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

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

Law 374
Municipal Law

Section 1

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

NOTE: DO ONLY 2 QUESTIONS.

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| **Marks**: 50 | 1. | The Chief Administrative Officer (the “CAO”) for the Town of Beachview (the “Town”) has been very concerned about the efficiency of her staff in reporting to the Town Council on important issues. Having completed an organizational review, the CAO believes that her staff could benefit from CouncilReports, a new project management software, that she learned of when attending a recent conference.The CAO contacted Kay Smith, the Regional Sales Representative for CouncilReports Ltd., to discuss the benefits and cost of CouncilReports for the Town. Ms. Smith, sensing that the CAO was very interested in CouncilReports, told the CAO about the benefits of CouncilReports and that the software suite that would benefit the Town the most would cost $415,000 plus GST on a three-year contract. This cost reflected a 25% discount where the Town entered into the contract within three days. The cost was made up of a one-time initial setup cost of $110,000.00, a one-time training cost of $65,000.00, and an annual software licensing fee of $80,000.00 for three years.The CAO was convinced that CouncilReports was the solution to her concerns, and was anxious to take advantage of the 25% costs savings being offered. Knowing that the next meeting of the Town Council was not for two weeks, the CAO asked the Town’s Corporate Officer how she could move forward with a contract with CouncilReports Ltd.. The Corporate Officer reminded the CAO the Town Council had just passed a resolution at its last meeting to amend the Town’s Delegation Bylaw to include a new delegation to the CAO of the Council’s power to enter into contracts for services having a value of less than $250,000.00. Based on that resolution, the Corporate Officer advised the CAO that she did not have the authority to enter into a single contract with CouncilReports Ltd.. Rather, the Corporate Officer recommended that the CAO have CouncilReports Ltd. split its services between two contracts; one contract for the setup and training services, with a contract price of $175,000.00, and another contract for the annual software licensing fees, with a contract price of $240,000.00.The next day, the CAO contacted Ms. Smith and told her to prepare two contracts (the “Contracts”) between CouncilReports Ltd. and the Town as recommended by the Corporate Officer. Ms. Smith was ecstatic at the sale.The next day, the CAO received the Contracts from Ms. Smith, signed the Contracts, and sent the signed Contracts to Ms. Smith.Once she received the signed Contracts, Ms. Smith sent the CAO two invoices (the “Invoices”); the first invoice was for $175,000.00 in relation to the Setup and Training Contract and the second invoice was for $80,000.00 in relation to year one of the Licensing Contract. The CAO directed the Town Staff to promptly pay the Invoices. The Invoices were paid in full the next day.Over the next few months, CouncilReports Ltd. performed all of its obligations under the Setup and Training Contract , and Town Staff began to use CouncilReports. Unfortunately, the Town Council was less than impressed with the reports it was receiving from Town Staff since they began using CouncilReports, and asked the Mayor to review the matter with the CAO. Through his discussions with the CAO, the Mayor learned of the Contracts and of the benefits and costs of CouncilReports, and reported back to the Council at its next meeting. The Town Council was neither impressed with the benefits of CouncilReports, given its cost, nor with the actions of the CAO and Corporate Officer in entering into the Contracts without Council’s knowledge.The Town’s Council has sought your advice on the following:Any and all arguments available to the Town that it is not bound by the Contracts, and the likelihood of success of each of those arguments.Any liability to the Town if it rightfully takes the position that it is not bound by the Contracts, including a discussion of the quantum of damages, if any, that the Town would be liable for. The discussion should address whether the Town could seek the return of all or part of the monies already paid to CouncilReports Ltd. on account of the Invoices.The liability to the Town if it wrongfully takes the position that it is not bound by the Contracts and refuses to pay any further amounts under the Licensing Contract, including a discussion of the quantum of damages, if any, that the Town would be liable for.Whether the Town Council may terminate the employment of the CAO and Corporate Officer for their roles in putting the Town into the legal position it is vis-à-vis CouncilReports Ltd., including a discussion of the necessary steps to terminate their employment.  |
| **Marks**:50 | 2. | Jevan Eddy was recently elected to Council for the Town of Beachview (the “Town”). Her election platform, which was resoundingly popular with the Town’s residents, was primarily based on enhancing opportunities in the Town for seniors. Since the election, many residents have expressed to the Town that they believed that Councillor Eddy was the right person to lead the Town’s efforts to enhance opportunities for seniors as she is employed as the Executive Director of the Beachview Seniors Support Society (the “Society”), a not-for-profit society.During a recent open meeting of the Town Council, the Council was discussing what use could be made of a property (the “Property”) in the Town core that was owned by the Town and was surplus to its needs. At the end of the discussion, the Council directed its Chief Administrative Officer (the “CAO”) to consider options for the use of the Property.Immediately after the Town Council meeting, Councillor Eddy had a conference call with the Society’s directors, and recommended that the Society approach the Town with a proposal (the “Proposal”) to partner for the construction and operation of much-needed seniors’ supportive housing in the Town. Her idea was that the Town would sell the Property to the Society for $1 on the condition that the Society construct and operate on it seniors’ supportive housing for the benefit of local seniors. The Society’s directors thought this was a great idea and directed Councillor Eddy to make the Proposal to the Town. The next morning, Councillor Eddy set up a meeting with the CAO for the following week.The next week, Councillor Eddy met with the CAO and discussed the Proposal with them. The CAO thought the Proposal represented a win-win for the Town and the Society, but noted that the Property was currently zoned Commercial One Zone (the “C1 Zone”) under the Town’s Zoning Bylaw (the “Zoning Bylaw”), which did not permit residential use. The CAO indicated that the first step to moving the Proposal forward for approval by the Town Council would be for it to consider rezoning the Property to the Residential (Community Care) Zone (the “RCC Zone”), which included seniors’ supportive housing as an expressly permitted use. If the Council rezoned the Property to the RCC Zone, the next step would be for the Town and the Society to work out an agreement for the sale of the Property to the Society on the condition that the Society construct and operate on it seniors’ supportive housing for the benefit of local seniors.Shortly after meeting with the CAO, Councillor Eddy met with the Town’s Mayor and brought him up to speed on the Proposal and her discussions with the CAO. The Mayor loved the idea and immediately called the CAO and directed them to prepare the necessary bylaws to rezone the Property to the RCC Zone.The CAO first reviewed the Town’s Official Community Plan (the “OCP”) and determined that the Property had a property use designation of Downtown Core Commercial (the “DCC Designation”). The DCC Designation provided that “properties having the DCC Designation were to be developed for a mix of uses for the purpose of enhancing the downtown core experience”.As the CAO was unsure whether rezoning the Property to the RCC Zone was consistent with the DCC Designation in the OCP, they prepared both a bylaw amending the OCP (the “OCP Amendment Bylaw”) and a bylaw amending the Zoning Bylaw (the “Zoning Amendment Bylaw”) for consideration by the Town Council (together, the “Amendment Bylaws”). The OCP Amendment Bylaw added the following sentence to the DCC Designation in the OCP:“Notwithstanding anything contained in the OCP, the Property may be used for seniors’ supportive housing.”The Zoning Amendment Bylaw rezoned the Property from C1 Zone to RCC Zone.The CAO placed the Amendment Bylaws on the agenda for the next open meeting of the Town Council. In their Report to Council (the “Report”), the CAO recommended that the Council resolve to not hold a public hearing, to direct that notice be given under section 467 of the *Local Government Act* that a public hearing would not be held, and to refer the OCP Amendment Bylaw to an open house to be held by the Society the following week. The Council passed the recommended resolutions at its next open meeting. The Report appended copies of the Amendment Bylaws.After the meeting, the Town gave notice, in full compliance with the requirements of section 467 of the *Local Government Act*, that it would not be holding a public hearing in relation to the Amendment Bylaws.Additionally, the next week, the Society held an open house (the “Open House”), which was attended by all members of the Town Council and numerous Town residents, where the use of the Property for seniors’ supportive housing was thoroughly discussed. At the Open House, it was never disclosed that, if the Amendment Bylaws were adopted, the Property would be sold to the Society for the construction and operation of the seniors’ supportive housing. At its next regular meeting, which was not more than 10 days and not less than 3 days since the second publication of the required notice under section 467 of the *Local Government Act*, the Town Council resolved to give first and second reading to the Amendment Bylaws. The resolution was passed unanimously by all seven members of Council, including Councillor Eddy.At its next regular meeting, the Town Council resolved to give third reading to the Amendment Bylaws and to adopt them. The resolution again was passed unanimously by all seven members of Council, including Councillor Eddy.You have been retained by Shyon Kirkland, the owner of the property adjacent to the Property, who is very frustrated that the Property may be developed for seniors’ supportive housing. When Mr. Kirkland heard that the Town was looking at options for the Property, he had hoped to acquire it for fair market value and consolidate it with his property for a mixed-use commercial/residential development. Mr. Kirkland has sought your advice on the following:Whether Councillor Eddy had a conflict of interest in relation to the Amendment Bylaws.Assuming that Councillor Eddy had a conflict of interest in relation to the Amendment Bylaws, the process for seeking her disqualification from office and the likelihood of that process being successful.The grounds, if any, that he could challenge the adoption of the OCP Amendment Bylaw, and the likelihood of success of each of those grounds.The grounds, if any, that he could challenge the adoption of the Zoning Amendment Bylaw, and the likelihood of success of each of those grounds. |
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| **Marks**: 50 | 3. | When the Town of Beachview (the “Town”) was first incorporated, Simone Brody had been operating a commercial soil operation (the “Soil Operation”) on her 25-acre parcel of land (the “Land”). At that time, the Soil Operation involved Ms. Brody stripping topsoil from the Property and selling it to local landscaping companies by the truckload or to local residents in bags. At that time, the Soil Operation occupied a 2-acre portion of the Land along its northern boundary. The Soil Operation had recently been relocated to that location from the 2-acre portion of the Land located to its immediate east as the previous location had been depleted of topsoil by the Soil Operation.Once the Town was incorporated, the Town Council adopted its Zoning Bylaw. The adoption of the Zoning Bylaw was the first time that zoning regulations became applicable to any of the lands within the Town’s boundaries, including the Land. Under the Zoning Bylaw, the Land was zoned Rural One Zone (the “R1 Zone”), which expressly permitted “commercial soil operations”. When this occurred, Ms. Brody approached the Town’s Chief Administrative Officer (the “CAO”) and received confirmation that she could continue to use the Land for the Soil Operation.At that same time, the Town Council also adopted a Business Bylaw requiring the operators of a business to obtain a business license from the Town to lawfully operate their business within the Town’s boundaries. When this happened, Ms. Brody applied for and obtained a business license for the Soil Operation. She has renewed that license annually since then. In the two years since the Town was incorporated, it has seen a significant growth in its popularity, resulting in the development of a large number of single-family residential neighbourhoods, including in areas adjacent to the Land. With this development, and a large number of residents now living close to the Land and the Soil Operation, the Town Council began to receive complaints about the Soil Operation and its impact on the new neighbourhoods. Initially, the Council’s response to the complaints was that the Soil Operation was there first. Ultimately, though, the Council could no longer ignore the complaints and adopted a zoning amendment bylaw (the “Zoning Amendment Bylaw”) that removed commercial soil operations as a permitted use in the R1 Zone.After the adoption of the Zoning Amendment Bylaw, Ms. Brody was livid and approached the CAO. She told the CAO that it had always been her business plan to relocate the Soil Operation to different locations on the Land when previous locations had been depleted of topsoil, and wanted confirmation that she could continue to do that. The CAO told her that she had to restrict the Soil Operation to its current 2-acre portion of the Land, and could not relocate it elsewhere on the Land.Stunned by the CAO’s advice to her, Ms. Brody began to consider alternate ways to operate the Soil Operation. She decided that, if she could not relocate it on the Property to areas where the topsoil had not been depleted, she would have to make the greatest use of the remaining topsoil where the Soil Operation was currently located on the Land. So, she decided to begin to import food waste onto the Land, to compost it, to mix the compost with topsoil from the current location of the Soil Operation, and to sell the finished product to landscapers and local residents.In the past 6 months, since Ms. Brody has been importing fand composting food waste as part of the Soil Operation, the Town has received hundreds of complaints relating to Soil Operation. The complaints relate to the impact of increased noise, dust, and traffic from heavy trucks delivering food waste to the Land, the smell of food waste composting on the Land, and dust from the finished compost being mixed with topsoil from the Land.You are the Town’s lawyer and have been asked to prepare a legal memorandum for the Town Council on the following:Whether Ms. Brody is entitled to continue to operate the Soil Operation on the Land, either at the current location on the Land without composting imported food waste, at the current location on the Land with composting imported food waste, at other locations on the Land where the topsoil had not yet been depleted without composting imported food waste, or at other locations on the Land where the topsoil had not yet been depleted without composting imported food waste.The grounds, if any, available to the Town Council to revoke Ms. Brody’s business license for the Soil Operation and the process for revoking or suspending that license.Assuming that Ms. Brody is not entitled to continue to operate the Soil Operation on the Land, or that the Town Council has revoked her business license for the Soil Operation and she continues to operate the Soil Operation on the Land, the process for enforcing the Zoning Bylaw and/or Business Bylaw by civil injunctive proceedings, including a discussion of the applicable test and the likelihood of success of an injunction application. |
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### **END OF EXAMINATION**