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**FARRIS**

File No: 041125-0001

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BY EMAIL

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

**Attention: Nelda Richardson, Deputy Corporate Officer**  
**([nelda.richardson@northcowichan.ca](mailto: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

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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