



Court File No. **VLC-S-S-223114**

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

COMOX VALLEY REGIONAL DISTRICT

PLAINTIFF

AND

UNION BAY INDUSTRIES LTD. and DEEP WATER RECOVERY LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

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

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

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

Claim of the Plaintiff

Part 1: STATEMENT OF FACTS

1. The Plaintiff Comox Valley Regional District (the “CVRD”) is a regional district incorporated and continued pursuant to the *Local Government Act*, R.S.B.C. 2015, c.1, and has a business address at 770 Harmston Avenue, Courtenay, British Columbia, V9N 0G8.
2. The Defendant Union Bay Industries Ltd. (“Union Bay”) is a business corporation incorporated pursuant to the laws of British Columbia, with registered and records offices at 1500 – 570 Granville Street, Vancouver, British Columbia, V6C 3P1.
3. The Defendant Deep Water Recovery Ltd. (“Deep Water”) is a business corporation incorporated pursuant to the laws of British Columbia, with registered and records offices at 1500 – 570 Granville Street, Vancouver, British Columbia, V6C 3P1.

Violation of the Zoning Bylaw

4. On or about October 29, 2019, the CVRD adopted the Rural Comox Valley Zoning Bylaw, No. 520, 2019 (the “Zoning Bylaw”), which bylaw regulates land use within the CVRD’s territorial jurisdiction in Electoral Areas A (except Denman and Hornby Islands), B, and C.
5. The real property (the “Property”) having a civic address of 5084 Island Highway South, Union Bay, British Columbia, and legal described as PID: 004-758-901, Parcel A (D.D. 27784N) of Lot 11, Nelson District, Except Parts Outlined in Red on Plans 397 R.W. and 1414R, and Except those Parts in Plans 7190, 8906, 21511, 22414, 28338, 29341, and 29342, is located within the CVRD’s territorial jurisdiction, in Electoral Area A (but not on either Denman or Hornby Island), and is subject to the land use regulations in the Zoning Bylaw.

6. Pursuant to the Zoning Bylaw, the Property is split-zoned, with the shoreline portion of the Property being zoned Industrial Marine (IM) Zone, a portion of the remainder of the Property being zoned Rural Twenty (RU-20), and the other portion of the remainder of the Property being zoned Country Residential One (CR-1).
7. Pursuant to the Zoning Bylaw, the permitted uses on land zoned IM Zone are:
 - (a) Boat building and repairs and service and sales;
 - (b) Seafood processing and sales;
 - (c) Marina;
 - (d) Barge facility;
 - (e) Waterfront freight handling facility;
 - (f) Log handling and storage facility;
 - (g) Storage and works yard and warehousing; and,
 - (h) Offices.
8. Pursuant to the Zoning Bylaw, the permitted uses on land zoned RU-20 Zone are:
 - (a) Single detached dwelling;
 - (b) Agricultural use;
 - (c) Veterinary establishment;
 - (d) Plant nursery and greenhouse;
 - (e) Silviculture;
 - (f) Fish hatchery (including community based);
 - (g) Animal kennel (on any lot greater than 2.0 hectares in area);
 - (h) Riding academy (on any lot greater than 2.0 hectares in area);
 - (i) Wood processing (on any lot greater than 4.0 hectares in area);
 - (j) Sawmill including portable sawmill (on any lot greater than 4.0 hectares in area);
 - (k) Gravel, mineral or peat extraction; gravel crushing and screening, excluding manufacturing or sales of concrete or concrete products (on any lot greater than 4.0 hectares in area); and,

- (l) Research and testing facility (on any lot greater than 4.0 hectares in area and classified as private managed forest land or farm (under the *Assessment Act*) or within a license area under the *Forest Act*).
- 9. Pursuant to the Zoning Bylaw, the permitted uses on land zoned CR-1 Zone are:
 - (a) Single detached dwelling; and,
 - (b) Agricultural use (on lots over 4000 square metres in area).
- 10. Union Bay is the registered owner in fee simple of the Property, and has been so at all times material to this claim.
- 11. Deep Water occupies the Property, and has done so at all times material to this claim.
- 12. In early March 2020, the CVRD received an enquiry from the public regarding the then use of the Property.
- 13. At that time, the CVRD opened a file on the matter and undertook a site visit at the Property to determine compliance with the Zoning Bylaw.
- 14. During the CVRD's site visit, the CVRD determined that the Property was being used for industrial purposes; it was not apparent to the CVRD at that time that the Property was being used for the dismantling and recycling of marine vessels.
- 15. Over the next several months, the CVRD sought additional information from Deep Water as to its use of the Property.
- 16. During that time, the Property continued to be used for industrial purposes, but it was not apparent to the CVRD that the Property was being used for the dismantling and recycling of marine vessels.
- 17. It is now apparent that the Property is being used for:
 - (a) Transferring marine vessels (e.g., barges) from the ocean to the Property;
 - (b) Dismantling the marine vessels on the Property; and,
 - (c) Shipping materials from the dismantled marine vessels offsite for recycling and repurposing,
 (the "Ship Breaking Use").
- 18. It is also now apparent that the Ship Breaking Use is being undertaken on the portion of the Property that is zoned IM Zone as well as portions of the Property that are zoned RU-20 Zone and CR-1 Zone.

19. The Ship Breaking Use is not a permitted use of the Property under the Zoning Bylaw, and is prohibited by the Zoning Bylaw.
20. It is now apparent that the portion of the Property that is zoned IM Zone is being used to house individuals in recreational vehicles (the “Housing Use”).
21. The Housing Use is not a permitted use of the Property under the Zoning Bylaw, and is prohibited by the Zoning Bylaw.

Violation of the Development Permit Requirement

22. On or about November 13, 2014, the CVRD adopted the Rural Comox Valley Official Community Plan Bylaw, No. 337, 2014 (the “OCP”), which among other things established, pursuant to section 488 of the *Local Government Act*, development permit areas within the CVRD’s territorial jurisdiction in Electoral Areas A (except Denman and Hornby Islands), B, and C.
23. The real property known as Glover Community Nature Park (the “Nature Park”), and legally described as PID: 005-481-252, Lot 9, District Lot 11, Nelson District, Plan 8906, is included within the Aquatic and Riparian Habitat Development Permit Area (the “DP Area”) established by the OCP.
24. Union Bay and Deep Water have themselves or by their agents entered upon the Nature Park and have altered lands (the “Land Alteration”) within the nature park located within the DP Area.
25. Union Bay and Deep Water undertook the Land Alteration without first obtaining a development permit from the CVRD authorizing it.
26. Union Bay and Deep Water have neither applied to the CVRD for a development permit authorizing the Land Alteration nor received from the CVRD a development permit authorizing the Land Alteration.
27. The Land Alteration was undertaken by Union Bay and Deep Water contrary to section 489 of the *Local Government Act*.

Part 2: RELIEF SOUGHT

1. A declaration that the use of the Property for the Ship Breaking Use is in contravention of the Zoning Bylaw;
2. An order that Union Bay, Deep Water, and all persons having notice of this order, immediately cease and desist the Ship Breaking Use of the Property;
3. An order restraining Union Bay, Deep Water, and all persons having notice of this order, from using the Property for the Ship Breaking Use;

4. A declaration that the use of the Property for the Housing Use is in contravention of the Zoning Bylaw;
5. An order that Union Bay, Deep Water, and all persons having notice of this order, immediately cease and desist the Housing Use of the Property;
6. An order restraining Union Bay, Deep Water, and all persons having notice of this order, from using the Property for the Housing Use;
7. A declaration that the Land Alteration undertaken by Union Bay and Deep Water contravened section 489 of the *Local Government Act*;
8. An order that, within 60 days of the date of this order, Union Bay and Deep Water restore the area of the Nature Park that was subject to the Land Alteration to its previous unaltered condition, in accordance with the recommendations of a qualified professional acceptable to the CVRD;
9. Costs; and,
10. Such further and other relief as to this Honourable Court seems just.

Part 3: LEGAL BASIS

Union Bay and Deep Water are in Breach of the Zoning Bylaw

1. The interpretation of local government zoning bylaws was considered by the Court of Appeal in *Neilson v. Langley (Township)* (1982), 134 D.L.R. (3d) 550. In that case, the Court stated as follows:

... it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.
2. Section 102.1 of the Zoning Bylaw provides that:

No land, surface of water, building, or structure in any zone shall be used for any purpose other than those specified for the zone in which it is located. Uses not expressly listed as a principal or accessory use within a zone are prohibited.
3. In addition, section 302.1 of the Zoning Bylaw provides that:

Any use not expressly permitted in this bylaw is prohibited in every zone
....

4. For the use of the Property for the Ship Breaking Use and Housing Use to be permitted, the uses must fall within the scope of the principal and accessory uses expressly permitted on the Property under the Zoning Bylaw.
5. The Ship Breaking Use is not an expressly permitted accessory use of the Property. Under the Zoning Bylaw, “accessory” means “customarily incidental and subordinate to a principal use of land, building or structure permitted on the same lot ...”. By definition, to be a permitted accessory use, there must be a permitted principal use of the Property. As there is no other current use of the Property, the operation cannot be a permitted accessory use.
6. The Ship Breaking Use is not an expressly permitted principal use under the Zoning Bylaw. It clearly does not fall within any of the permitted principal uses in the RU-20 Zone or the CR-1 Zone. Moreover, it clearly does not fall within any of the permitted principal uses in the IM Zone.
7. Moreover, section 302.1 of the Zoning Bylaw, provides that:

... where particular use is expressly permitted in one zone, such a use is prohibited in every zone where it is not also expressly permitted.
8. If the Ship Breaking Use is an expressly permitted use under the Zoning Bylaw at all, it would be permitted in the Industrial Heavy (IH) Zone as being within the scope of the permitted principal use of “heavy industrial use”, which by definition includes “scrap salvage”. As such, pursuant to section 302.1 of the Zoning Bylaw, the Ship Breaking Use is prohibited in the IM Zone.
9. The Housing Use, which is occurring in the IM Zone, is neither an expressly permitted accessory use of the Property nor an expressly permitted principal use of it.

Union Bay and Deep Water Breached section 489 of the *Local Government Act*.

10. Section 489 of the *Local Government Act* provides that:

489 If an official community plan designates areas under section 488 (1), the following prohibitions apply unless an exemption under section 488 (4) applies or the owner first obtains a development permit under this Division:

...

(c) land within an area designated under section 488 (1) (a) or (b) [natural environment, hazardous conditions] must not be altered;

....

11. The Nature Park is included within the DP Area.
12. Union Bay and Deep Water have themselves or by their agents entered upon the Nature Park within the DP Area and undertook the Land Alteration without first obtaining a development permit from the CVRD authorizing it.
13. The Land Alteration was undertaken by Union Bay and Deep Water contrary to section 489 of the *Local Government Act*.

The CVRD is Entitled to a Statutory Injunction Enforcing the Zoning Bylaw and Section 489 of the Local Government Act

14. Section 274(1) of the *Community Charter*, 2003 S.B.C., c. 26, provides as follows:

274 (1) A municipality may, by a proceeding brought in Supreme Court, enforce, or prevent or restrain the contravention of,


(a) a bylaw or resolution of the council under this Act or any other Act, or

(b) a provision of this Act or the Local Government Act or a regulation under those Acts.
15. Section 274 of the *Community Charter* is made applicable to the CVRD by section 420 of the *Local Government Act*.
16. The CVRD may enforce its Land Use Bylaw by injunctive proceedings in this Honourable Court.
17. In cases of a breach of a bylaw or a statute, the courts will generally consider the public interest in enforcing the public law as paramount. The discretion of the court to decline an injunction to enforce a bylaw is very narrow and is reserved for rare cases with exceptional circumstances.

North Pender Island Local Trust Committee v. Conconi, 2010 BCCA 494, para. 38
18. There are no exceptional circumstances in this case for this Honourable Court to refuse to issue the injunctions sought by the CVRD.

Plaintiff's address for service:	c/o Sukhbir Manhas Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2
Fax number address for service (if any):	604.689.3444
E-mail address for service (if any):	Not applicable.
Place of trial:	Vancouver, B.C.
The address of the registry is:	800 Smithe Street Vancouver, BC V6Z 2E1

Date: 14/Apr/2022
[dd/mmm/yyyy]


Signature of
☐ Plaintiff ☒ lawyer for Plaintiff
Sukhbir Manhas

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Enforcement of Regional District Zoning Bylaw and Section 489 of the Local Government Act

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate

X a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws

X none of the above

☐ do not know

Part 4: