

**THIS EXAMINATION CONSISTS OF 8 PAGES (INCLUDING THE COVER PAGE)
PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER**

**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2022

Law 374.001
Municipal Law

Sukhbir Manhas

TOTAL MARKS: 100

TIME ALLOWED: 3 HOURS

- 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. IF A STUDENT COMPLETES ALL 3 QUESTIONS, ONLY QUESTIONS 1 AND 2 WILL BE MARKED.

NOTE: DO ONLY 2 QUESTIONS.

Marks:

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1. The District of Apple Valley has long been known for its abundant apple orchards. At one time, Apple Valley was the source of 95% of the apple supply for British Columbia.

More recently, with a shortage of orchard workers and the other costs of operating an orchard sky-rocketing, Apple Valley's apple orchardists have been struggling to survive.

Mayor Smith, affectionately known by the District's residents as "Granny Smith", was a former apple orchardist herself, and well understands the struggles that the apple orchardists are facing. She hears about it first hand from her granddaughter, Ambrosia, who is the lead botanist for ten of the forty apple orchards in Apple Valley.

Mayor Smith also knows, from experience, that the apple orchardists are creatures of habit and lack any desire to change the way they do business.

Mayor Smith, seeing the writing on the wall for the apple orchardists, began speaking with her Council colleagues about the District taking steps to require the industry to change. Through those discussions, the Council determined that the industry's focus had to be broadened, and settled on the concept of promoting a new apple cidery industry in Apple Valley. The Council directed the District's Chief Administrative Officer (the "CAO") to bring forward amendments to the District's Business Regulation and Licensing Bylaw (the "Business Bylaw") designed to promote the new industry.

The CAO drafted an amending bylaw, Business Bylaw Amendment (Apple Orchard Regulations) Bylaw 2022, (the "Amending Bylaw"), that added the following to the Business Bylaw:

1. A provision that prohibited the operation of an apple orchard unless it included the operation of a cidery, with a tasting room, as a component of its operations;
2. A provision that prohibited the operation of more than ten apple orchards (with the required cidery operation) within the District's boundaries; and,
3. A provision that prohibited the operation of an apple orchard (with the required cidery operation) within 2.5 km of another apple orchard.

The CAO felt the second requirement was needed to ensure that there was not an oversaturation of the cidery market in Apple Valley.

Once the amending bylaw had been prepared, Mayor Smith directed that a special Council meeting be scheduled for two days later, on January 12, 2022. The CAO knew that he had to give notice of the special Council meeting and made sure that at least 24 hours' notice was given. He also made sure that the notice was provided in the manner required by section 127(2) of the *Community Charter*. The notice stated that the purpose of the special meeting was "to consider amendments to the Business Bylaw". The CAO appended to the notice a copy of the agenda for the special meeting which referenced consideration of first, second, and third reading of the proposed Amending Bylaw, but did not append the Amending Bylaw.

At the special Council meeting on January 12, 2022, Council unanimously resolved to give first, second, and third reading to the Amending Bylaw.

At the regular Council meeting on January 19, 2022, Council unanimously resolved to adopt the Amending Bylaw.

Shortly thereafter, the District notified all apple orchardists that they would have to comply with the new requirements imposed by the Amending Bylaw. As the District recognized that it would take some time for the apple orchardists to obtain the necessary provincial approvals to operate a cidery, with a tasting room, the District advised the orchardists that they would have until July 1, 2022, to bring their businesses into compliance with the new requirements.

By April 15, 2022, the ten apple orchards for which Ambrosia Smith was the lead botanist had brought their businesses into compliance with the new requirements. The other thirty apple orchards could no longer bring their businesses into compliance with the new requirements as a result of the maximum permitted number under the Amending Bylaw having been filled.

As their next step towards their goal of promoting the shift in the apple orchard industry to include cideries, the Council wants to ensure that the ten apple orchards complying with the Amending Bylaw have the greatest chance of success. The Council has directed the CAO to seek legal advice on the enforcement of the Business Bylaw, as amended, against the thirty non-compliant apple orchards.

You are the District's solicitor. The CAO has asked you to provide him with a legal memorandum addressing the following:

1. Assuming that the Amending Bylaw is valid and enforceable, the grounds, if any, on which the Council may revoke the business

licenses that were issued on January 1, 2022, for the thirty apple orchards.

2. The process to be followed by the Council in revoking those business licenses on those grounds.
3. The enforcement options available to the District in the event that the owners of the thirty apple orchards don't cease operating after their licenses have been revoked, including the test to be applied by the courts.
4. All grounds on which the owners of the thirty apple orchards could defend against the revocation of the business licenses and the enforcement steps taken by the District, and the likelihood that the courts would accede to those grounds.

Marks:

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2. As another step to support the economic recovery of the District of Apple Valley, the Council has, since September 2021, been marketing for sale surplus parcels of land the District owned, for development. One of those parcels of land was a large parcel of land (the "District Lot") owned by the District in the West Apple Valley neighbourhood. The West Apple Valley neighbourhood is one of the oldest neighbourhoods in Apple Valley. The District's Official Community Plan (the "OCP"), designates the West Apple Valley neighbourhood for "estate residential use" and includes policies that are directed at the preservation of the "rural" character of the neighbourhood and at the preservation of the magnificent views of Lake Magestic from the neighbourhood. The District's Zoning Bylaw (the "Zonign Bylaw") zones the entirety of the West Apple Valley neighbourhood "large lot residential", specifying a minimum parcel size of 0.5 acres (2,023 square metres) and a maximum height of 30 feet (9 metres).

On January 2022, Apple Valley Developments Ltd. ("AVDL") approached Mayor Smith about acquiring the District Lot. AVDL provided Mayor Smith with a copy of an appraisal that indicated that the District Lot was worth \$3.5 million. AVDL advised Mayor Smith that it was willing to acquire the District Lot for that price, but that its acquisition of the lot would be subject to the District rezoning the lot to permit its development for a five storey wood-framed multi-family development.

Mayor Smith was ecstatic at the possibility of selling the District Lot to AVDL for \$3.5 million. After all, the District had acquired the District Lot ten years earlier for \$53,000.00. Mayor Smith told AVDL to have its lawyers draft up a purchase and sale agreement for the District Lot.

Mayor Smith received the purchase and sale agreement (the “Agreement”) for the District Lot from AVDL in the morning of January 12, 2022, and immediately forwarded it to the CAO for addition to the agenda for the special Council meeting to be held later that day.

At its special Council meeting on January 12, 2022, the Council reviewed the Agreement in detail. Councillor Condor noted that the Agreement included a condition that AVDL was not bound to complete the purchase of the District Lot unless the District had first rezoned it to permit its development for a five storey wood-framed multi-family development. Councillor Condor was appalled at such a requirement, commenting that it would drastically change the character of the neighbourhood and that he could never support such a rezoning. Notwithstanding Councillor Condor’s views, Council proceeded to pass a resolution authorizing Mayor Smith and the CAO to execute the Agreement, with Councillor Condor being the only councillor to vote against the resolution.

After the special Council meeting, Mayor Smith and the CAO executed the Agreement and delivered it to AVDL, and the CAO began preparation of the necessary bylaws to rezone the District Lot to permit. He prepared a bylaw to amend the OCP to add the following statement:

“The District Lot may be developed for a five storey wood-framed multi-family development.”

He also prepared a bylaw to amend the Zoning Bylaw to add the following statement to the Large Lot Residential Zone:

“The District Lot may be developed for a five storey wood-framed multi-family development, with a maximum height of 90 feet (27 metres).”

Mayor Smith and the CAO then added the bylaws to amend the OCP and Zoning Bylaw (the “Land Use Amendment Bylaws”) to the agenda for the regular Council meeting on February 2, 2022, for first and second reading.

At its regular Council meeting on February 2, 2022, the Council resolved to:

1. Give first and second reading to the Land Use Amendment Bylaws;
2. To not provide any opportunities to consult in relation to the OCP amendment bylaw as, in Council’s view, the bylaw was not significant enough to warrant consultation over and above the required public hearing; and,

3. Schedule the public hearing for the Land Use Amendment Bylaws for February 16, 2022.

The vote on these resolutions was six to one, with Councillor Condor voting against all three resolutions.

The CAO caused notice of the public hearing to be published in accordance with all of the requirements of the *Local Government Act*. The notice specified that the Land Use Amendment Bylaws, and all other relevant documents, would be available for inspection at the District's offices at 123 Main Street, during regular business hours from February 7 to 16, 2022. The CAO made sure that the bylaws and the associated staff report were available for inspection by the public as of February 7, 2022. He did not believe that the Agreement was relevant to Council's decision and did not make it available to the public.

On February 5, 2022, when Councillor Condor's neighbour (from across the street) became aware of the Council's consideration of the Land Use Amendment Bylaws, they were apoplectic. They were very concerned that, as the District Lot was only 500 metres down the road from her property, the increased traffic from the new development would be unbearable. They urged Councillor Condor to oppose the adoption of the bylaws.

At the public hearing on February 16, 2022, which was held as part of the regular Council meeting, Councillor Condor strenuously spoke out against the Land Use Amendment Bylaws. He expressed grave concerns over the impact of the proposed five storey wood-framed multi-family development on the general character of the West Apple Valley neighbourhood, the impact of it on the views of the lake from neighbouring properties, and the impact of the increased traffic created by the proposed development on the District Lot on the sole road leading to it. Councillor Condor's views were supported by a great number of residents of the West Apple Valley neighbourhood.

After the public hearing was concluded, the Council proceeded with the rest of the agenda for the regular Council meeting, which included consideration of third reading and adoption of the Land Use Amendment Bylaws.

When third reading and adoption of the Land Use Amendment Bylaws came up for consideration by Council, Councillors Golden and Fancy left the meeting to use the facilities. While they were gone, Council proceeded to consider third reading and adoption of the bylaws, with a three to two vote in favour of the resolutions. Mayor Smith then declared the bylaws to have been adopted.

On April 16, 2022, Mayor Smith became aware that the West Apple Valley neighbourhood residents were planning to bring a legal challenge to the adoption of the Land Use Amendment Bylaws. She blames Councillor Condor for the resident's discontent.

You are the District's solicitor. The CAO has asked you to provide her with a legal memorandum addressing the following:

1. All grounds on which the West Apple Valley neighbourhood residents may challenge the adoption of the Land Use Amendment Bylaws, and the likelihood of success of each of those grounds; and,
2. What, if anything, Mayor Smith can do about Councillor Condor's behaviour? Specifically, Mayor Smith wants to know if there are sufficient grounds on which to seek to have Councillor Condor disqualified from holding office. If so, what are the requirements and the process for seeking his disqualification. Lastly, what is the likelihood of that process being successful.

Marks:

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3. As part of her discussions with AVDL for the sale of the District Lot to it, Mayor Smith asked AVDL if it would be prepared, in addition to the proposed purchase price, to upgrade the road, water, and sewer services (the "District Infrastructure") leading to the District Lot. She believed that, by doing so, AVDL would gain a lot of good will with the residents of the West Apple Valley neighbourhood, and garner their support for the proposed development of the District Lot.

AVDL was not interested in incurring those additional costs, believing that its offer of \$3.5 million more than compensated the District for the District Lot. That being said, AVDL was prepared to upgrade the District Infrastructure on behalf of the District, and proposed to enter into a construction contract with the District whereby AVDL would upgrade the District Infrastructure for the District on the basis of the District reimbursing AVDL for its actual costs of upgrading the same; AVDL would not charge the District any profit for its work.

Mayor Smith spoke with the CAO about AVDL's offer. The CAO had previously obtained an estimate for the costs of upgrading the District Infrastructure, which was \$2.3 million. As that estimate included an amount on account of profit, being 20% of the actual upgrading costs, the actual upgrading costs were estimated at \$1.92 million. At that time, the CAO had AVDL confirm that it believed that estimate to be accurate.

With AVDL's offer meaning a savings of \$380,000.00 to the District, Mayor Smith and the CAO thought this was a great deal for the District, and moved quickly to scoop it up. They immediately asked that AVDL send them a form of construction contract, which AVDL did.

AVDL forwarded the construction contract (the "Construction Contract") to Mayor Smith and the CAO. It provided that AVDL would perform all work to upgrade the District Infrastructure and that the District would reimburse AVDL for its actual costs of performing the work. The Construction Contract did not include any specific dollar value.

After Mayor Smith and the CAO received the Construction Contract from AVDL, Mayor Smith directed that the CAO put it on the agenda for the next regular Council meeting.

The CAO reminded Mayor Smith that he has the authority under the District's purchasing policy to authorize construction contracts with a value up to \$2 million as long as funds for the construction project are identified in the financial plan. As the District's financial plan has \$1.95 million set aside for upgrading the District Infrastructure, the CAO told Mayor Smith that he could approve the Construction Contract (as the estimated costs were only \$1.92 million). The CAO then went on to execute the Construction Contract on behalf of the District and sent it off to AVDL.

About 16 weeks after AVDL began work under the Construction Contract, it completed the work and submitted an invoice to the District for \$2.5 million.

When the CAO told Mayor Smith about the \$2.5 million invoice, she became very angry, and called AVDL's president. She told him that the District wouldn't be paying the invoice as presented. She told him that the District would only be paying the \$1.92 million that AVDL had agreed would be the cost of upgrading the District Infrastructure, and that AVDL was luck at that. Subsequently, the District paid AVDL \$1.92 million on account of the invoice.

AVDL has now commenced legal proceedings against the District for the \$580,000.00 of the invoice remaining outstanding.

You are the District's solicitor. The CAO has asked you to provide her with a legal memorandum addressing the District's liability, if any, to AVDL for the costs of upgrading the District Infrastructure. Specifically, the CAO wants to know if the District is obligated to pay the full \$2.5 million, \$1.95 million, or \$1.92 million, or is entitled to the return of the \$1.92 million it paid.

END OF EXAMINATION