

Amended pursuant to Rule 16-1(19)(b)(i)  
Original filed: October 17, 2018

No. S-1811213  
Vancouver Registry

**SUPREME COURT  
OF BRITISH COLUMBIA  
VANCOUVER REGISTRY**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**JAN 25 2019**



*RE: IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT,  
R.S.B.C. 1996, c. 241*

BETWEEN:

**3L DEVELOPMENTS INC.**

PETITIONER

AND:

**COMOX VALLEY REGIONAL DISTRICT**

RESPONDENT

**AMENDED PETITION TO THE COURT**

ON NOTICE TO:

Comox Valley Regional District  
600 Comox Road  
Courtenay, B.C. V9N 3P6

Attorney General for British Columbia  
Legal Services Branch  
PO Box 9280, Stn. Prov. Govt.  
1001 Douglas Street  
Victoria, B.C. V8W 9J7

**This proceeding is brought for the relief set out in Part 1 below by**

- the person named as petitioner in the style of proceedings above  
 (the Petitioner)

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and  
(b) serve on the petitioner

- (i) 2 copies of the filed response to petition, and
- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

**Time for response to petition**

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	<p>The address of the registry is:          Supreme Court Vancouver Registry          800 Smithe Street,          Vancouver, B.C. V6Z 2E1</p>
(2)	<p>The ADDRESS FOR SERVICE of the petitioner is:          c/o Shane Coblin          Kornfeld LLP          1100 One Bentall Centre, 505 Burrard, Street, Box 11          Vancouver, B.C. V7X 1M5</p> <p>Fax number for service of the petitioner: 604-683-0570</p> <p>E-mail address for service of the petitioner: scoblin@kornfeldllp.com</p>
(3)	<p>The name and office address of the petitioner's lawyer is:          Shane D. Coblin          Kornfeld LLP          1100 One Bentall Centre, 505 Burrard, Street, Box 11          Vancouver, B.C. V7X 1M5</p>

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## CLAIM OF THE PETITIONER

### Part 1: ORDERS SOUGHT

1. An order setting aside the July 24, 2018 decision of the Comox Valley Regional District Board to refuse the Petitioner's minor amendment application brought pursuant to section 5.2.4 of the Regional Growth Strategy;
2. An order setting aside the decision of the Comox Valley Regional District Board at the October 2, 2018 meeting, to deny the Petitioner's application to amend the Regional Growth Strategy;
3. A declaration that the Comox Valley Regional District Board's July 24, 2018 decision to deny the Petitioner's minor amendment application is unreasonable;
4. A declaration that the Comox Valley Regional District Board's October 2, 2018 decision to deny the Petitioner's Extension Application, Withdrawal Application and/or Amendment Application are unreasonable and/or were made in bad faith;
5. A declaration the Comox Valley Regional District Board contravened sections 89 and 90 of the *Community Charter* at the October 2, 2018 Board meeting;
- 1-6. A declaration that the Comox Valley Regional District Board breached the rules of procedural fairness and natural justice by failing to provide the Petitioner with sufficient notice of the Regional Growth Strategy Steering Committee Report of September 28, 2018 in advance of the October 2, 2018 meeting;
- 2-7. A declaration that the Comox Valley Regional District Board breached the rules of procedural fairness and natural justice by failing to properly consider the Petitioner's request for an extension to its amendment application at the October 2, 2018 meeting;
- 3-8. A declaration that the Comox Valley Regional District Board breached the rules of procedural fairness and natural justice by failing to properly consider the Petitioner's request to withdraw its application at the October 2, 2018 meeting;
- 4-9. A declaration that the Comox Valley Regional District Board breached the *Local Government Act*, R.S.B.C. 2015, c. 1, by failing to put in place procedures for processing applications in Board meetings;
- 5-10. A declaration that the conduct of the Comox Valley Regional District and its Board in relation to the amendment application demonstrates bias or gives rise to reasonable apprehension of bias, or both;
- 6-11. An order that the Petitioner's amendment application be remitted to the Board for consideration and that the Petitioner's requests for an extension to the application and

withdrawal of the application be reconsidered by the Board in accordance with the rules of procedural fairness and natural justice;

~~7.12.~~ Costs against the Comox Valley Regional District; and

~~8.13.~~ Such further and other relief that this Honourable Court deems just.

## Part 2: FACTUAL BASIS

### Parties

1. The Petitioner, 3L Developments Inc. ("**3L Developments**"), is a corporation incorporated pursuant to the laws of British Columbia and having an address of service for the purposes of this litigation at 1100 One Bentall Centre, 505 Burrard, Street, Box 11 Vancouver, British Columbia.
2. The Respondent, Comox Valley Regional District, is a regional district incorporated by Letters Patent issued on February 15, 2008 with an office at 550B Comox Road, Courtenay, British Columbia (the "**CVRD**").
3. The CVRD is a federation of three municipalities and four unincorporated rural areas known as "electoral areas".
4. The CVRD carries out its business and operations through the CVRD Board of Directors consisting of directors duly elected from throughout the CVRD (the "**Board**").

### Properties

5. 3L Developments is the owner of certain lands located within the CVRD legally described as:
 

PID: 028-915-194  
Lot A Sections 10 and 15 Township 9 Comox District Plan EPP23059

(the "**3L Lands**")
6. 0768816 BC Ltd. (the "**Numbered Company**") is the owner of two parcels of land located within the CVRD, legally described as:
  - (a) PID 000-866-792
 

That Part of the North West 1/4 of Section 10, Township 9, Comox District, Plan 552G Lying West of Puntledge River Except That Part in Plan VIP70188 and EPP24391; and
  - (b) PID 000-866-814

The South West 1/4 of Section 15, Township 9, Comox District, Plan 552G, Except That Part Shown Coloured Red on Plan 79 RW and Except That Part In Plan VIP70188

(collectively, the “**Numbered Lands**”)

7. The 3L Lands and the Numbered Lands (collectively, the “**Development Lands**”) currently comprise about 385 acres west of the boundary of the City of Courtenay, adjacent the Brown River and Puntledge River.
8. The Development Lands are located in the Puntledge-Black Creek (Electoral Area C) (“**Area C**”), within the CVRD.
9. 3L Developments and the Numbered Company intend to develop the Development Lands to include residential housing and parkland (the “**Riverwood Development**”). The Numbered Company and 3L Developments agreed that 3L Developments would coordinate the Riverwood Development.

#### **Initial Application to Amend the Regional Growth Strategy**

10. On March 29, 2011, the CVRD adopted the *Comox Valley Regional District Growth Strategy Bylaw No. 120, 2010* (the “**RGS Bylaw**”). Through the RGS Bylaw, the CVRD adopted the “Regional Growth Strategy for Comox Valley Regional District” (the “**RGS**”).
11. On May 22, 2013, 3L Developments brought an application seeking a minor amendment to the RGS to create a new “settlement node” for the Riverwood Development, which would allow for subdivision of the Development Lands into smaller lots (the “**Amendment Application**”).
12. In March 2014, the CVRD adopted *Comox Valley Regional District Regional Growth Strategy Fees and Charges Bylaw, No. 274, 2014*.

#### **Opposition to 3L Developments’ Application by Edwin Grieve**

13. At all material times, Edwin Grieve (“**Grieve**”) was a member of the Board from Area C, and served as Chair of the Board from 2010 to 2015.
14. In or around July 2013, Grieve stated to one or more persons at the CVRD that he would not support any developments or applications sought by 3L Developments.
15. Grieve stated that his opposition to 3L Developments was due to his refusal to “be directed by an East Indian” (the “**Discriminatory Statements**”). The Discriminatory Statements targeted the development manager for 3L Developments, Kabel Atwall (“**Atwall**”), who is of East Indian descent and has been one of the primary contacts between 3L Developments and the CVRD.

16. In response to the Discriminatory Statements, Atwall filed a complaint against, *inter alia*, the CVRD and Grieve under Case Number 12231 (the “**Complaint**”).
17. On or about May 25, 2014, the CVRD settled the Complaint with Atwall (the “**Settlement Agreement**”)
18. The Settlement Agreement provided as follows:
- (a) Grieve agreed to recuse himself from any further involvement with the Development Lands, including refraining from discussing the Development Lands or any applications submitted to the CVRD in relation to the Development Lands with the Alternate Director that would replace him;
  - (b) Grieve would select a replacement Alternate Director in accordance with the *Local Government Act* that was acceptable to Atwall to hear applications submitted in relation to the Development Lands; and
  - (c) The CVRD agreed to set up appropriate internal safeguards to ensure that Grieve had no further involvement with respect to the Development Lands.
- ~~19.~~ Following the Settlement Agreement, Curtis Scoville (“**Scoville**”) was purportedly appointed as an Alternate Director by Grieve to sit in his place when matters related to the Development Lands were being considered by the Board. ~~At that time, the CVRD advised 3L Developments and Atwall that Scoville would be fair and impartial when dealing with 3L Developments and the Development Lands; however, Atwall was not consulted in advance pursuant to the terms of the Settlement Agreement.~~
- ~~20.~~19. ~~Scoville was not appointed as an Alternate Director in accordance with the requirements of the Settlement Agreement or in accordance with the *Local Government Act*, yet he has participated and voted on all matters related to the Development Lands. Despite 3L Developments’ demands, the CVRD has failed to confirm how it effected Scoville’s appointment.~~
- ~~21.~~20. Grieve and the CVRD breached the Settlement Agreement on or about September 29, 2014 when Grieve attended an Electoral Services Committee meeting and involved himself in the discussions and motions concerning *Bylaw No. 337, 2014*, a draft bylaw to amend the Rural Comox Official Community Plan. *Bylaw No. 337, 2014* (“**Bylaw 337**”) called for a change to permitted density and community amenity contribution frameworks for subdivision in the Rural Settlement Areas, which contain the Development Lands. In essence, this bylaw was intended to downzone the Development Lands, and other lands located in the Rural Settlement Areas, to make it significantly less profitable to develop.
- ~~22.~~21. Grieve was also present and involved in the Board meeting on August 26, 2014 when *Bylaw 337* was given first and second readings and a formal referral process was commenced.

### **First Refusal of Minor Amendment to the Regional Growth Strategy**

- 23-22. On June 24, 2014, the CVRD rejected the Amendment Application without following the proper procedure as prescribed in the *Local Government Act*, the applicable bylaws passed by the CVRD, or the processes set out in the RGS (the “**First RGS Refusal**”). The CVRD also failed to provide 3L Developments with fair and due process.
- 24-23. Accordingly, 3L Developments applied to the Supreme Court of British Columbia on September 10, 2014 for a judicial review of the First RGS Refusal.
- 25-24. The application was successful, and the Honourable Madam Justice Burke set aside the First RGS Refusal on May 6, 2015. The Court further ordered that the CVRD consider the Petitioner’s application in a manner consistent with the mandatory process set out in Part 5.2 of the Regional Growth Strategy.
- 26-25. The CVRD appealed the decision of Madam Justice Burke to the British Columbia Court of Appeal. The appeal was dismissed on April 6, 2016 (the “**Court of Appeal Decision**”).
- 27-26. After the First RGS Refusal, 3L Developments met with the then General Manager of Planning and Development Services for the CVRD, Ann MacDonald to discuss the proposed development. In that meeting, and despite the decisions of the British Columbia Supreme Court and the British Columbia Court of Appeal, Ms. MacDonald told representatives of 3L Developments that “*it would be a frosty Friday in hell*” before the CVRD would approve the Riverwood Development

### **Second Refusal of Minor Amendment to the Regional Growth Strategy**

- 28-27. Despite this, 3L Developments resubmitted the Amendment Application to the Board.
- 29-28. Section 5.2(1) of the RGS states:
- An amendment to the RGS, other than those considered to be a minor amendment, is considered a standard amendment and will follow the same process that is required to adopt a RGS as set out in Part 25 of the *Local Government Act*.
- 30-29. Sections 5.2(2) and (3) establish a quicker and more streamlined process for making “minor amendments” to the RGS than the process set out in the *Local Government Act*.
- 31-30. 3L Developments’ application to create a new settlement node for the Riverwood Development constitutes a minor amendment within the meaning of the RGS.
- 32-31. Section 5.2(4) states, in relevant part, that:

Minor amendments may be applied for by a member municipality, the regional district, external agency, **private land owner or developer**.

[emphasis added]

- ~~33.~~32. Once an application for a minor amendment is received, the RGS requires the CVRD to set up a Technical Advisory Committee (“TAC”) and Steering Committee to review the application and provide comments and recommendations to the Board.
- ~~34.~~33. The CVRD bylaws also require the proposed application, along with the recommendations of the TAC and Steering Committee, to be reviewed by the Committee of the Whole (“COW”), which consists of the same voting members as the Board. The COW would then consider the application and vote on whether to recommend the application to the Board.
- ~~35.~~34. Despite the requirements of the RGS, the TAC and the Steering Committee failed or refused to properly consider the Amendment Application as a minor amendment, claiming that the Court of Appeal Decision on the First RGS Refusal precluded it from considering or commenting on the merits of the Amendment Application, and as such they reported that they were unable to recommend that the Amendment Application proceed as a minor amendment.
- ~~36.~~35. In fact, the Court of Appeal Decision did not preclude the TAC or the Steering Committee from considering and commenting on the merits of the Amendment Application, and the CVRD and its staff were made aware of this fact prior to the reports being presented to the COW.
- ~~37.~~36. Further, CVRD staff misinformed the COW at its meeting on July 10, 2018 as to the required voting process for adoption of the Amendment Application if it were to proceed as a minor amendment rather than a standard amendment. CVRD staff told the Board that the former required a unanimous vote of all Board members, when only a simple majority of those Board members present was actually required.
- ~~38.~~37. Representatives of 3L Developments present at that meeting complained to the COW and to the CVRD staff that they had been given incorrect information about the voting requirements, but those complaints were ignored.
- ~~39.~~38. As a direct and foreseeable result of this misinformation, the COW voted against recommending that the Amendment Application proceed as a minor amendment.
- ~~40.~~39. 3L Developments continued to complain about the misinformation following the meeting, and ultimately the CVRD staff agreed that they had misled the COW and called a special meeting of the COW on July 17, 2018 to reconsider the matter.
- ~~41.~~40. At that meeting, once being provided with the proper information about the voting requirements of the minor amendment process, the COW voted in favour of a resolution



to approve the minor amendment process by a 5 to 3 majority. However, despite the fact that the resolution had passed by the requisite majority, the CVRD staff unilaterally declared the resolution defeated claiming that it required a special 2/3 majority, when in reality it did not. 3L Developments again complained to the Board and the CVRD staff at the meeting that they were not correct, but those complaints were ignored.

- 42.41. 3L Developments continued to complain about the actions of the CVRD staff, and once again the staff to agree that they had been wrong. The CVRD staff then retroactively declared that the resolution had passed.
- 43.42. The Board meeting to consider whether or not 3L Developments' application should proceed through the minor or standard amendment process was scheduled for July 24, 2018.
- 44.43. Prior to the July 24, 2018 meeting, Russell Dyson ("**Dyson**"), Chief Administrative Officer of the RGS, contacted 3L Developments' representatives and advised that the CVRD staff was not in favour of the application proceeding through the minor amendment process, but that they had come up with a way that the application could proceed through an "expedited" standard amendment process.
44. Dyson further advised 3L Developments' representatives that the expedited amendment process, if put in place, would see the amendment up for an adoption vote by December 2018, resulting in a delay of only an additional 35 days compared to the minor amendment process. 3L Developments did not agree to the "expedited" standard amendment process.
45. At or around that same time, the CVRD staff instructed the Board to consider the minor amendment process pursuant to the Court of Appeal Decision, but explained to the Board that the Amendment Application could be denied at the first reading of the standard amendment process.
- 45.46. In breach of his obligations to be fair and impartial, Scoville sent a private message in advance of the July 24, 2018 Board meeting to a constituent, which was later released on Facebook, advising that he would continue to oppose 3L Developments' Amendment Application and would be outspoken against it at the July 24, 2018 Board meeting.
- 46.47. At the meeting of July 24, 2018, the CVRD staff presented to the Board that if it voted against the minor amendment process, it had come up with an expedited standard process that would add only a 35 days delay as compared to the minor amendment process. This information influenced the Board to vote to refuse the minor amendment process (the "**Minor Amendment Refusal**").
- 47.48. Following the meeting, the CVRD staff thereafter withdrew its support for the "expedited" standard amendment process and authored a report, dated August 8, 2018, recommending that the Board reject the expedited process that it had previously presented and instead follow a much longer process (the "**Consultation Plan**").

49. On August 14, 2018, in reliance upon this report, the Board adopted the lengthier Consultation Plan and voted against proceeding with the expedited standard amendment process.
50. The Consultation Plan required the CVRD staff to consult with various stakeholders including a number of neighbouring First Nations regarding the Amendment Application in accordance with the International Association for Public Participation, a standard known as "IAP2".
51. Pursuant to the Consultation Plan, the CVRD was required to deliver to various stakeholders a copy of an information package regarding the Amendment Application by August 15, 2018.
- 48-52. At least one stakeholder, the We Wai Kum First Nation, indicates that they did not receive any notification or information of any kind from the CVRD regarding the Amendment Application by August 15, 2018, or at all.

#### **Refusal of Standard Amendment to the Regional Growth Strategy**

- 49-53. Pursuant to the Consultation Plan, a Board meeting was scheduled for October 2, 2018 for the first reading of the Amendment Application.
- 50-54. At or about 11:16 a.m. on Friday, September 28, 2018, 3L Developments received an email from the CVRD informing it that the Steering Committee Report to the Board would be published shortly on the CVRD website and that its recommendation was to deny the Amendment Application. This was the first time that 3L Developments had been advised that the Steering Committee would be recommending that the Amendment Application be denied. No further details were provided at that time.
- 54-55. 3L Developments did not have access to the September 28, 2018 Steering Committee Report until at or about 11:16 a.m. that day (the "**Steering Committee Report**").
- 52-56. When it received the report, 3L Developments learned the following:
- (d)(a) The Steering Committee had met on September 20, 2018 and September 27, 2018 to consider 3L Development's application. 3L Developments' representatives were not contacted regarding these meetings or provided with an opportunity to attend or participate in them;
  - (e)(b) In advance of these Steering Committee meetings, the TAC had met on September 19, 2018 and September 26, 2018 to consider the Amendment Application and to prepare reports to be presented to, and considered by, both the Steering Committee and the Board when making their decision about the Amendment Application ("**TAC Reports**"). 3L Developments' representatives were not contacted regarding these meetings or provided with an opportunity to attend or participate in them; and

(f)(c) Neither of the Steering Committee Reports or TAC Reports, which formed the basis of the Steering Committee's report, had been provided to anyone from 3L Developments prior to approximately 11:16 a.m. on Friday, September 28, 2018.

53-57. The Board meeting to consider the first reading of the Amendment Application was scheduled for Tuesday October 2, 2018.

54-58. On Monday, October 1, 2018, 3L Developments requested an extension to the Amendment Application in order to allow it sufficient time to consider the information in the reports it had just received on September 28, 2018 and to prepare a reasoned response and address certain concerns that had only been raised for the first time in those reports (the "**Extension Application**").

55-59. Rather than granting the Extension Application, which is the customary practice of the CVRD in similar situations, planning staff advised that only the Board could grant an extension and that the request would be put to a vote at the October 2, 2018 meeting.

56-60. At the outset of the October 2, 2018 the Board meeting, 3L Developments renewed its Extension Application and requested that it be considered prior to the CVRD putting the Amendment Application to a vote.

57-61. The Chair of the Board (the "**Chair**") acted improperly by refusing to initiate a vote on the Extension Application, ruling instead that the Board would hear first from delegates on the Amendment Application and then vote on the Extension Application at the same time as the Amendment Application.

58-62. The Board then proceeded to hear presentations from CVRD Staff and delegates opposing the Amendment Application.

59-63. Representatives of 3L Developments then spoke to the Board explaining that they were unable to properly respond to the information that had been presented by CVRD staff and in the Steering Committee and TAC Reports, and needed an opportunity to do so. However, the Chair again refused to allow the Board to consider the Extension Application separate from consideration of the entire Amendment Application.

60-64. As a result of the Chair's refusal to consider the Extension Application separately, 3L Developments sought to formally withdraw the Amendment Application (the "**Withdrawal Application**").

65. Upon receipt of the Withdrawal Application, the Chair ~~adjourned~~ recessed the meeting and held a private *in camera* meeting with the CVRD Staff and other CVRD Board Members outside of the council chamber.

66. The Board did not bring a motion to call an *in camera* meeting nor did the Board pass a vote permitting an *in camera* meeting to take place.

67. The *in camera* meeting was held in an office adjacent to the public Board meeting room. Not all of the Board members were invited nor did they participate in the *in camera* meeting.
68. Following the *in camera* meeting, the Chair reconvened the Board meeting and announced that it was the Board's application and that 3L Developments was not entitled to withdraw it.
- 61-69. The Board proceeded to vote on the motion to deny the Amendment Application, with six Directors voting in favour of the motion to deny and four opposed (the "Second RGS Refusal").
- 62-70. At no time during the course of the October 2, 2018 meeting, was the Withdrawal Application presented to the Board for a vote.
- 63-71. At no time during the course of the October 2, 2018 meeting, did anyone provide any justification or explanation as to why the Board refused to grant the Extension Application.

### **Part 3: LEGAL BASIS**

#### **Judicial Review**

1. This is an application brought pursuant to section 2 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.
2. Section 2 of the *Judicial Review Procedure Act* provides:
  - 2 (1) An application for judicial review must be brought by way of a petition proceeding.
  - (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
    - (a) relief in the nature of mandamus, prohibition or certiorari;
    - (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

#### **The CVRD's July 24, 2018 decision to deny the Petitioner's minor amendment application is unreasonable.**

3. The failure of an administrative decision-maker to take into account a highly relevant consideration is just as erroneous as the improper importation of an extraneous consideration and may result in the decision being set aside.

*Oakwood Developments Ltd. v. St. Francois Xavier (Rural Municipality)*, [1985] 2 SCR 164

*Pucci v. North Vancouver (City)*, 2010 BCSC 743

4. A decision may also be quashed if it is grounded upon or activated by an improper or incorrect assumption.

*Kollen and Piercy v. City of Vancouver*, 2004 BCSC 684

*Brinkworthy Properties Ltd. v North Salt Spring Waterworks District*, 2017 BCSC 951

5. When considering the Petitioner's minor amendment application, the CVRD took into account irrelevant considerations, failed to take into account relevant considerations and grounded its decision to deny the minor amendment application upon improper and/or incorrect assumptions.

#### **The CVRD breached the *Local Government Act***

- 3-6. The CVRD breached section 225 of the *Local Government Act* by failing to establish procedures governing the Board's conduct when considering applications submitted by interested parties.

- 4-7. Section 225 of the *Local Government Act* requires a regional board to enact a bylaw to establish the general procedures to be followed in conducting its business. Section 225(1) provides:

(1) A board must, by bylaw, do the following:

(a) establish the general procedures to be followed by the board and by board committees in conducting their business, including the manner by which resolutions may be passed and bylaws adopted;

(b) provide for advance public notice respecting the date, time and place of board and board committee meetings and establish the procedures for giving that notice;

(c) identify places that are to be public notice posting places for the purposes of the application of section 94 [requirements for public notice] of the Community Charter to the regional district.

- 5-8. On October 28, 2008, the CVRD adopted *Comox Valley Regional District Procedure Bylaw No. 1, 2008* (the "**Procedure Bylaw**").

- 6-9. The Procedure Bylaw does not explain when or how an application to the Board can be withdrawn.

7.10. The CVRD breached section 225 of the *Local Government Act* by failing to provide for a procedure for the withdrawal of applications under consideration by the Board.

**The CVRD contravened sections 89 and 90 of the *Community Charter***

11. Section 226 of the *Local Government Act* provides that Division 3 of Part 4 of the *Community Charter* applies to Regional Districts.

12. Section 89 of the *Community Charter* provides that meetings of a Regional District Board (see section 207 of the *Local Government Act*) must be open to the public unless the subject matter being considered falls within the listed categories set out in section 90 of the *Community Charter*.

13. The Board contravened sections 89 and 90 of the *Community Charter* by briefly adjourning the October 2, 2018 meeting in order to discuss the Petitioner's Extension Application, Withdrawal Application and/or Amendment Application *in camera* with some, but not all, members of the Board and staff.

14. The Petitioner and members of the public have a right to a fair, transparent and open process. The Board's failure to comply with the statutory procedural requirements provides sufficient grounds for quashing the Board's October 2, 2018 decision.

*London (City) v. RSJ Holdings Inc.*, [2007] 2 SCR 588, 2007 SCC 29

**The CVRD breached the rules of procedural fairness and natural justice**

8.15. The CVRD breached the rules of procedural fairness and natural justice owed to 3L Developments on the following bases:

- (a) by failing to provide 3L Developments with a sufficient opportunity to properly review and respond to the September 28, 2018 Steering Committee Report in advance of the October 2, 2018 meeting; and
- (b) by failing to properly consider 3L Developments' Extension Application or Withdrawal Application at the October 2, 2018 meeting.

(a) *Late Disclosure of the September 28, 2018 Steering Committee Report*

9.16. The duty of fairness includes the right of the parties affected by an administrative body's decision to know the case against them and to be given the opportunity to present the other side of the matter.

*Thomson v. Canada (Deputy Minister of Agriculture)*,

10.17. Notice is of fundamental importance to the legitimacy of the decision making process in land use cases. Fairness requires that all information relied upon by the administrative body when making its decision be disclosed to the affected party. Information required

to be disclosed includes reports prepared by the body's staff and any other report upon which the body has relied and must be provided to the party in adequate time before the hearing so that the party can prepare its case.

*Pitt Polder Preservation Society v. Pitt Meadows (District)*, 2000 BCCA 415

~~11.18.~~ The CVRD's failure to provide timely notice of the September 28, 2018 Steering Committee Report and the TAC Reports denied 3L Developments the opportunity to prepare a reasoned response in advance of the October 2, 2018 meeting. In the circumstances, this late disclosure constitutes a breach of procedural fairness and natural justice.

(b) *Failing to Properly Consider the Extension Application and Withdrawal Application*

~~12.19.~~ A public body like a municipality is bound by a duty of procedural fairness when it makes an administrative decision affecting individual rights, privileges or interests.

*Congregation des temoins de Jehovah de St.-Jerome-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at para. 2

~~13.20.~~ A number of factors should be considered when analyzing the duty of procedural fairness, including:

- (a) the nature of the decision being made and the process followed in making it, including the closeness of the administrative process to the judicial process;
- (b) the nature of the statutory scheme and the terms of the statute pursuant to which the body operates, including whether there is an appeal procedure provided within the statute;
- (c) the importance of the decision to the individuals or individuals affected;
- (d) the legitimate expectations of the person challenging the decision; and
- (e) the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures.

*Baker v. Canada (Minister of Citizenship & Immigration)*,  
1999 SCC 699, at paras. 23-27 [*Baker*]

~~14.21.~~ The *Baker* factors have been applied in the context of municipal board decisions.

*Congregation des temoins de Jehovah de St.-Jerome-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at paras. 5-13

~~15.22.~~ Applying the *Baker* factors to the Withdrawal Application and Extension Application indicates that the CVRD was required to comply with a heightened standard of procedural fairness in relation to these applications:

- (a) the Board's implicit decision to deny the Extension Application and outright denial of the Withdrawal Application was quasi-judicial, because the nature of those applications relates to decisions concerning private interests rather than wide policy decisions;
- (b) neither the *Local Government Act* nor the Procedure Bylaw provide an applicant with a right of appeal from the Board's decision in relation to an application, indicating that higher procedural fairness safeguards are required;
- (c) the decisions on the Withdrawal Application and Extension Application were highly important to 3L Developments, as they affected its ability to respond effectively to the Steering Committee Report;
- (d) 3L Developments' legitimate expectations were that the Withdrawal Application and Extension Application would be individually considered and that reasonably detailed reasons would be provided for the Board's decisions in relation to each application; and
- (e) the Board had not instituted any procedures for dealing with applications at Board meetings.

~~16-23.~~ As a result, the CVRD was bound to abide by a heightened standard of procedural fairness in relation to the Extension Application and the Withdrawal Application.

~~17-24.~~ Even if the heightened standard did not apply, the Board still was required to engage in proper deliberations and debate of the Extension and Withdrawal Applications.

*Catalyst Paper Corp. v. North Cowichan (District)*,  
2012 SCC 2, at para. 29 [*Catalyst Paper*]

~~18-25.~~ The Board failed to meet even this lower standard as contemplated in *Catalyst Paper*.

~~19-26.~~ The Board denied the Extension Application without giving it proper consideration or providing any reasoning for why it was denied. There was no debate or deliberation by the Board regarding the Extension Application.

~~20-27.~~ The Board also denied the Withdrawal Application without reasonable consideration of relevant factors, and did not provide adequate reasoning for its denial.

~~21-28.~~ As a result, the Board failed to meet the standard of procedural fairness required when deciding both the Withdrawal Application and the Extension Application, and in so doing it breached the rules of natural justice.



**The October 2, 2018 decisions to deny the Extension Application, Withdrawal Application and/or the Amendment Application are unreasonable and/or were made in bad faith**

29. When considering the Petitioner's Extension Application, Withdrawal Application and/or the Amendment Applications, the CVRD took into account irrelevant considerations, failed to take into account relevant considerations and grounded its decisions upon improper and/or incorrect assumptions.
30. In denying the Amendment Application, the CVRD also failed to follow its own Consultation Plan by not properly consulting with various stakeholders, including but not limited to, the We Wai Kum First Nation.
31. The CVRD acted unreasonably and arbitrarily and without the degree of fairness, openness and impartiality required of a Regional District.

*London (City) v. RSJ Holdings Inc.*, [2007] 2 SCR 588, 2007 SCC 29

*338186 B.C. Limited v. City of Vancouver*, 2011 BCSC 336

*Oakwood Developments Ltd. v. St. Francois Xavier (Rural Municipality)*, [1985]  
2 SCR 164

*Brinkworthy Properties Ltd. v North Salt Spring Waterworks District*, 2017 BCSC 951

**The conduct of the CVRD and the Board demonstrates bias or gives rises to a reasonable apprehension of bias**

- 22-32. The rule against bias provides that administrative boards, including planning boards and city councils, must base their decisions and must be seen to be basing their decisions on the evidence that is properly before them.

*Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623

- 23-33. Sopinka J., for the majority of the Supreme Court of Canada, concluded in *Save Richmond Farmland Society v Richmond (Township)*, 1990 CarswellBC 282, at para. 57 that "a member of a municipal council [would not be] disqualified by reason of bias unless he or she had prejudged the matter to be decided to the extent of being no longer capable of persuasion".

- 24-34. The test for apprehension of bias is an objective one, in that there must be an apprehension of bias on the part of a reasonable, informed observer, regardless of whether the person who is subject to the decision apprehends bias.

*McLaren v. Castlegar (City)*, 2011 BCCA 134 at paras. 39-41

25.35. The following conduct of the CVRD and its Board, taken as a whole, demonstrates that they had prejudged the Amendment Application prior to the October 2, 2018 meeting to the extent that they were no longer capable of being persuaded to change their minds:

- (a) the CVRD planning department told representatives of 3L Developments that it would be “a frosty Friday in hell” before the CVRD would ever approve the Riverwood Development;
- (b) Greive, when he was the chair of the Board, made racist remarks about Atwall and indicated that he would not be directed by an East Indian.
- (c) Following the settlement of the Human Rights complaint, Grieve continued to participate in CVRD meetings relating to 3L Developments and the Development Lands;
- ~~(d) Scoville was not properly appointed as an Alternate Director by the Board and/or Grieve, pursuant to section 201 of the *Local Government Act* and the Settlement Agreement;~~
- ~~(e)~~(d) Scoville’s made remarks that ultimately became public that can only be considered as an indication that he had pre-judged the matter to the point that no reasonable argument could change his mind;
- ~~(f)~~(e) the actions taken by the CVRD staff leading up to the Minor Amendment Refusal demonstrate that they did not have an open mind with respect to 3L Developments and the Amendment Application;
- (f) the CVRD staff unreasonably revoked their support for the “expedited” standard amendment process, leaving 3L Developments with no option other than the standard amendment process;
- ~~(g)~~ contravened the Consultation Plan by failing to properly inform and notify various stakeholders;
- ~~(g)~~(h) by failing to provide proper notice of the Steering Committee Report or the TAC Reports prior to the October 2, 2018 meeting, the CVRD denied 3L Developments any meaningful opportunity to prepare a response to the report;
- ~~(h)~~(i) the CVRD prepared reports for the sole purpose of meeting the requirements outlined in the Court of Appeal Decision without any legitimate consideration of the Amendment Application; and
- ~~(i)~~(j) the Board refused to give proper consideration to the Extension Application and the Withdrawal Application.

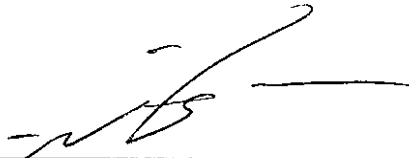
**Part 4: MATERIAL TO BE RELIED UPON**

- 1.      Affidavit #1 of Kabel Atwall sworn October 16, 2018;
- 1-2.      Affidavit #2 of Kabel Atwall sworn January 25, 2019;
- 2-3.      Affidavit #1 of Mark Holland sworn October 16, 2018;
- 4.      Affidavit #1 of David Dutcyvich sworn October 15, 2018;
- 5.      Affidavit #2 of Larry Jangula sworn January 23, 2019;
- 3-6.      Affidavit #1 of James MacIntyre sworn October 15, 2018;
- 7.      Affidavit #1 of Vashti Hamilton sworn October 17, 2018;
- 8.      Affidavit #2 of Vashti Hamilton sworn January 25, 2019;
- 9.      Affidavit #1 of Anna Moore sworn January 25, 2019; and
- 4-10.      Such further and other material as Counsel may advise and this Honourable Court may permit.

The Petitioner estimates that the hearing of the petition will take **one day**.

Dated: October 17, 2018

Amended: January 25, 2019

per: 

Signature of Lawyer for Petitioner  
Kornfeld LLP

*Shane D. Coblin*

To be completed by the court only:

Order made

in the terms requested in paragraphs ♦ of Part 1 of this petition

with the following variations and additional terms:

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Date:

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Signature of  Judge

Mater