

**THIS EXAMINATION CONSISTS OF 7 PAGES INCLUDING THE COVER PAGE
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**THE UNIVERSITY OF BRITISH COLUMBIA
FACULTY OF LAW**

FINAL EXAMINATION – APRIL 2015

**Law 374
Municipal Law**

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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

THIS EXAMINATION CONSISTS OF 3 QUESTIONS. STUDENTS MUST COMPLETE 2 OF THE 3 QUESTIONS.

NOTE: DO ONLY 2 QUESTIONS

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1. Mr. Smith has for years owned one of the many waterfront properties in Lakeview. Mr. Smith had always dreamed of building a home for himself on the property. Last year, Mr. Smith and his wife divorced and Mr. Smith was faced with having to either sell his waterfront property or buy out his wife. Six months ago, in order to buy out his wife, Mr. Smith sold an undivided 50% interest in his property to Mr. Harding. At that time, Lakeview's official community plan bylaw designated the property "Waterfront Recreational Residential", which was defined as "the use of waterfront properties for recreational residential purposes, including two-family dwellings, single family dwellings and guest cabins". Lakeview's zoning bylaw allowed waterfront properties to be used for a two-family dwelling (which by definition was a building containing two dwelling units), a single family dwelling (which by definition was a building containing one dwelling unit) and a guest cabin (which by definition was a building smaller than 500 square feet and containing one dwelling unit), or a single family dwelling alone. Mr. Harding bought the 50% interest in the property as he believed that he would never have to share it with Mr. Smith, who Mr. Harding believed would never have the money to build a home on the property. Even if Mr. Smith did have the money, Mr. Harding wanted to ensure that all Mr. Smith could build on the property was a guest cabin. Mr. Harding immediately began construction of a 2400 square foot house on the property.

For years, the Lakeview Council has been inundated with complaints from residents, who were fed up with some property owners renting their waterfront properties to tourists, and the tourists causing all sorts of noise and other nuisances.

Three months ago, the Council gave first and second reading to an amendment to the zoning bylaw that would limit the use of waterfront properties to one single family dwelling alone.

When Mr. Smith read the Notice of Public Hearing for the zoning amendment bylaw, he wasn't sure whether he should be concerned. So, he arranged a meeting with Lakeview's building inspector, who told him that, if the amendment bylaw was adopted before Mr. Smith had commenced construction of his home on the property, Mr. Smith would not be permitted to build on it.

In a panic, and without first obtaining a building permit, Mr. Smith commenced construction of a 1100 square foot home on the property. As part of that construction, he started to build a covered breezeway that would connect the home to Mr. Harding's home between the bathroom windows of each home.

After holding a public hearing, Council gave third reading to the zoning amendment bylaw, and adopted it.

Mr. Harding has now made a formal complaint to Lakeview's building inspector that Mr. Smith's home is in contravention of the newly amended zoning bylaw and the building bylaw and has demanded that the bylaws be enforced against Mr. Smith. The building inspector has brought this to the attention of Lakeview's Chief Administrative Officer, who has asked for your advice on:

- 1) Whether Mr. Smith's home is in contravention of the zoning and building bylaws? In answering this question the Chief Administrative Officer has directed you to provide an analysis of any and all grounds on which Mr. Smith could reasonably argue that it is not in contravention of the bylaws regardless of whether you believe that one ground is dispositive of the issue; and,
- 2) Assuming that the home is in contravention of the bylaws, what steps can Lakeview take to enforce the bylaws, including an analysis of the likelihood of success of those steps, and the likely remedy that would be granted.

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2. In late 2013, the Council of the City of Greenville passed a resolution to implement a water metering program in the City (the "Program"), which would require every property owner to have a water meter installed within the main building located on their property, and would, beginning on January 1, 2016, have property owners paying for water on the basis of their actual consumption as measured by the meters. In the resolution, the Council directed the City's Chief Administrative Officer to take all steps necessary to implement the Program. The Chief Administrative Officer was already authorized under the City's Officers Bylaw to enter into a

contract on behalf of the City, upon receiving the written confirmation of the City's Chief Financial Officer that the proposed contract was within the scope of the City's current Financial Plan Bylaw.

As a first step, in order to pre-qualify contractors for the supply and installation of water meters for the Program (the "Water Meter Work"), the City undertook a Request for Expression of Interest process (the "RFEI Process"), which closed on January 30, 2014. Jones Mechanical Inc., whose principal is Mr. Dave Jones, submitted an Expression of Interest in response to the RFEI Process, but was not pre-qualified to participate in the City's Request for Proposal process (the "RFP Process") for the Water Meter Work.

The City subsequently undertook the RFP Process, and the City's consultants recommended that the City enter into a contract with Trident Enterprises Ltd. ("Trident") for the Water Meter Work. The City's Chief Administrative Officer, having reviewed the recommendation from the City's consultants and having reviewed the Financial Plan Bylaw, signed the proposed contract with Trident.

As a result of the election in November 2014, Mr. Jones was elected as the City's Mayor.

By December 1, 2014, Trident had concluded a significant portion of the Water Meter Work. In his Staff Report dated January 26, 2015, the City's Manager of Operations indicated that:

- 1) There remained outstanding under the contract with Trident 115 committed inside water meter installations, 146 recommended outside pit water meter installations, and 206 uncommitted water meter installations; and,
- 2) The scope of work and cost of these installations was to be determined before Trident commenced the installations.

With respect to outside pit water meter installations, the City's consultant had made an error in the documents for the RFP Process, specifying that the required depth of the pits was four feet and not the required five and a half feet.

Trident and the City subsequently discussed the price for which Trident would undertake the outside pit water meter installations, but were unable to come to an agreement (with Trident's proposed price being

significantly more than the City would have expected given the price stated by Trident in its proposal for a four foot pit depth).

At its in-camera meeting on February 27, 2015, the City's Chief Administrative Officer presented the January 26, 2015, staff report to the City Council and updated the City Council on the state of the negotiations between the City and Trident. During the discussion of the issue, now Mayor Jones expressed concern that, as it relates to the inside water meter installations completed by Trident, those installations contravene the British Columbia Plumbing Code as they were not carried out by or under the supervision of a certified plumber. Upon further discussion and notwithstanding that there is no without cause termination provision in its contract with Trident, the City Council resolved, on a 4 to 3 vote, with the Mayor voting in the affirmative, to terminate the City's contract with Trident, and for City staff to report back as to available options to have the work completed.

Trident was just notified of the City Council's decision and is furious with the City's decision and has retained you to advise it on:

- 1) Any remedies it has as against the Mayor;
- 2) Any grounds available to it to have the resolution of the City Council set aside by the courts; and,
- 3) The likelihood of it succeeding in a damages claim against the City, assuming that it does not have any grounds to have the resolution set aside.

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3. The District of High River has a business licensing bylaw that requires all owners of a business to first obtain a business license from the District before commencing business operations. When the District issues a business license, the license does not have to be renewed, but is valid for as long as the business is carried on at the location set out in the license.

The District is known for two things: its fertile soils and the relatively high percentage of its population that suffers from glaucoma and other illnesses that require treatment through the use of medical marihuana. As a result, under the Medical Marihuana Access Regulation, Health Canada had issued a significant number to personal production licenses and

designated person production licenses to the District residents. A personal production license permitted the holder to grow marihuana for their own medical purposes use. A designated person production license permitted the holder to grow marihuana for the medical purposes use of individuals who could have obtained personal production licenses but chose to designate the authority to grow marihuana for them to the holder of the designated person license.

As a result of holding a number of designated person production licenses, We Excel in Euphoric Delight Inc., aka WEED, applied to the District for a business license to grow and distribute medical marihuana from its industrially zoned property. Having satisfied itself that WEED's business had all of the necessary permits from Health Canada to lawful grow and distribute medical marihuana, and that the applicable zoning for the proposed location for WEED's business permitted that use at that location (the zoning bylaw zoned the land "Industrial 1 Zone" and permitted the property to be used for, among other things, "the growing, processing, and distribution of agricultural products where such activities do not create noise, dust, light or other nuisances that unreasonable affect the neighbourhood", the District issued a business license to WEED.

Some time after issuing a business license to WEED, the District received notice from Health Canada that all licenses under the Medical Marihuana Access Regulation would expire on April 1, 2014, and the holders would be required to obtain a new permit under the Marihuana for Medical Purposes Regulation. WEED never applied for a new permit.

WEED operated its business at its industrial property for over two years without any issue. Recently, on January 1, 2015, the District began to receive complaints from the owners of businesses located near WEED's property about the "skunky" smell coming from WEED's property. The District's Bylaw Enforcement Officer met with WEED's principals and required them to take action to abate the odour issues. In response, WEED's principals had scrubbers installed on the exhaust system for the business to reduce the odour. Unfortunately, the scrubbers were ineffective in reducing the odour, and the complaints continued. When the Bylaw Enforcement Officer spoke with WEED's principals about the ongoing complaints, they threw their hands up in the air and said that there was nothing they could do because their building simply wasn't air tight, and they could not prevent the odour from escaping.

The Bylaw Enforcement Officer, having exhausted his ability to obtain voluntary compliance, has sought your advice on the following:

- 1) The grounds, if any, that the District Council could rely upon in considering whether to suspend or revoke WEED's business license, including a full analysis of each of those grounds;
- 2) Any defences that WEED may raise in respect of each of the grounds that you identify;
- 3) The likelihood that the suspension or revocation of WEED's business license would be upheld by the courts; and,
- 4) The detailed steps that the Bylaw Enforcement Officer should follow in preparing his recommendation to the Council to suspend or revoke Weed's business license, and the detailed steps that the Council should follow in suspending or revoking the business license.

END OF EXAMINATION