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**THIS EXAMINATION CONSISTS OF 8 PAGES INCLUDING THE COVER PAGE
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THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW

FINAL EXAMINATION – APRIL 2019

Law 374
Municipal Law

Sukhbir Manhas

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

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- Note:
1. This is an open book examination. Students may refer only to (i) the Statutory Material, (ii) the Case Book; and (iii) Class Notes
 2. THIS EXAMINATION CONSISTS OF 3 QUESTIONS. STUDENTS MUST COMPLETE 2 OF THE 3 QUESTIONS.

NOTE: ANSWER ONLY 2 QUESTIONS

QUESTION 1

In early 2018, the City of Streetville (the “City”) was approached by the Streetville Community Support Society (the “Society”) in relation to the construction of a highly needed supportive housing/homeless centre development (the “Development”) in the City. The Society sought the help of the City in identifying an appropriate site for the Development and in funding the construction of the Development.

City staff, believing there to be a significant need for a supportive housing/homeless centre development in Streetville, identified the City’s property (the “Site”) located at 123 Front Street, in the City’s downtown core, as the best location for the Development. In August 2018, City staff prepared a staff report recommending that:

1. The City support the construction of the Development at the Site;
2. The City rezone the Site to specifically permit the Development;
3. The City sell the Site to the Society for \$1.

(the “Recommendation”).

The City Council considered the Recommendation at its closed Council meeting on August 13, 2018, accepted the Recommendation, and directed City staff to work with the Society to obtain all necessary approvals for the Development. As the plans for the Development became public, it became overwhelmingly clear that the residents of the City did not support the Development, being concerned that it was going to attract homeless people from all of the City’s neighbouring areas. Despite the residents’ concerns, the City Council, pressed forward with implementing the Recommendation. All steps necessary to approve the Development and sell the Site to the Society were completed by the City shortly before the municipal election in late October 2018.

The day after all steps necessary to approve the Development and sell the Site to the Society were completed by the City, a number of the City’s residents, including Joanne Frack and Florence O’Hara, brought judicial review proceedings (the “JR Proceedings”) against the City seeking to stop the Development.

Needless to say, the approval of the Development was a significant factor in the election.

As a result of the municipal election in late October 2018, John Main was elected as the City's Mayor, and Ms. Frack and Ms. O'Hara were elected as members of the City Council. A significant factor in Mayor Main, Councillor Frack and Councillor O'Hara being elected was that they were opposed to the Development.

You are the City's solicitor, and the City's Chief Administrative Officer (the "CAO") has contacted you to discuss the Development and the administrative challenges facing the City as a result of Mayor Mayne and Councillors Frack and O'Hara being elected to the City Council.

Specifically, the CAO has asked you the following questions:

1. Does Mayor Main, who is a co-owner of property located within the City's downtown core, a block away from the Site, have a conflict of interest in relation to the JR Proceedings and/or the approval of the use of the Site for the Development?
2. Do either Councillor Frack and/or Councillor O'Hara have a conflict of interest in relation to the JR Proceedings and/or the approval of the use of the Site for the Development?
3. Assuming that Mayor Main, Councillor Frack and Councillor O'Hara have a conflict of interest, what steps do they need to take in relation to that conflict of interest?
4. Assuming that Mayor Main, Councillor Frack and Councillor O'Hara declare a conflict of interest, what steps, if any, can they take to remove their conflict of interest and thereafter participate in the City's dealings with the JR Proceedings and/or the approval of the use of the Site for the Development? If there are no steps that they can take to do so, explain why.

QUESTION 2

In the JR Proceedings, the Petitioners seek an Order setting aside the official community plan amendment bylaw (the “OCP Amendment Bylaw”) and the zoning amendment bylaw (the “Zoning Amendment Bylaw”) adopted by the City to authorize the use of the Site for the Development.

The relevant facts to the JR Proceedings are as follows:

1. The City Council considered the Recommendation at its closed Council meeting on August 13, 2018, accepted the Recommendation, and directed City staff to work with the Society to obtain all necessary approvals for the Development.
2. City staff prepared the OCP Amendment Bylaw, which amended the “Downtown Commercial” land use designation in the City’s Official Community Plan (the “OCP”) applicable to the Site from “Downtown Commercial”, which designation is described as including commercial uses customarily found in the downtown centre of a mid-sized municipality, to expressly include “public social welfare facilities”.
3. City staff prepare the Zoning Amendment Bylaw, which amended the “Downtown Commercial” zone in the City’s Zoning Bylaw (the “Zoning Bylaw”) applicable to the Site to expressly include “public social welfare facilities”.
4. The City Council gave first reading to the OCP Amendment Bylaw and the Zoning Amendment Bylaw on August 20, 2018.
5. The City Council gave second reading to the OCP Amendment Bylaw and the Zoning Amendment Bylaw on August 27, 2018, and directed staff to schedule the public hearing for the September 25, 2018.
6. The City gave notice of the public hearing in the local newspaper, which is published weekly, on September 10, 17, and 24, 2018, stating that the public hearing would be held at 7:00 p.m. on Monday, September 25, 2018, at City Hall (and provided the address) and that copies of the proposed bylaws could be inspected between the hours of 9:00 a.m. and 5:00 p.m. from September 10 to 25, 2018. The notice of public hearing described the purpose of the OCP Amendment Bylaw and the Zoning Amendment Bylaw as being to authorize the use of the Site for the Development.
7. The City delivered notice of the public hearing as required by section 466(4)(b) of the *Local Government Act*.

8. The City Council held the public hearing on September 25, 2018, as scheduled. At the beginning of the public hearing, the then City Mayor advised that, given the number of people in attendance at the public hearing, if the public hearing did not complete that evening, it would reconvene the next day at 7:00 p.m. at City Hall.
9. The public hearing did not complete on the evening of September 25, 2018, was reconvened at 7:00 p.m. on September 26, 2018, and completed that evening.
10. The City Council gave third reading to, and adopted, the OCP Amendment Bylaw and the Zoning Amendment Bylaw on October 8, 2018, and thereafter authorized the sale of the Site to the Society for \$1.
11. The City transferred the Site to the Society on October 9, 2018.

In the JR Proceedings, the Petitioners submit that:

1. The City Council's initial consideration of the Recommendation was unlawful.
2. The City Council's adoption of the OCP Amendment Bylaw was unlawful.
3. The City Council's adoption of the Zoning Amendment Bylaw was unlawful.

The Petitioners do not set out in the JR Proceedings the specific grounds on which they assert that the City's actions were unlawful.

As the City's solicitor, you have been asked by the CAO to provide the City with your advice as to the likelihood of success of the JR Proceedings. The CAO has asked that, in providing your advice, you identify the specific grounds on which the Petitioners may assert that the City's actions were unlawful, you provide your advice as to whether each of the grounds would be successful (please provide your advice in relation to all potential grounds regardless of whether you believe that one ground may be dispositive of the JR Proceedings, and please discuss issues where success on one ground may impact the likelihood of success on another ground), and the likely remedy, if any, in relation to each ground.

QUESTION 3

The Village of Redfearn (the “Village”) has historically had very high property taxes as a result of it not having any real industrial operations within its boundaries, and the Village has, for years, been looking for ways to reduce its property value taxes for its residents.

The Village’s Mayor, Mike Stokes, being a long-time participant in the annual 4/20 event in Vancouver, has always believed that cannabis was the solution to all of the Village’s financial issues.

As soon as the use of recreational cannabis was legalized, Mayor Stokes entered into discussions with a number of operators of recreational cannabis dispensaries to discuss how the Village could partner with them in the retail sales of recreational cannabis within the Village’s boundaries.

Mayor Stokes was particularly impressed by his discussions with Sky High Cannabis Ltd. (“Sky High”) and directed the Village’s Corporate Officer (the “Corporate Officer”) to prepare an agreement (the “Agreement”) between the Village and Sky High whereby the parties agree as follows:

1. Sky High will purchase property within the Village’s boundaries and take all commercially reasonable steps to establish a recreational cannabis retail store (the “Store”).
2. The Village will cooperate with Sky High and facilitate it in obtaining all necessary permits and other authorizations to operate the Store.
3. Sky High, within 30 days of commencing operation of the Store, will make payment to the Village in the amount of \$500,000.00, and thereafter, within 30 days of each anniversary of Sky High commencing operation of the Store, will make payment to the Village in the amount of 10% of the gross revenues of the Store in the immediately preceding 12 month anniversary period.

To the surprise of the Mayor, who thought that the financial terms of the Agreement were too onerous, Sky High immediately signed the Agreement. Wishing to close the deal before Sky High changed its mind, the Mayor signed the Agreement and directed the Corporate Officer to sign it as well, which she did.

Within a month, Sky High had purchased a property (the “Property”) on Main Street in the Village and began to renovate the building for the Store. When the Village’s Bylaw Enforcement Officer drove by, he placed a stop work order on the renovations (the “Renovations”) as Sky High did not have a building permit for the work, and because the use of the Property for the

Store was not permitted under the Village's Zoning Bylaw (the "Zoning Bylaw").

Sky High immediately contacted Mayor Stokes, who told them to apply for an amendment (the "Amendment") to the Zoning Bylaw, that he would "shepherd the Amendment through the process", and that "the approval of the Amendment was a slam dunk". On the basis of that advice, Sky High decided to continue on with the Renovations.

The next day, Sky High applied for the Amendment and Mayor Stokes directed that the Amendment be placed on the agenda for the next meeting of the Village Council.

At that meeting, Mayor Stokes advised the Village Council of the Agreement, describing how financially beneficial it was for the Village. The Village Council was ecstatic about the deal that the Mayor had struck and resolved to move forward with consideration of the Amendment in accordance with the Village's duties to cooperate and facilitate under the Agreement.

The Village Council gave first and second reading to the bylaw (the "Bylaw") to enact the Amendment and referred the Bylaw to public hearing. At the public hearing, the residents of the Village were far from supportive of the Amendment. As a result, a majority of the members of the Village Council voted against giving third reading to the Bylaw, publicly blaming Mayor Stokes for bringing the Amendment forward.

Despite the denial of the Amendment, Sky High completed the Renovations and commenced operating the Store.

Sky High has commenced legal proceedings against the Village seeking an Order requiring the Village to approve the Amendment and to issue a business license for the Store. In the alternative, Sky High has claimed damages against the Village for breach of the duties of cooperation and facilitation under the Agreement. In the further alternative, Sky High has claimed damages against the Village for negligent misrepresentation in relation to Mayor Stokes assurances that the Amendment would be approved.

You have been retained by the Village.

The Village has asked you to provide it with your advice as to the likelihood of Sky High being successful in the legal proceedings, including a full discussion of the defences that the Village could raise to each claim in the legal proceedings.

The Village has also asked you to provide it with your advice as to how the Village could require Sky High to cease operating the Store, including a full discussion of the grounds on which the Village could require the same, the steps that the Village should take to require the same, and the likelihood of the Village being successful in the same.

END OF EXAMINATION