



This is the 1st Affidavit
of RUSSELL DYSON in this case
and was made on 19/Dec/2018

**No. S1811213
VANCOUVER REGISTRY**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

3L DEVELOPMENTS INC.

PETITIONER

AND:

COMOX VALLEY REGIONAL DISTRICT

RESPONDENT

AFFIDAVIT

I, RUSSELL DYSON, municipal civil servant, of 600 Comox Road, Courtenay, British Columbia, V9N 3P6, SWEAR THAT:

1. I am currently employed by the Respondent, Comox Valley Regional District, (the "Regional District"), as its Chief Administrative Officer, and have held that position with the Regional District since May 15, 2017. I have personal knowledge of the matters hereinafter deposed to, save and except where those matters are stated to be based on information and belief, and to such latter matters, I verily believe the same to be true.
2. Since becoming the Regional District's Chief Administrative Officer, I have been responsible for overseeing the processing of the application (the "RGS Amendment Application") made by the Petitioner, 3L Developments Inc., ("3L Developments"), to the Regional District to amend the "Comox Valley Regional Growth Strategy", (the "RGS"), as a first step to authorizing 3L Developments to

proceed with the development of three parcels of land (the "Development Lands") located within Electoral Area "C" of the Regional District for a large-scale commercial and residential development, commonly referred to as the proposed "Riverwood Development".

3. Between July 7 and December 21, 2017, Regional District staff and 3L Developments met and exchanged correspondence in relation to consideration of the RGS Amendment Application by the Regional Board. During those meetings and in that correspondence, Regional District staff repeatedly advised 3L Developments that the process for consideration of the RGS Amendment Application would be lengthy given the requirements under the *Local Government Act* for consultation.
4. In October 2017, as I was responsible for overseeing the processing of the RGS Amendment Application, I met with 3L Developments to discuss the RGS Amendment Application. During that meeting I advised 3L Developments that:
 - (a) The Regional District wished to proceed with consideration of the RGS Amendment Application in accordance with the Reasons for Judgment of the British Columbia Court of Appeal delivered on April 6, 2016;
 - (b) The process for consideration of the RGS Amendment Application would be lengthy given the requirements under the *Local Government Act* for consultation; and,
 - (c) The decision on whether to approve the RGS Amendment Application was that of the Regional Board, and not that of Regional District staff.

5. At no time during my meeting with 3L Developments, or otherwise, did I advise 3L Developments that the Regional District would expedite consideration of the RGS Amendment Application. I was not in a position to do so as the timing of the consideration of the RGS Amendment Application was within the discretion of the Regional Board.
6. At no time during my meeting with 3L Developments, or otherwise, and despite Ms. Ann MacDonald, the Regional District's then General Manager of Planning and Development Services, being significantly involved in the processing of the RGS Amendment Application, did 3L Developments indicate to me that Ms. MacDonald had made any negative comments to 3L Developments about the RGS Amendment Application that would cause me to investigate her objectivity and role in processing the RGS Amendment Application. While 3L Developments was somewhat critical of Ms. MacDonald, the criticisms of Ms. MacDonald were consistent with those that are commonly made about local government planning staff by a development applicant who was not satisfied with the processing of his application.
7. In December 2017, as a result of reading an advertisement in the local newspaper, I first became aware of 3L Developments' allegation (the "Allegation") that Ms. MacDonald had stated to 3L Developments in June/July 2016 that *"it would be a frosty Friday in hell"* before the Regional District would approve the proposed Riverwood Development (the "Alleged MacDonald Statement"). At no time prior to December 2017 did 3L Developments advise the Regional District of the Alleged MacDonald Statement.

8. Upon becoming aware of the Allegation, I immediately had a discussion with Ms. MacDonald. As Ms. MacDonald reported to me in her employment with the Regional District, I felt that I had a duty to investigate the Allegation given that Ms. MacDonald was involved in the processing of the RGS Amendment Application.
9. When I questioned Ms. MacDonald about the Allegation, she was very upset by the Allegation. Ms. MacDonald denied ever having made the Alleged MacDonald Statement or any other similar statement to 3L Developments or otherwise. Ms. MacDonald expressed to me that the Alleged MacDonald Statement was very unprofessional and was not consistent with the manner in which she conducts herself. She was offended by the suggestion that she would speak in such a vulgar manner. In addition, Ms. MacDonald expressed to me that the Alleged MacDonald Statement was something that she would never say as she was well aware that the approval of the RGS Amendment Application was not her decision or the decision of any other member of the Regional District staff, but was the decision of the Regional Board.
10. During my discussion with Ms. MacDonald about the Allegation, Ms. MacDonald requested that she be permitted to respond to the Allegation. I advised Ms. MacDonald that she was permitted to do so. Ms. MacDonald subsequently spoke with the local newspaper that published the advertisement and her response to the Allegation was printed in a subsequent issue of the newspaper. Attached as Exhibit "A" to this my Affidavit is a true copy of the article published by the local newspaper containing Ms. MacDonald's response to the Allegation.
11. Ms. MacDonald's employment with the Regional District ended on April 10, 2018. Ms. MacDonald has not been involved in any manner with the processing of the RGS Amendment Application since then.

12. On July 11, 2018, after the July 10, 2018, meeting of the Regional District's Committee of the Whole (the "Committee of the Whole"), Ms. Alana Mullaly, the Regional District's then Acting General Manager of Planning and Development Services, and I met with 3L Developments in relation to a reference in the report prepared by Regional District staff on July 5, 2018, to the Committee of the Whole that approval of an amendment (the "Amendment") to the RGS in furtherance of the RGS Amendment Application required a unanimous vote of the Regional Board in order to proceed using the minor amendment process under the RGS (as had been indicated at the July 10, 2018, meeting of the Committee of the Whole as being required). 3L Developments was concerned that the reference was incorrect and may have affected the Committee of the Whole's voting on the motion to process the Amendment using the minor amendment process. After considering the issue, I accepted that a mistake had been made by it and took steps to correct the mistake. At no time did I agree that Regional District staff misled the Committee of the Whole. The mistake was made as a result of inadvertence.
13. At that meeting, 3L Developments was also concerned with the timing of consideration of the RGS Amendment Application. 3L Developments expressed that it wished for the process to move along in an expeditious manner.
14. On July 17, 2018, Ms. Mullaly and I met with 3L Developments. At that meeting, 3L Developments again expressed concerns that the Regional Board would likely decide to consider the Amendment on the basis of it being a standard amendment, and that a standard amendment process would be too lengthy.

15. At that meeting, we:

- (a) Discussed with 3L Developments a number of scenarios for a standard amendment process, fulsome and expedited, as well as a scenario for a minor amendment process;
- (b) Provided 3L Developments with a schematic that illustrated both what a regular standard amendment process could look like and its timing and what an expedited standard amendment process could look like and its timing;
- (c) Cautioned 3L Developments that, if a minor amendment process was used, the perception that the RGS Amendment Application was being expedited at the expense of public consultation and consultation ^{with} the Regional District's member municipalities, might negatively impact the Regional Board's consideration of the RGS Amendment Application. RD
- (d) Indicated to 3L Developments that, if the Regional Board was agreeable to adopting an expedited standard amendment process, an expedited standard amendment process might not take much more time than a minor amendment process; and,
- (e) Advised 3L Developments that whether the Regional Board would consider the Amendment using a minor amendment process (which was the recommendation of the Committee of the Whole, a regular standard amendment process, or an expedited standard amendment process was solely within the discretion of the Regional Board, and was not the decision of Regional District staff.

16. At no time during that meeting with 3L Developments or otherwise did Ms. Mullaly or I commit to the use of an expedited standard amendment process in relation to the Amendment or did Ms. Mullaly or I advise 3L Developments that Regional District staff would recommend to the Regional Board that it use an expedited standard amendment process in relation to the Amendment. Ms. Mullaly and I always maintained with 3L Developments that an expedited standard amendment process was only a possibility if it was deemed appropriate by the Regional Board. I also reminded 3L Developments that it was the Regional District's RGS Technical Advisory and Steering Committees that made recommendations to the Regional Board, and not Regional District staff.
17. At its July 24, 2018, meeting, the Regional Board considered the Amendment in the context of the Committee of the Whole's recommendation of July 17, 2018 that the Regional Board proceed with the Amendment using a minor amendment process.
18. Representatives of 3L Developments were in attendance at the July 24, 2018, meeting of the Regional Board and spoke in favour of the Amendment being processed as a minor amendment. In that context, 3L Developments spoke in favour of the application of the full spectrum of public engagement, including an open house and public hearing.
19. At the July 24, 2018, meeting of the Regional Board:
 - (a) The Regional Board was aware of the differences between a minor amendment process and a standard amendment process for the Amendment;
 - (b) Regional District staff addressed the fact that a standard amendment process for the Amendment could require not much longer than the time required for a minor amendment process or could be a significantly lengthier process, at the discretion of the Regional Board; and,

- (c) Regional District staff advised that, if the Regional Board chose to proceed with a standard amendment process, Regional District staff would report back to the Regional Board with options and timing for a standard amendment process.
20. At its meeting on July 24, 2018, the Regional Board rejected the Committee of the Whole's recommendation that the Regional Board proceed with the Amendment using a minor amendment process. As a result, the Amendment was to proceed using a standard amendment process.
21. On July 25, 2018, I spoke with Mr. Atwall of 3L Developments on the telephone and advised that Regional District staff were preparing a report to the Regional Board that provided two options for consultation in relation to the Amendment, with one option being a regular standard amendment process and the other being an expedited standard amendment process. I did not, at that time or otherwise, advise 3L Developments that Regional District staff would be recommending the expedited standard amendment process option to the Regional Board. At all times, Regional District staff were clear that the choice of consultation in relation to the Amendment was the decision of the Regional Board, with input from the RGS Technical Advisory and Steering Committees.
22. On August 8, 2018, Regional District staff prepared a report (the "August 8, 2018, Staff Report") containing the above two options. In the August 8, 2018, Staff Report, Regional District staff recommended that the Regional Board adopt a consultation plan (the "Recommended Consultation Plan") for the Amendment that was consistent with a regular standard amendment process as Regional District staff, including me, and the RGS Technical Advisory Committee were of the view that, given the significance of the change to the RGS that would be effected by the adoption of the Amendment, a full opportunity for public consultation was appropriate. Regional District staff, including me, and the RGS Technical Advisory Committee were also of the view that the Recommended

Consultation Plan was consistent with statements made by 3L Developments at the July 24, 2018, meeting of the Regional Board to the effect that 3L Developments supported a full and meaningful opportunity for the public to be engaged in the consideration of the Amendment.

23. At its August 14, 2018, meeting, after hearing from 3L Developments, which spoke in favour of the Amendment being processed through an expedited standard amendment process, the Regional Board resolved to adopt the Recommended Consultation Plan, subject to certain amendments (the "Board Specified Amendments") specified by the Regional Board that would result in the possibility of the Amendment being adopted one month earlier. The Regional Board made the Board Specified Amendments in an effort to accommodate the request of 3L Developments that the RGS Amendment Application be processed in an expedited manner.
24. On August 22, 2018, I wrote to 3L Developments to clarify some comments made by it at the August 14, 2018, meeting of the Regional Board.
25. At its meeting on October 2, 2018, after hearing from Regional District staff, 3L Developments, and numerous members of the public both in favour and opposed to the proposed Riverwood Development, Regional District Director Price put forward a motion (the "Denial Motion") that the Amendment be denied, which motion was seconded by Regional District Director Sproule.
26. During the debate on the Denial Motion, 3L Developments requested (the "Withdrawal Request") to withdraw the RGS Amendment Application.

27. Upon becoming aware of the Withdrawal Request, Mr. Joliffe, the Chair of the Regional Board conferred with Regional District staff, including me, and determined that withdrawal of the RGS Amendment Application was at the discretion of the Regional Board as the Denial Motion was on the table and was being debated. As a result, I advised the Regional Board, 3L Developments, and the public that the Withdrawal Request was at the discretion of the Regional Board.

SWORN BEFORE ME at Courtenay, British Columbia, on 19/Dec/2018.

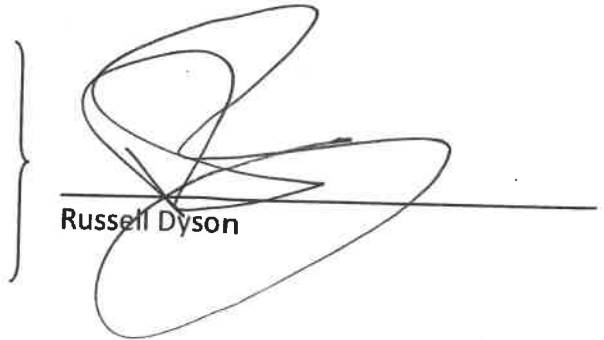


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Russell Dyson

District responds to 3L assertions

Terry Farrell
Record staff

The Comox Valley Regional District has taken issue with a recent paid advertisement that ran in the Comox Valley Record.

The 3L Developments ad, which ran as a "false front" in the Dec. 12 issue, attacked the CVRD and questioned its governance policies.

In 2006, 3L Developments purchased a 495-acre parcel of land around Stotan

Falls from TimberWest Forest Corp., with visions of developing the area into a residential community.

The advertisement stated the last 11 years have been spent dealing with "bureaucratic wrangling" and "stonewalling," and he suggests that "it is as though time has stood still."

Regional district chief administrative officer Russell Dyson said such statements do not reflect the process.

"First and foremost, as I have ex-

pressed to David (3L Developments founder Dave Dutcyvich) and I want to express to the public, this matter will be processed in a fair manner, in accordance to processes set out by our bylaws and the local [Municipal] Government Act." Dyson said. "The regional district takes its role very seriously, and we — the staff and directors — will be ensuring that we respond to any application or proposal in a fair and unbiased way."

See CVRD, Page A9

This is Exhibit "A" referred to in the affidavit of Russell Dyson sworn before me at COUCTENAY in the Province of British Columbia this 19 day of DECEMBER A.D., 2010.


A Commissioner for taking Affidavits
within British Columbia

CVRD: MacDonald categorically denies uttering quote attributed to her

Cont. from Page A3

The advertisement also insinuated that there are personality conflicts between Dutcyvich and CVRD management.

In one segment of the advertisement, presented as A Conversation with Dave Dutcyvich, he "discusses" a court ruling whereby the CVRD was to consider 3L's application in accordance with "the mandatory process that is set out in the Municipal Government Act."

Dutcyvich is then "asked" whether this process has happened.

"No," he responded, in the ad. "Anne (sic) MacDonald, the planner director from the CVRD told us that notwithstanding the Court's direction, 'it would be a frosty Friday in hell, before I would approve your application.'"

CVRD general manager of planning and development services, Ann MacDonald, was appalled to read that statement.

"The quote is very unprofessional," she said in an interview with the *Comox Valley Record*. "It's not something I would say; it's not something I did say..."

"Also, it's not a responsibility of mine, to approve applications. That is done by the elected officials... and I can't see elected officials, either, disregarding court direction. It suggests that regardless of court direction, I am not doing something, which, a) I don't have authority to do and b) nobody would do. And it is vulgar language, which is another very unprofessional [approach]."

Dutcyvich concurred on the decision-making process, and stands behind MacDonald in all regards.

"Staff don't make these decisions — these are the decisions of the board," he said. "We are there to support the process and that's our role, but ultimately, these are decisions to be made by the board — and in the case of a Regional Growth Strategy, it

The quote is very unprofessional. It's not something I would say; it's not something I did say.

ANN MACDONALD

also involves a high level of engagement with our municipal partners.

"We have full trust in, and support for Ann, and Ann and her staff will be here to treat any application in a fair and reasonable manner," he added.

MacDonald said any such application has to follow procedures and that is all the CVRD is doing in this case.

"What's important

to note is that there is a process that's in place to review this application in a fair and timely manner," she said. "We've made several written commitments to the applicant, to assure the applicant that the matter will be approached and processed in a fair manner, in accordance with the [guidelines] set out in the Comox Valley Regional District Strategic

Plan, and in Part 14 of the Local Government Act, which clearly lays out a process to amend the Regional Growth Strategy.

"To that end, we have notified the applicant to the proposed timing for that, and the steps, and also again committed that the staff will be bringing this matter to the regional board for its approval in a timely and fair manner. So, again, we emphasize that it's a board decision and there is a really clearly laid out statutory process that we will be diligently following."

MacDonald said 3L

was notified via email on Dec. 6 that the board will be presented with a status update on the 3L application in January. The update is expected to be on the agenda for the next CVRD committee of the whole meeting.

In April of 2018, the CVRD plans to take a staff report and a preliminary report to the

CVRD board in order for decisions to be made on two matters:

1) whether this is to be considered a minor, or standard amendment (to the RGS), and.

2) does the board wish to proceed with initiating the amendment?

"The Regional Growth Strategy...

took a great deal of consultation with the development community, and with the public, to ensure that all interests were accounted for," added Dyson. "It is the document that guides developments to ensure that the economy, the environment and the social values in the Comox Valley are protected."

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