater Road from Highway 18; and
8. To register all of the above in a covenant.
(the "Amenities").

Despite all of the above NCM council voted (5-2) against the rezoning, evidently on the basis of late submissions from the Cowichan Tribes (who had earlier indicated support, was otherwise disinterested and refused to meet with my client).

The rejection of the rezoning was surprising to my client as it is otherwise entitled to a development permit, and the Concessions and Amenities are only available by way of rezoning.

My client is, of course, content to save the millions of dollars that the Amenities would cost and to not have any Concessions apply, but is extremely disappointed that so much time has been wasted on a fruitless rezoning process.

In particular because the public discussion of the rezoning process was used by a small group of residents as a platform to spread numerous lies about the facility and to circulate personal and racist attacks against my client's owners and staff.

My client has followed the law slavishly. It went above and beyond what is required to be a good neighbor and citizen by committing to the Concessions and agreeing to provide the Amenities.

My client has issued contracts, booked clients and has mobilized equipment to the site to commence construction of Phase Two, based on the issuance of the development permit.

By copy of this letter to NCM my client requests that NCM now move forward and issue the development permit for Phase Two.

Be advised that should the development permit be refused or some other action be taken to interfere with my client's lawful rights to establish and operate its business, my client will pursue all legal remedies available.

In the circumstances, having invested so much time and money in reliance on NCM's assurances and conduct to date, it will be left with no other choice.

I remain

Yours truly,

HUTCHISON OSS-CECH MARLATT

Per:

A handwritten signature in black ink, appearing to be 'L. Oss-Cech', written over a horizontal line.

Lorenzo G. Oss-Cech

lgo/ed

cc. North Cowichan Building Department – by hand
Clients.
Sean Hern

October 25, 2019

Prospero No: DP000155
Folio No: 29019-030
File No: 3060-20 17.24

Mark Holland
Holland Planning Innovations Inc.
mark@hollandplan.com

Dear Mr. Holland

RE: Development Permit for Vancouver Island Motor Circuit - Lot A, Drinkwater Road¹

I am writing to advise that I am obliged to deny development permit application DP0000155 on the basis that the proposed land use does not comply with Zoning Bylaw 2950.

I have not come to this conclusion lightly. I appreciate that it is your client's position that the development proposed in the application is for the same land use as under the development permit issued by North Cowichan for Phase 1 of the Vancouver Island Motor Circuit and, as such, there has been a past determination that the land use is in compliance with Zoning Bylaw 2950. However, upon careful review, I have concluded that the proposed land use is not permitted under Zoning Bylaw No. 2950. "Motor vehicle testing and driver training facility" is not listed as a permitted use in the Industrial Heavy (I-2 zone), and I have found no permitted use within the I2 zone that includes that use.

Please be advised that Section 23 of Delegation of Authority Bylaw No. 3734 allows you to have my decision to deny the development permit application reconsidered by Council. Section 23 provides as follows:

"Land use approvals – reconsideration

23 (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.

¹ SECTION 4 RANGE 1 SOMENOS EXCEPT PLAN EPP60766. - PID: 009-751-297

(2) Where the owner wishes to have Council reconsider a decision made under the delegated authority under section 22 of this bylaw:

(a) The owner must, within 30 days of the decision having been communicated to the owner, make an application in writing to the Corporate Officer, which application must include the following:

- (i) A description of the decision sought to be reconsidered by Council;
- (ii) The date of the decision;
- (iii) The name of the delegate who made the decision;
- (iv) The grounds on which reconsideration is being requested; and,
- (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.

(b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.

(c) The Corporate Officer must:

- (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
- (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
- (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.

(d) In reconsidering the decision, the Council must consider all the material before it.

(e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.

(f) Council is entitled to adjourn the reconsideration of the decision; and,

(g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council."

A copy of Bylaw No. 3734 is enclosed for your reference.

Sincerely

A handwritten signature in blue ink, appearing to be 'Rob Conway', with a long horizontal flourish extending to the right.

Rob Conway, MCIP, RPP
Director
PLANNING AND BUILDING DEPARTMENT

Reply Attention of: Sean Hern
Direct Dial Number: 250 405 1982
Email Address: shern@farris.com

FARRIS

File No: 041125-0001

October 30, 2019

BY EMAIL

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan BC V9L 6A1

Attention: Corporate Officer
(karen.robertson@northcowichan.ca)

Dear Sirs/Mesdames:

**Re: Development Permit for Vancouver Island Motor Circuit - Lot
A, Drinkwater Road, Section 4 Range 1 Somenos Except Plan
EPP60766 - PID: 009-751-297**

We write on behalf of 1909988 Ontario Limited ("**VIMC**") the owner of the above-noted lands and the applicant in development permit application DP0000155 ("**VIMC's Development Permit Application**").

Pursuant to section 23(1) of the Delegation of Authority Bylaw 3734, VIMC hereby requests a reconsideration by Council of the decision of Rob Conway, Director of Planning, dated October 25, 2019, a copy of which is attached hereto (the "**Decision**"). In the Decision, Mr. Conway denied VIMC's Development Permit Application on the basis that the proposed land use in did not comply with Zoning Bylaw 2950.

The grounds on which reconsideration is requested are three-fold:

1. First, a decision of whether to issue a development permit is an assessment of the application in light of the municipality's Official Community Plan. It is not a land use decision, as has been made in this case by the Director of Planning. To proceed otherwise is to exceed the statutory jurisdiction delegated in respect of development permit applications. There are many examples of the court's enforcement of this constraint on municipal jurisdiction in relation to development permit applications, including: *Westfair Foods Ltd v Saanich (District)* (1997), 49 BCLR (3d) 299 (C.A.); *Rocky Point Metalcraft Ltd. v. Cowichan Valley (Regional District)*, 2012 BCSC 756; and *0742848 B.C. Ltd. v. Squamish (District)*, 2011 BCSC 747.
2. Second, the suggestion that the VIMC Development Permit Application may not comply with the I2 zoning for the purposes of the development permit application analysis is arbitrary and irrational in light of VIMC having been issued a development permit in 2015 for the adjacent I2 lands and having operated without interference on those lands in essentially an identical manner as intended for the subject lands. Moreover, as you know, North Cowichan's Planning Department repeatedly confirmed in writing to VIMC that the uses on the adjacent I2 land were consistent with *both* the I2 zoning and the C8 zoning that is present there. A copy of that correspondence is enclosed for your reference. Further, North Cowichan's

FARRIS LLP

3rd Floor - 1005 Langley Street Victoria, BC Canada V8W 1V7
Tel 250 382 1100 farris.com

October 30, 2019

- 2 -

FARRIS

lawyer filed pleadings and made submissions to the BC Supreme Court on behalf of North Cowichan to the same effect.

3. Third, and alternatively, the planned use for the subject lands is not singular, but is rather a collection of a number of different uses, and even if North Cowichan were to be concerned that some of those uses may not be consistent with the I2 zoning, many of the uses clearly are (for example, motor vehicle storage, repair, sales, servicing, driving trade school and accessory uses). Accordingly, the matter of whether the user operates in compliance with the zoning in the future is, at most, a matter of municipal enforcement and not a basis to deny the development permit application: see the case authority cited in point 1, above. VIMC is committed to using the lands in accordance with the I2 zoning. If there is a difference of opinion at some point in the future about what precisely that is, it may have to be resolved, but clearly many of the planned and potential uses are expressly and directly authorized in the I2 zone, and VIMC will make use of circuit and facilities accordingly. As a result, in the process of considering the VIMC Development Permit Application, there is no basis to presume that the owner will not use the land in a manner consistent with the current zoning.

On the basis of the above, we hereby request that the VIMC Development Permit Application be reconsidered and the requested development permit issued forthwith.

Yours truly,

FARRIS LLP

Per:

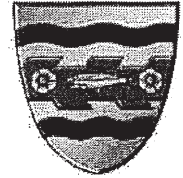


Sean Hern

Enclosures

cc. Sukhbir Manhas

Municipality of North Cowichan



7030 Trans Canada Highway, Box 278
Duncan, BC V9L 3X4

Telephone: (250) 746-3100
Fax: (250) 746-3139
www.northcowichan.ca

November 12, 2013

File: 0930-20 CVH

Mr. John D. Srebot, General Counsel
Auto World Imports
220 Steeles Avenue West
Thornhill, ON L4J 1A1

Dear Mr. Srebot

Re: Proposed Land Acquisition – Lot A, Section 3, Range 1, Somenos District, Plan EPP35449

The purpose of this letter is to clarify the Municipality's position regarding the proposed use of lands legally described as Lot A, Section 3, Range 1, Somenos District, Plan EPP35449.

The subject property is currently split-zoned I2 (Industrial Heavy Zone) and C8 (Rural Recreation Zone).

The prospective purchaser has verbally outlined their intended use of the properties as a "Recreational Testing Facility" for motor vehicles. While not specifically listed as permitted use under the *Zoning Bylaw*, No. 2950, it is the Municipality's position that the proposed "Recreational Testing Facility" would be considered a permitted use under the definitions of "Recreational Facility" (C8) and "Industrial Use" (I2) so this use is permitted on any portion of the subject property.

Secondary or accessory facilities, such as space for office and meetings, motor vehicle repair, food service, etc. are acceptable and would be permitted on any portion of the subject property. Any proposed use of the property is subject to issuance of a Development Permit as per the Municipality's *Official Community Plan Bylaw*, No. 3450, and *Zoning Bylaw*, No. 2950.

Any use of the subject property for racing, or as a "Race Track" for either go-karts or other motor vehicles must be contained to that portion of the property that has C8 zoning. Racing and "Race Track" are not permitted uses in the I2 zone.

Please feel to contact us directly if you require any additional clarification or supporting information.

Sincerely

Dave Devana
Chief Administrative Officer

devana@northcowichan.ca

pc P. Trzewik
S. Mack, Director of Planning and Development

ddnov12_2013Indt_Srebot_Highway 18

cowichan



GAIN
2546 Government Street
Victoria, BC V8T 4P7

November 4, 2015

Municipality of North Cowichan
7030 Trans-Canada Highway, Box 278
Duncan, British Columbia V9L 3X4

To Whom It May Concern,

We write with respect to our planned vehicle testing and driver training facility at 4063 Cowichan Valley Highway.

Because the property is split-zoned, and our facility design will have the driving track extending across both the I2 and C8 portions of the property, we are seeking further comfort that the activities proposed for the vehicle testing and driver training facility are compliant with local zoning. Please confirm that the following activities are permitted in both the I2 and C8 zones:

On the Driving Track:

1. Hold driving programs of up to 100 cars and drivers per day in different areas of the facility;
2. Use the track in different configurations with different groups;
3. Single vehicles driving the track with the goal to achieve and improve "fast lap" times;
4. Single vehicles practicing emergency braking, lane change, cornering, slalom and other emergency manoeuvres, some at high speed;
5. Multiple vehicles on the track simultaneously, driving during club or manufacturers activities to achieve and improve their "fast laps" however not to race each other or hold events that would be considered a race.
6. Change settings of the cars and guide the drivers to improve lap times further and further;

In the Pit Area:

7. Changing tires and conducting minor maintenance;
8. Set up work on cars to improve their lap times.

Should you have any questions, please do not hesitate to contact me. I can be reached by email at ptrzewik@gain-vi.ca or by phone at (250) 818-8038.

Sincerely,

A handwritten signature in black ink, appearing to read 'Peter Trzewik', written over a faint, curved line.

Peter Trzewik

November 4, 2015

Mr. Peter Trzewik
GAIN
2546 Government Street
Victoria, BC V8T 4P7

Dear Mr. Trzewik

**Re: 4063 Cowichan Valley Highway - (Lot A, Section 3, Range 1, Somenos District,
Plan EPP35449 and Section 4, Range 1, Somenos District)**

We write to you further to your letter of November 4, 2015, in which you have requested confirmation of permitted activities on the above-noted lands owned by 1909988 ONTARIO LTD.

The Municipality of North Cowichan confirms that the eight activities (listed 1 through 8 in your letter), are permitted on the split-zoned C8 (Commercial Rural Recreation Zone) and I2 (Industrial Heavy Zone) properties as they are activities consistent with a vehicle testing facility.

We trust the above provides the information you require. If you have any questions or require any clarification please contact me as noted above.

Sincerely



Dave Devana
Chief Administrative Officer

dave.devana@northcowichan.ca

c: S. Mack, Director of Development Services



BC CLIMATE ACTION
COMMUNITY 2014

October 25, 2019

Prospero No: DP000155
Folio No: 29019-030
File No: 3060-20 17.24

Mark Holland
Holland Planning Innovations Inc.
mark@hollandplan.com

Dear Mr. Holland

RE: Development Permit for Vancouver Island Motor Circuit - Lot A, Drinkwater Road¹

I am writing to advise that I am obliged to deny development permit application DP0000155 on the basis that the proposed land use does not comply with Zoning Bylaw 2950.

I have not come to this conclusion lightly. I appreciate that it is your client's position that the development proposed in the application is for the same land use as under the development permit issued by North Cowichan for Phase 1 of the Vancouver Island Motor Circuit and, as such, there has been a past determination that the land use is in compliance with Zoning Bylaw 2950. However, upon careful review, I have concluded that the proposed land use is not permitted under Zoning Bylaw No. 2950. "Motor vehicle testing and driver training facility" is not listed as a permitted use in the Industrial Heavy (I-2 zone), and I have found no permitted use within the I2 zone that includes that use.

Please be advised that Section 23 of Delegation of Authority Bylaw No. 3734 allows you to have my decision to deny the development permit application reconsidered by Council. Section 23 provides as follows:

"Land use approvals – reconsideration

23 (1) The owner of land who is subject to a decision made under the delegated authority under section 22 of this bylaw is entitled to have the decision reconsidered by Council in accordance with this section.

¹ SECTION 4 RANGE 1 SOMENOS EXCEPT PLAN EPP60766. - PID: 009-751-297

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- (i) A description of the decision sought to be reconsidered by Council;
- (ii) The date of the decision;
- (iii) The name of the delegate who made the decision;
- (iv) The grounds on which reconsideration is being requested; and,
- (v) A copy of any materials that the owner wishes Council to take into account when reconsidering the decision.

(b) Council must reconsider the decision at a regular meeting of Council held within a reasonable period of time after the date on which the application for reconsideration was delivered to the Corporate Officer.

(c) The Corporate Officer must:

- (i) Place the reconsideration of the decision on the agenda for a regular meeting of Council in accordance with paragraph (b) above;
- (ii) Give notice of reconsideration of the decision in accordance with any notice requirements applicable to the original decision; and,
- (iii) Before the reconsideration of the decision by Council, deliver to each Council member a copy of the materials that were considered by the delegate in making the decision that is to be reconsidered, and a copy of all materials submitted by the business license applicant or holder to the Corporate Officer as part of the application for reconsideration.

(d) In reconsidering the decision, the Council must consider all the material before it.

(e) At the meeting at which Council is to reconsider the decision, Council will first hear from staff in relation to the subject matter of the decision and in relation to the decision itself, and will then hear from the owner. Council may then hear from staff in relation to any new information raised by the owner in its submissions to Council.

(f) Council is entitled to adjourn the reconsideration of the decision; and,

(g) After hearing from staff and the owner, Council will reconsider the decision and may either confirm the decision, amend the decision, or set aside the decision and substitute the decision of Council."

A copy of Bylaw No. 3734 is enclosed for your reference.

Sincerely

A handwritten signature in black ink, appearing to be 'Rob Conway', with a long horizontal stroke extending to the right.

Rob Conway, MCIP, RPP
Director
PLANNING AND BUILDING DEPARTMENT

Reply Attention of: Sean Hern
Direct Dial Number: 250 405 1982
Email Address: shern@farris.com

FARRIS

File No: 41125-0001

November 26, 2019

BY EMAIL

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan BC V9L 6A1

Attention: Corporate Officer
(karen.robertson@northcowichan.ca)

Dear Sirs/Mesdames:

**Re: Development Permit for Vancouver Island Motor Circuit - Lot
A, Drinkwater Road, Section 4 Range 1 Somenos Except Plan
EPP60766 - PID: 009-751-297**

Further to VIMC's October 30, 2019 application for reconsideration of VIMC's development permit application DP0000155, we enclose five documents that the Municipality of North Cowichan's council may wish to consider in addition to the materials attached to our October 30 letter and the development permit application materials and file that staff will be providing to council. What these additional documents refute is the suggestion some observers have made that the second phase of the development was a surprise to the municipality. The following documents are instructive on this issue:

- (a) The development permit for the circuit that was constructed on phase one was approved on August 17, 2015 by Scott Mack. The building permit for the clubhouse was issued on October 20, 2015.
- (b) In late 2015, I am advised that VIMC provided North Cowichan's staff with a sketch that was prepared by the circuit designers, Tilke, as to what a potential second phase could look like (Appendix A).
- (c) In an email exchange on November 30 – December 1, 2015, North Cowichan's Engineering Assistant John Pite was communicating with VIMC's engineer, Jeff Tomlinson, about the design requirements for water service. Mr. Pite's drawing is attached to the email, showing that the municipality understood there was likely to be a phase two expansion, and this informed its interest in having a watermain extension to service future development in the adjacent industrial-zoned lands as well as the clubhouse in phase one of the circuit's development (Appendix B).
- (d) Further emails were exchanged on the subject on December 1, 2015 with Dave Conway included, attaching Mr. Pite's sketch (Appendix C).
- (e) Meeting minutes from a December 1, 2015 meeting between North Cowichan Engineering and Operations and JE Anderson show the details of the watermain extension being discussed (Appendix D)

FARRIS LLP

3rd Floor – 1005 Langley Street Victoria, BC Canada V8W 1V7
Tel 250 382 1100 farris.com

November 26, 2019

- 2 -

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- (f) Council then voted on January 20, 2016 to approve the watermain extension that was designed to service both phases, and contributed \$325,000 for that purpose (Appendix E, item 8.4).
- (g) For reference, in June 2016, the phase one circuit opened.

We understand there is to be a meeting of council on December 4, 2019. We ask that the reconsideration of Mr. Conway's decision be placed on the council agenda for that meeting. The matter should not be further delayed.

Yours truly,

FARRIS LLP

Per:



Sean Hern

SH/jf
Enclosures

cc. Sukhbir Manhas

APPENDIX A

APPENDIX B

On 2015-12-01, 9:50 AM, "John Pite" <John.Pite@northcowichan.ca> wrote:

Hi Jeff, pls review attached and phone Dave Conway at 250.746.3130 at 10:30 this morning so we can discuss. Both Dave and I have appts at 11. Assuming this works for you... thx

John Pite, ASCT
Engineering Assistant / Development Coordinator
ENGINEERING AND OPERATIONS
john.pite@northcowichan.ca
T 250.746.3129

-----Original Message-----

From: Jeff Tomlinson [mailto:jwt@jeanderson.com]
Sent: November-30-15 12:57 PM
To: John Pite
Subject: Drinkwater Water System

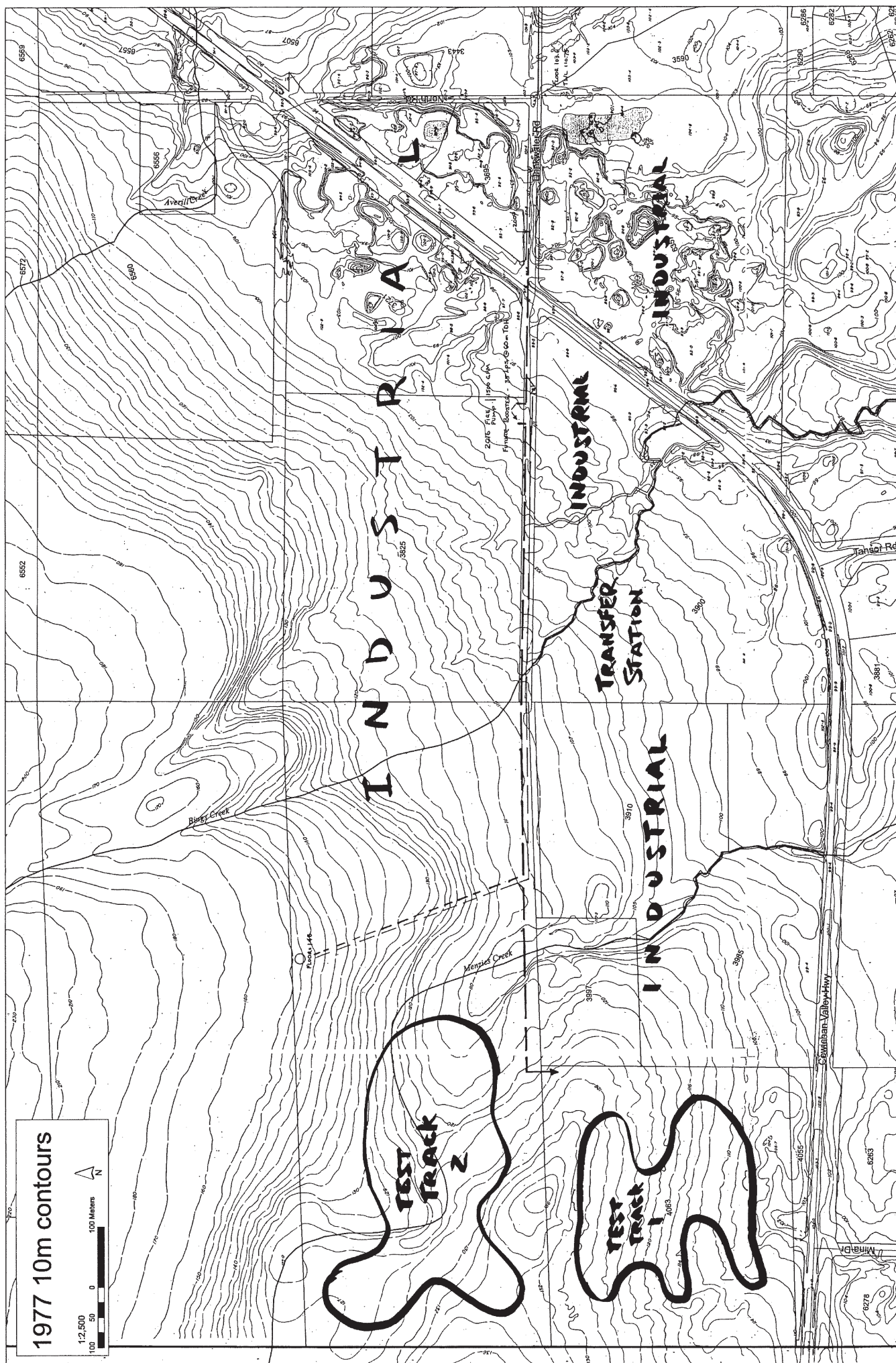
Hi John,

I'm getting some pressure from our clients regarding the water system. They are reluctant to give the civil contractor the go-ahead with construction of the fire protection infrastructure on site until they know what is happening with the Drinkwater water system. Once they proceed with the on-site protection they won't have money available for the Drinkwater system.

Do you know when you and Dave might have some demands/service areas available? We have our survey crew scheduled to start the topo survey this week.

Thank you,
Jeff

Sent from my iPhone



APPENDIX C

From: Jeff Tomlinson <jwt@jeanderson.com>

Date: Tuesday, December 1, 2015 at 12:00 PM

To: Peter Trzewik <ptrzewik@gain-vi.ca>, Chris Erb <chris@chrisherb.ca>

Cc: John Pite <John.Pite@northcowichan.ca>, Dave Conway <david.conway@northcowichan.ca>, Jim Buchanan <jim@jeanderson.com>

Subject: Drinkwater Water System

Hi Peter and Chris,

North Cowichan have provided the attached plan showing the service area and water system concept. We met with Dave Conway and John Pite this morning to review their expectations and requirements.

Jim and I are now in the process of putting together a design schematic and design brief that will be necessary for you to review before we move forward with any detailed design. I would like to schedule a telephone meeting with Jim, Jeff, Chris and Peter tomorrow at 1:30. Please let me know if this works for you.

Thank you,

Jeff Tomlinson
Manager, Engineering
J.E. Anderson and Associates
Office (250) 758-4631
Cell (250) 740-7088



DISCLAIMER: This e-mail message is intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender and delete this e-mail message.



APPENDIX D

From: Jeff Tomlinson <jwt@jeanderson.com>

Date: Tuesday, December 1, 2015 at 6:53 PM

To: Dave Conway <david.conway@northcowichan.ca>, John Pite <John.Pite@northcowichan.ca>, Jim Buchanan <jim@jeanderson.com>

Subject: Telephone Meeting Summary - Drinkwater Road Water Systeme

Thank you for the quick telephone meeting. I've attached my meeting notes. If you have anything to revise or add please let me know.

Cheers,

Jeff Tomlinson
Manager, Engineering
J.E. Anderson and Associates
Office (250) 758-4631
Cell (250) 740-7088



DISCLAIMER: This e-mail message is intended only for the named recipient(s) above and may contain information that is privileged, confidential and/or exempt from disclosure under applicable law. If you have received this message in error, or are not the named recipient(s), please immediately notify the sender and delete this e-mail message.

Meeting Summary

Date: December 1, 2015

File: 88396

Meeting With: Dave Conway, North Cowichan
John Pite, North Cowichan
Jim Buchanan, JEA
Jeff Tomlinson, JEA (Author)

Purpose of Meeting: Review possible water system on
Drinkwater Road.

BY TELEPHONE

1. North Cowichan have prepared a plan showing the servicing area, anticipated reservoir, water mains and temporary/permanent pump station. This plan was prepared at the request of property owners attending meeting November 24th.
 - a. The plan indicates a schematic solution for providing fire flows to VIMR - Phase 1 and a final solution for servicing the industrial service area.
2. There are 2 Stages shown on the plan
 - a. Stage 1 – a system for providing Fire Supply Only to VIMR Phase 1. This includes connection to the existing system on the south side of the Cowichan Valley Highway, installation of a 200mm water main to a temporary private fire pump and installation of necessary watermains to the site. A second water main should be installed along side the fire main, for future use.
 - b. Stage 2 is the construction of a complete water system to provide both domestic and fire demands to the industrial area.

- c. Stage 1 can be skipped if the preference is to construct all of the water system, therefore eliminating construction of a fire pump.
- 3. The proposed reservoir site has been shown based on the highest point indicated on the existing contour plan.
 - a. Given that the floor elevation is approximately 148m, the maximum elevation for domestic servicing (40psi) will be 123m. (The final elevation of the reservoir is still to be determined so the actual domestic servicing contour will be determined during detailed design.)
 - b. All properties located above the 40psi contour will require a booster pump. A covenant will be required on these properties allowing for individual booster stations.
- 4. The system will require a private fire pump to ensure sufficient fire flows. This fire pump is to be located outside of any road dedication, so a private easement agreement will be required with one of the property owners on Drinkwater Road.
 - a. The location of this fire pump station shall be large enough to construct the final Future pump station.
 - b. The easement agreement shall allow for a conversion to Statutory Right of Way when the Future pump station is required.
- 5. The fire pump shall include a diesel generator to ensure power during electrical outages.
- 6. Standard protocols for testing the fire pump station.
- 7. Detector check at the fire pump to protect the public system.
- 8. Fire flows shall be limited to 200 L/s
- 9. No domestic water will be available to the industrial area (including VIMR Phase 1) until a reservoir has been constructed
- 10. The reservoir size is to be determined during the design stage.
- 11. Road dedication shall be provided from the end of Drinkwater Road to 3997 Cowichan Valley Highway. This will not just be a 10m widening to create a 20m total dedication. The intent is to eliminate the immediate jog at the current termination of the road.
 - a. The road does not require construction, but it will be required that it is graded to within 250mm of the final elevation. A complete road design will be required over the

portion between the end of Drinkwater Road and the connection at VIMR Phase 1.

12. JEA to complete a design brief and system layout prior to commencing final designs. A construction budget will be provided at this time and a further review with North Cowichan will be required.

APPENDIX E

Municipality of North Cowichan Regular Council MINUTES

**January 20, 2016, 1:30 p.m.
Municipal Hall - Council Chambers**

Members Present	Mayor Jon Lefebure Councillor Joyce Behnsen Councillor Rob Douglas Councillor Maeve Maguire Councillor Kate Marsh Councillor Al Siebring Councillor Tom Walker, (participated electronically)
Staff Present	Dave Devana, Chief Administrative Officer (CAO) Mark Ruttan, Director of Corporate Services / Deputy CAO Scott Mack, Director of Development Services Brian Green, Manager of Planning and Sustainability David Conway, Director of Engineering and Operations John Gunn, Manager of Information Services

1. CALL TO ORDER

There being a quorum present, the meeting was called to order at 1:30 p.m.

2. APPROVAL OF AGENDA

It was moved and seconded:

That Council approve the agenda as amended to add the following:

1. 3.1 New Appointment to the closed session;
2. 9.1 Rail Service;
3. 11.2 Amalgamation;
4. 11.3 2015 - 2019 Priority Projects.

CARRIED

3. ADOPTION OF MINUTES

It was moved and seconded:

That Council adopt the minutes of the Special meeting held December 10, 2015 and the Regular meeting held December 16, 2015, as amended to change item 5.2 to read "waiving".

CARRIED

4. PUBLIC INPUT

Council received brief public input regarding agenda items from registered speakers.

5. PUBLIC MEETINGS & HEARINGS

5.1 Public Meeting - Development Variance Permit - 5803 Trans-Canada Highway

Council received a presentation from the Manager of Planning and Sustainability, and offered the applicant and public an opportunity to address Council regarding the proposed variance (no one came forward).

It was moved and seconded:

That Council authorise issuance of development variance permit No. DVP00020, to vary section 6 (c) of the Sign Bylaw to increase the maximum permitted fascia sign area from 11.7 sq. m to 13.4 sq. m for Speedy Cash's 2 box fascia signs.

(Opposed: Douglas)

CARRIED

6. DELEGATIONS & PRESENTATIONS

6.1 RCMP Quarterly Report

Council heard from Inspector Carfantan regarding North Cowichan/Duncan RCMP detachment's 4th Quarter (October - December 2015) activities and accomplishments and answered questions from Council.

6.2 Cowichan Green Community

Council received a video presentation from Judy Stafford regarding the Cowichan Green Community's accomplishments during 2015.

6.3 Cowichan Intercultural Society

Council heard from Lynn Weaver of Cowichan Intercultural Society regarding refugee resettlement.

It was moved and seconded:

That Council authorize the Mayor to send a letter to the federal government confirming community capacity and interest in refugee resettlement.

CARRIED

It was moved and seconded:

That Council direct staff to provide a report to the next Regular Council meeting regarding the Cowichan Intercultural Society's request for financial assistance to undertake a public relations campaign to increase community support for refugee resettlement.

CARRIED

7. BYLAWS

7.1 Bylaw 3605 - Zoning Amendment Bylaw (No. 10 - Cowichan Lake Road), 2015

It was moved and seconded:

That Council read a first and second time "Zoning Amendment Bylaw (No. 10 - Cowichan Lake Road), 2015", No. 3605.

(Opposed: Behnsen and Douglas)

CARRIED

It was moved and seconded:

That Council require registration of a restrictive covenant, prior to considering adoption of Bylaw 3605, to prohibit the following uses on the subject properties: Appliance and Small Equipment Repair; Bed and Breakfast; Bus Depot; Commercial Cardlock Facility; Home-Based Business; Mini-Warehousing; Night Club; Retail Lumber and Building Supply Yard; Single Family Dwelling; and Tool Rental.

Amendment:

It was moved and seconded:

That Council add "liquor store and gas station" to the main motion.

(Opposed: Lefebure, Maguire, Marsh, Siebring and Walker)

DEFEATED

Amendment:

It was moved and seconded:

That Council add "outdoor storage" after Tool Rental in the main motion.

(Opposed: Walker)

CARRIED

It was moved and seconded:

Council recessed at 3:58 p.m. resumed at 4:04 p.m.

CARRIED

Amendment:

It was moved and seconded:

That Council add "and drive through" to the main motion.

(Opposed: Lefebure, Behnsen and Siebring)

CARRIED

Main motion as Amended:

It was moved and seconded:

That Council require registration of a restrictive covenant, prior to considering adoption of Bylaw 3605, to prohibit the following uses on the subject properties: Appliance and Small Equipment Repair; Bed and Breakfast; Bus Depot; Commercial Cardlock Facility; Home-Based Business; Mini-Warehousing; Night Club; Retail Lumber and Building Supply Yard; Single Family Dwelling; Tool Rental (outdoor storage) and drive through.

(Opposed: Siebring)

CARRIED

It was moved and seconded:

That Council require registration of a restrictive covenant, prior to considering adoption of Bylaw 3605, to require the following be completed to the satisfaction of the Director of Engineering and Operations:

1. Design and construction of a BC Transit (bus) stop along the Cowichan Lake Road (South) frontage of the subject property;
2. Design and construction of a sidewalk along Cowichan Lake Road (West) between the northwest corner of the subject property across the frontage of Lot 1, Plan VIP30275 and to a point (trailhead) where the Trans-Canada Trail intersects with Cowichan Lake Road (west); and
3. Road dedication from the subject property along the Cowichan Lake Road (South) frontage in order to provide for a 20 m road right-of-way, and at the northwest corner of the intersection of Cowichan Lake Road (South) and Skinner Road to accommodate the future re-alignment of Skinner Road.

Amendment:

It was moved and seconded:

That Council amend the motion to delete number 1.

(Opposed: Maguire, Marsh and Walker)

CARRIED

Main motion as Amended:

It was moved and seconded:

That Council require registration of a restrictive covenant, prior to considering adoption of Bylaw 3605, to require the following be completed to the satisfaction of the Director of Engineering and Operations:

1. Design and construction of a sidewalk along Cowichan Lake Road (West) between the northwest corner of the subject property across the frontage of Lot 1, Plan VIP30275 and to a point (trailhead) where the Trans-Canada Trail intersects with Cowichan Lake Road (west); and
2. Road dedication from the subject property along the Cowichan Lake Road (South) frontage in order to provide for a 20 m road right-of-way, and at the northwest corner of the intersection of Cowichan Lake Road (South) and Skinner Road to accommodate the future re-alignment of Skinner Road.

CARRIED

7.2 Bylaw 3609 - Zoning Amendment Bylaw (No. 11 - Lakes Road), 2015

It was moved and seconded:

That Council read a first and second time "Zoning Amendment Bylaw (No. 11 - Lakes Road), 2015", No. 3609.

CARRIED

It was moved and seconded:

That Council require registration of a restrictive covenant, prior to considering adoption of Bylaw 3609, that will require the following:

1. A tree replacement plan, prepared by a qualified professional, that requires the planting of 5 replacement trees per lot as part of the overall property development, including provisions that will proportionally reduce the number of trees based on the number of existing trees retained and protected on the site following the completion of lot grading and the construction of servicing; and
2. Design and construction of a full cul-de-sac bulb, to Municipal standards, at the termination of Arnhem Road in conjunction with the construction of lot servicing on and adjacent to the subject property.

CARRIED

8. REPORTS

8.1 Application to Discharge Covenant - 2886 Oak Street

It was moved and seconded:

That Council extend the meeting to 6:00 p.m.

CARRIED

It was moved and seconded:

That Council:

1. Not release restrictive covenant EM20780 from the title of 2886 Oak Street; and
2. Direct staff to provide a report recommending an appropriate multi-family zoning designation as part of the proposed new Zoning Bylaw (and in accordance with Official Community Plan policy and Chemainus Town Centre Revitalization Plan), which would facilitate development of 4 to 10 residential units on 2886 Oak Street.

(Opposed: Behnsen)

CARRIED

8.2 The Somenos Marsh Wildlife Society

It was moved and seconded:

That Council grant \$1,000 to the Somenos Marsh Wildlife Society to help host the 2016 WildWings Festival.

CARRIED

8.3 2016 Islands Agriculture Show

It was moved and seconded:

That Council authorize Councillor Maeve Maguire to attend the 2016 Islands Agriculture Show, February 12 – 13, 2016.

CARRIED

8.4 Drinkwater Road Watermain Extension

It was moved and seconded:

That Council invite the Vancouver Island Motorsport Resort to petition to include its properties in the South End water local area service.

CARRIED

It was moved and seconded:

That Council require the Vancouver Island Motor Sport Resort to:

1. Provide excess or extended services (in the form of a 1400 m long, 300 mm diameter watermain extension along Drinkwater Road);
2. Dedicate 15 m of road widening along Drinkwater Road frontage; and
3. Pay the required capital cost fee (calculated at \$5,513.60).

CARRIED

It was moved and seconded:

That Council:

1. Contribute \$325,500 towards the cost of the Drinkwater Road watermain extension excess or extended services; and
2. Grant North Cowichan latecomer protection in order to recover North Cowichan's financial contribution to the watermain extension.

CARRIED

8.5 2016 Committee Meeting Calendar

It was moved and seconded:

That Council receive the proposed 2016 Committee Meeting Calendar for information purposes.

CARRIED

9. NOTICE OF MOTIONS

9.1 Rail Service

Councillor Behnsen gave notice that she intends to move the following motion at the February 3, 2016 meeting:

"That Council invite the Island Corridor Foundation and Southern Railway Vancouver Island to provide a joint delegation to Council to provide Council with an update on the likelihood and timing of the resumption of freight and passenger rail service on Vancouver Island."

10. REVIEW OF COMMITTEE MINUTES

Council reviewed, for information, the December 14, 2015 Community Planning Advisory Committee minutes.

11. NEW BUSINESS

11.1 Amalgamation

Council received a brief update from the Chief Administrative Officer on amalgamation.

11.2 2015 - 2019 Priority Projects

Council received a brief update from Chief Administrative Officer on Council's priorities and noted a report will go to Council in February seeking Council's further direction.

12. QUESTION PERIOD

Council received a question from the media regarding business considered at this meeting.

13. CLOSED SESSION

Council closed the meeting to the public at 5:45 p.m. on the basis of section (90) (1) (a), (e) and (g) of the *Community Charter* and rose and reported at 6:35 p.m. on the following:

13.1 Committee Vacancies

It was moved and seconded:

That Council appoint Mona Kaiser to fill one of the Community Planning Advisory Committee membership vacancies.

CARRIED

It was moved and seconded:

That Council appoint Sharon Horsburgh to fill one of the Community Planning Advisory Committee membership vacancies.

(Opposed: Siebring)

CARRIED

It was moved and seconded:

That Council appoint Rhonda Hittinger to fill the Chemainus Advisory Committee membership vacancy.

CARRIED

It was moved and seconded:

That Council appoint Ryan Hollett to fill the Environmental Advisory Committee membership vacancy.

(Opposed: Siebring)

CARRIED

January 20, 2016 - Regular Council Meeting Minutes

It was moved and seconded:

That Council accept resignations from Reed Early and Katherine Garrah and advertise the two Environmental Advisory Committee vacancies.

CARRIED

It was moved and seconded:

That Council invite Dan Robin to apply for one of the upcoming Environmental Advisory Committee vacancies.

CARRIED

13.2 Regional Recreation Select Committee

It was moved and seconded:

That Council invite the Parks & Recreation Advisory Committee to recommend a representative to be appointed to the Regional Recreation Select Committee.

CARRIED

14. ADJOURNMENT

The meeting ended at 6:35 p.m.

Signed by
Mayor or Presiding Member

Certified by
Director of Corporate Services

Report

Date December 4, 2019

File:

To Council

From Ted Swabey, Chief Administrative Officer

Endorsed:



Subject VIMC Claim for Damages and Property Tax Implications

Purpose

To provide information regarding potential property tax increase scenarios based on a successful claim by Vancouver Island Motorsport Circuit (VIMC) against the Municipality of North Cowichan.

Background

We have been put on notice that VIMC will seek damages for \$60+ million in the event we do not issue a development permit for phase 2 of its project. Up until this point, we have provided staff's best efforts to ensure Council understands the legal risks associated with how the VIMC approvals have been handled and the implications of decisions surrounding the comprehensive zoning application. We have also provided comprehensive advice on the process and implications of not mitigating the liability of this issue.

At the Special Closed meeting held October 16, 2019, Council passed the following resolution:

That Council direct staff to prepare a report on establishing a liability reserve fund related to VIMC and (in consultation with our Solicitor) the report should recommend an annual amount to be included in this reserve for the next five years or until the extent of a claim is managed.

This report provides an overview of this issue and a recommendation respecting how to address the budget allocation related to a successful claim by VIMC. It is also an opportunity to provide an update for Council respecting staff's discussion with our insurer and to provide the tax implication scenarios related to paying for a successful claim made by VIMC.

Discussion

As Council is aware, staff believe we have significant budget challenges facing us over the next number of years. Without adjustments to the work expectations (i.e. projects), service levels (i.e. reduction) or major increases to our revenues (i.e. development approvals, forestry harvesting, etc.), we will be faced with 5%+ tax increases for the foreseeable future. These challenges are related to the following budget drivers, which are known issues for us at this point:

- New RCMP detachment
- Loss of forestry revenue
- Safer Community Plan implementation and increasing bylaw enforcement issues

- Loss of revenue from land sales
- New strategic priorities
- Asset management
- Crofton Fire Hall replacement
- Operations Building replacement

The potential liabilities associated with the VIMC claims for damages cannot be ignored and have potentially devastating implications over the next ten plus years.

Options

If a judgement of \$60 million were awarded against the District, there would be two options:

1. One time tax increase.
2. Borrow some or all of the judgement and repay over time. A major constraint on how we fund a claim of this size is our Liability Servicing Capacity Available, which is only \$7.3 million. This is the amount of debt servicing available to borrow, \$34 million over five years and \$70 million over ten years. To serve a debt of \$40 million; we would have to pay it out over ten years. This means we will incur large interest charges of approximately \$5.7 million.

A judgement of \$60 million insured (net \$40 million) would result in a one-time tax increase of 133%.

- This would equate to a one-time increase of \$2,164 for an average home and \$8,134 for an average business.
- Borrowing over 10 years would result in annual loan payments of \$4.6 million per year, equating to a 15% tax increase.
 - Average home \$250 increase for 10 years (\$2,500 total)
 - Average business \$930 increase for 10 years (\$9,300 total)
 - Total interest paid \$5.7 million

In addition to these tax increases an additional tax increase of 3% (best guess) would be required to pay for our insurance premiums during these ten years.

Schedule A identifies the tax implications described above, including other lesser scenarios ranging from a \$10 million dollar liability (better case scenario) to a \$60 million dollar liability (worst case scenario).

Implications

The tax ramifications for any judgement in the range of \$40 to \$60 million are staggering. At \$40 million, this is equivalent to two RCMP buildings or two Aquatic Centres. Borrowing would make increases slightly more palatable but would use up a large portion of the District's borrowing power and cost millions in interest. The opportunity costs of this expenditure would be the tax room used up that could have been used to advance Council's priorities.

North Cowichan's insurance brokers have difficulty quantifying the magnitude of an increase in insurance premiums that a claim of this magnitude would have.

Summary

As noted in this report, we have a potential liability that is beyond our means to address fully.

Our current premiums are approximately \$300,000 per year, and our insurance claims vary year to year (but have not exceeded \$160,000 in recent years). This notwithstanding, we have historically had several larger settlements paid out at between \$1 to \$3 million, and it only takes one significant claim to clear out any settlement reserve we create.

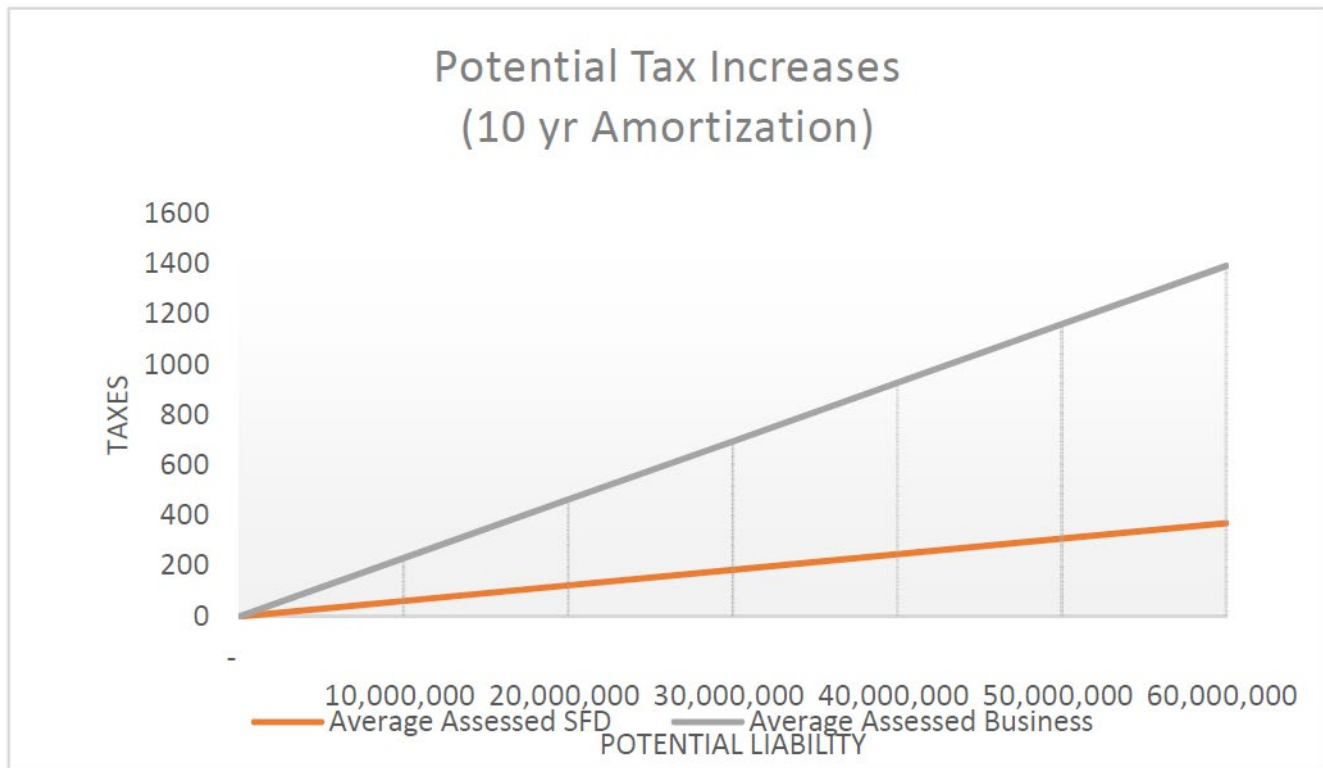
The scale of a potential claim would be known within three years, and we could not build enough of a reserve in that time to significantly address this issue without unprecedented tax rate increases.

This notwithstanding, this potential liability requires attention starting in the 2020 budget. To this end, staff recommend an ongoing 0.5% tax be allocated to a reserve for insurance purposes. This will provide approximately \$150,000 per year into a reserve account.

Staff recommend that this information be made public as part of the public hearing process to ensure transparency in Council's decision.

Attachment: Schedule A – Projected Tax Increases

SCHEDULE A



PROJECTED FIGURES DO NOT INCLUDE:

- Insurance Premium increases
- Legal fees (estimated \$1,000,000)

Reply Attention of: Sean Hern
Direct Dial Number: 250 405 1982
Email Address: shern@farris.com

FARRIS

File No: 041125-0001

December 5, 2019

BY EMAIL

Municipality of North Cowichan
7030 Trans-Canada Highway
Duncan BC V9L 6A1

Attention: Nelda Richardson, Deputy Corporate Officer
(nelda.richardson@northcowichan.ca)

Dear Sirs/Mesdames:

**Re: Vancouver Island Motorsport Circuit - Application to Rezone
Properties at 4063 Cowichan Valley Road to a Comprehensive Zone**

We write on behalf of 1909988 Ontario Limited ("VIMC"). VIMC was asked by the Municipality of North Cowichan to apply for a comprehensive zoning bylaw that would apply to both phases 1 and 2 of VIMC's circuit. VIMC agreed to make the application and thereafter engaged in numerous meetings with staff, public consultations and hosted various public events. A variety of commitments were made to donate land, construct or pay for the construction of community amenities, mitigate sound and accept various operating restrictions on the circuit that do not currently apply to the phase one component. On October 4, 2019, however, council voted 5-2 to refuse the rezoning application that it had requested, apparently in deference to opposition that appears to be comprised of a large number of non-North Cowichan residents.

With Rob Conway's October 25, 2019 denial of the development permit application on zoning grounds, the municipality then reneged on its past representations. The facts are that the municipality made specific representations about the zoning to VIMC when it sold VIMC the lands that the municipality owned, the municipality intended VIMC to rely on those representations when it purchased and developed those and adjacent lands, and until now, the municipality has always acted in a manner consistent with those representations by, for example, authorizing the various stages of development for phase one and by taking the positions it took in court in opposing the Sahtlam Residents Association's lawsuit.

On November 6, 2019, a reconsideration of the rejection of the rezoning application was announced, along with another public hearing. Through the media, we understand that some on municipal council may take the view that there is "new information" in the fact that VIMC has indicated that a lawsuit is likely to result if the municipality now reverses its position on whether VIMC's existing and proposed circuit can operate in the current I2 and C8 zoning for the properties. A potential lawsuit, however, is not new information to council – the likelihood of a lawsuit in such a circumstance and the potential liability for the municipality has long been known to council and to municipal staff, and has no doubt been the subject of extensive legal advice.

Potentially new information for council to consider might have resulted from the municipality's recent discussions with Cowichan Tribes. As you know, VIMC discussed the circuit's expansion with Cowichan

FARRIS LLP

3rd Floor - 1005 Langley Street Victoria, BC Canada V8W 1V7
Tel 250 382 1100 farris.com

Tribes on a number of occasions and Cowichan Tribes had not previously expressed opposition to the project. Those engagements included:

- July 18, 2017, a meeting was held at Cowichan Tribes' office between Chief William Seymour, Tracy Fleming and a Band Elder from Cowichan Tribes and Sylvester Chuang, Peter Trzewik, Toby Seward and Chris Erb of VIMC, to discuss an expansion of the circuit;
- October 27, 2017, the proposed development area was walked by Cowichan Tribes' Tracy Fleming and an Elder, hosted by Toby Seward and Chris Erb of VIMC;
- November 21, 2017, the proposed off-road track development area was walked by Luschiium (Arvid Charlie) and Tracy Fleming, hosted by Toby Seward of VIMC;
- April 16, 2018, VIMC provided a letter to Chief and Council inviting them to two open houses to review the circuit's plans for expansion;
- May 9, 2019, a meeting was held at Cowichan Tribes' office to discuss the proposed expansion. Larry George and Tracy Fleming attended from Cowichan Tribes, and Marie Baynton and Chris Erb attended on behalf of VIMC;
- August 8, 2019, the proposed phase two development site was walked with Tracy Fleming from Cowichan Tribes, and Sarah Bonar, Marie Baynton and Chris Erb on behalf of VIMC, to view existing stream crossings and the use of bridges instead of culverts; and
- August 21, 2019, the creek beds of the proposed phase two development were walked with Irving Canute from Cowichan Tribes, Kira Kristensen and Matt Bulloch of Madrone Environmental Services, and Sarah Bonar, Chris Erb and Brent Brownsell of VIMC. The purpose was to identify environmentally sensitive areas, and Madrone Environmental was engaged to conduct an Archeological Overview Assessment.

Having received no indication of opposition from Cowichan Tribes to a phase two expansion, it was a surprise to VIMC to learn on October 2, 2019 that the municipality had separately solicited Cowichan Tribes' views on the rezoning and received a letter from Cowichan Tribes dated September 27, 2019 that made various accommodation-type requests if phase two was to proceed. Those requests prompted the mayor to seek some adjustments to the covenants and commitments from VIMC in the rezoning application, but in the end the rezoning application was rejected.

Since then, VIMC learned that the mayor and perhaps others on municipal council have been meeting, or attempting to meet, with Cowichan Tribes. Presumably those meetings involved further accommodation-type measures being proposed as part of the rezoning conditions. While VIMC was interested in discussing accommodation measures with Cowichan Tribes and reached out to the band for that purpose on two additional occasions since the rezoning application was refused, VIMC has not had the opportunity to consider any specific commitments, has had no response to its meeting requests to Cowichan Tribes and has heard nothing further from the municipality. Accordingly, there is no new information to discuss in relation to Cowichan Tribes' position on the rezoning application.

On December 4, 2019, council upheld Mr. Conway's denial of VIMC's development permit application on zoning grounds. In doing so, council provided no analysis or explanation, and did not even ask to hear staff's report on the matter.

In light of the municipality reneging on its past assurances and position on zoning, and in view of there being no new information for council to consider in a reconsideration vote, VIMC no longer wishes to proceed with the rezoning application that the municipality initially requested and then refused. VIMC owns 12 zoned lands that the municipality has said many times is appropriate zoning for the circuit, and VIMC will proceed in accordance with its legal and equitable rights. VIMC does not plan to attend the public hearing or reconsideration meeting. If the municipality chooses to proceed with the reconsideration in the absence of VIMC, we remind the municipality of the limitations in section 470 of the *Local Government Act*:

470 (1) After a public hearing, the council or board may, without further notice or hearing,

(a) adopt or defeat the bylaw, or

(b) alter and then adopt the bylaw, provided that the alteration does not

(i) do any of the following:

(A) alter the use;

(B) increase the density;

(C) without the owner's consent, decrease the density

of any area from that originally specified in the bylaw, or

VIMC's perspective is that in denying the development permit, the municipality's about-face is complete and legal processes will necessarily follow. While it seeks remedies and compensation in the courts for its substantial losses, VIMC will proceed to mitigate its losses, as it must, by extracting whatever value it can from alternative uses of its lands.

Yours truly,

FARRIS LLP

Per:



Sean Hern

cc. Sukhbir Manhas



The Corporation of the District of North Cowichan
Zoning Amendment Bylaw (Motorsport Circuit), 2019
Bylaw 3761

The Council of The Corporation of The District of North Cowichan enacts as follows:

1. ***This Bylaw may be cited as "Zoning Amendment Bylaw No. 3761, 2019".***
2. ***Section 12 of Zoning Bylaw 1997, No. 2950 is amended by adding the following definitions:***

"go-kart use" means the use of buildings, structures, or land for the maintenance, repair, operation and racing of go-karts.

"motor vehicle testing and driver training facility" means the use of land for a motorsport circuit and off-road circuit that hosts a variety of motor vehicle driving programs in different configurations with different groups, including but not limited to

- (a) motor vehicles driving the circuit to achieve and improve lap times;
- (b) motor vehicles practicing emergency braking, lane changes, cornering and other procedures including some at high speed;
- (c) multiple motor vehicles using the facility simultaneously including during club or manufacturer activities to achieve and improve their driving skills;
- (d) facilities and repair areas to change settings of motor vehicles, change tires, conduct minor maintenance and repairs, and set up motor vehicles;
- (e) club with restaurant, office, retail store, the sale of food and beverages, change rooms and ancillary amenities;
- (f) parking, off-street parking, covered parking, maintenance, warehouse and storage facilities.

"motor vehicle presentation centre" means the use of a building, structure or land for the display, storage and sales of motor vehicles, motor vehicle parts, accessories and merchandise, including ancillary offices and facilities.

"motion picture and television filming" means the filming and production of motion pictures or television shows or series.

3. ***Zoning Bylaw 1997, No 2950, is amended in section 43 [Zones] by adding***
"Motorsport Circuit Comprehensive Development Zone (CD21)".
4. ***Zoning Bylaw 1997, No 2950, is amended by adding the following section after 80.20:***

Motorsport Circuit Comprehensive Development Zone (CD21)

Permitted Uses

- 80.21** (1) The permitted uses in the CD21 zone are as follows:

- Accessory Building
- Accessory Fueling Installation
- Accessory Restaurant
- Accessory Use
- Assembly Hall
- Fitness Centre/Gymnasium
- Go-kart Use
- Motion Picture and Television Filming
- Motor Vehicle Autobody Repair
- Motor Vehicle Parts and Accessories Sales
- Motor Vehicle Presentation Centre
- Motor Vehicle Repairs
- Motor Vehicle Sales
- Motor Vehicle Storage Yard
- Motor Vehicle Testing and Driver Training Facility
- Recreation Area
- Warehouse

Minimum Lot Size

- (2) The minimum lot size for the CD21 zone is 2.5 ha.

Minimum Frontage

- (3) The minimum permitted frontage for the CD21 zone is 30 m (98.43').

Maximum Lot Coverage

- (4) The maximum permitted lot coverage for the CD21 zone is 50% of the lot area.

Maximum Floor Space Ratio of All Buildings and Structures

- (5) The maximum permitted floor space ratio for the CD21 zone is 0.5:1.

Minimum Setbacks

- (6) The minimum setbacks for all buildings are as follows:

Front yard - 6 m (19.7'); 18 m (59') from an arterial highway

Side yard - 3m (9.8')

Rear yard - 6m (19.7')

Maximum Building Height

- (7) The maximum building height for the CD21 zone is 15 m (49.2').

5. ***Schedule "C" of Zoning Bylaw 1997, No 2950 is amended by reclassifying, to Motorsport Circuit Comprehensive Development Zone (CD21), the lands shown as the "Subject Properties" (PIDs: 009-751-297; 029-201-675; 014-104-067), and outlined in bold on the Schedule attached to and forming part of this bylaw.***
-

READ a first time on August 21, 2019

READ a second time on August 21, 2019

CONSIDERED at a Public Hearing on October 1, 3 and 4, 2019

READ a third time on

APPROVED by Ministry of Transportation and Infrastructure on

ADOPTED on

DEPUTY CORPORATE OFFICER

PRESIDING MEMBER

Schedule

