But perhaps the most interesting file Council has had to deal with has involved the proposed expansion of the Vancouver Island Motorsport Circuit operation. As you all know, we had two nights of very long and intense public hearings on this issue at the Cowichan Theatre earlier this month, and at about 2:20 in the morning on October 4th, Council decided, by a 5-2 vote, to deny VIMC's application for a comprehensive rezoning of the lands in question. That rezoning application was to remove any uncertainty around the permitted uses on those lands. Their application included almost $5-million dollars in amenities; things they were prepared to give the community in exchange for an end to that uncertainty. But Council, in its wisdom, decided that the expansion would run counter the Strategic Goals I mentioned earlier; specifically, the ones related to environmental priorities and Indigenous relations. And I fully understand that rationale. But there's an update on this file. On October 15th, North Cowichan received what's called a "demand letter." Let me explain. The comprehensive rezoning application came about after VIMC had submitted a request for a Development Permit for Phase II of their operations. They did that early last year, and the request initially didn't include any amenities. Basically, they sought a Development Permit authorizing them to develop Phase II of their operation based on the notion that the lands for that phase were zoned I-2 - "Heavy Industrial" - which is the same zoning that covers most of their Phase I lands. From their perspective, they were simply asking the Municipality to apply consistency and give them the Development Permit to expand based on the fact that they had been given a Development Permit for Phase I. But as I said, there's some uncertainty over that basic premise.

Which is why staff suggested they put their DP application on hold, and apply for a Comprehensive Rezoning to remove that uncertainty. That's what led to the two nights of Public Hearings. But after Council turned down the rezoning, they sent us the "demand letter", which basically asks us to issue them a Development Permit for Phase II, based on what's been allowed on the I-2 lands in Phase I. But the letter also includes something else. The letter claims that VIMC spent $37-million dollars to engineer and build Phase I. And it implies that if we deny the application for Phase II that denial would also put the land use for Phase I in jeopardy. In other words, they are asking us to apply the principle of "consistency." From their perspective, they’re saying that either the use that they're applying for is allowed in both Phase I and Phase II, or it's potentially not allowed at all, which could ultimately force them to close their entire operation. They say that if the Development Permit for Phase II is not issued, they will be bringing legal proceedings against the Municipality. The letter from their lawyer also includes another line. “In the circumstances, having invested so much time and money in reliance on North Cowichan’s assurances and conduct to date, (my client) will be left with no other choice (but to pursue all legal remedies available.)” And what “time and money” have they invested based on the assurances that Phase 1 was allowed? They bought the Aerie. They bought an outdoor recreation resort in Lake Cowichan. And they spent a bunch of money planning for Phase II.

It appears that they would argue that they did all of this based on the "assurances" they initially received that their operation was a "permitted use" in the I-2 zone. Would they be successful in that legal action? That’s why we have lawyers. Better minds that mine are working on the answer to that question. But really, where does that leave us? This letter at the very least implies that the Municipality could ultimately be facing a lawsuit in the range of $50-million dollars. $50-million dollars! Yes.. we have some insurance against this eventuality. A $20-million dollar policy. But that would potentially still leave us with a $30-million dollar uninsured liability. It would, of course, take years for this case to wend it way through the courts, but let's say – hypothetically, and worst-case scenario –that at the end of the day, the GAIN group is successful in their suit. A $30-million dollar payout is equal to what we collect in taxes every year. So guess what? The payout, if it were to come to that, would require a doubling of taxes. Not only that, but if the insurance company ends up paying out the full $20-million on this single claim in that year, every other claim against us for that year - from twisted ankles to other legal disputes - would have to be paid for in cash, outside of our insurance coverage. As you can see, this is turning into a difficult file. So what will we do? Well, on Friday afternoon I sent an email to our Corporate Officer, advising her that per Section 131

of the Community Charter, I will be exercising my authority as mayor to initiate a reconsideration of third reading on the Comprehensive Development Zone; the vote that was held at 2:20 in the morning on October 4th. In other words, we're going to reset the clock. We're going to vote on this again.

And not only that, but I have also served notice that it is my intent – with Council's agreement – to have the actual vote on reconsideration postponed until after the scheduling and holding of a second public hearing on this matter. Now, to be clear, I'd rather have a mouth full of simultaneous root canals than hold another public hearing on a file that's this contentious. But I have struggled through a number of sleepless nights over this, and at the end of the day, the fact is that the community was unaware of the legal risks associated with the vote we took on this on the morning of October 4th. So that consideration wasn't part of the public input that informed Council's decision. In that sense, this potential liability is "new information" in the context of what we generally ask the community to comment on at Public Hearings. Certainly, as I look around this room, I'm quite sure that most of you weren't aware of the legal liability that was inherent in the vote that was taken. And to be fair to Council, I'm not sure they fully expected things to come to this either when they cast their votes.

Another factor in my decision was the so-called "referral letter" we received from Cowichan Tribes. I have reached out to Chief Seymour in the hopes that we can schedule a Council-to-Council meeting in advance of the Public Hearing to get absolute clarity on the contents of that letter. So we're going to have another vote. And I'm asking Council for another Public Hearing. As to when that would happen, there are legislative notification requirements associated with a new public hearing; we'd have to advertise it if Council decides to go down that road. I'm hoping we can do it by the end of November, but that will also be subject to being able to find a venue.

And where does this leave you? Well, assuming the Public Hearing goes ahead, it gives you another opportunity to have input on this file. (And to be clear, I'm not asking for that input now. The proper place to do that is at the Public Hearing.) But your input this time will be informed by the potential financial implications of this decision; implications which weren't widely known or considered in the first Hearing.