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VIA FAX

REPLY TO: VANCOUVER OFFICE

September 15, 2005

Ms. Marcy Bond
Planning Technician
Fraser Valley Regional District
1 - 45950 Cheam Avenue
Chilliwack, B.C. V2P 1N6

Dear Ms. Bond:

**Re: Sunshine Valley Land Tenures
Our File No. 00083-0225**

We write in response to your request for an analysis of property tenures in the Sunshine Valley. In particular, you asked us to prepare a study of the six village areas and one larger region and to explain how each form of ownership affects municipal voting rights. You also asked us to explain some of the charges indicated on the sample property titles you provided to us.

We enclose a chart in which we have compared and contrasted the different types of tenure present in the seven areas and the implications of these tenures on the entitlement of owners to vote in municipal elections. In this letter we will briefly identify other registered charges that do not generally affect ownership or voting rights. We will also explain the legislative provisions affecting voting in local elections and other municipal voting.

Registered Charges

1. Financial Charges

We note that some of the sample property titles you provided to us indicate the land is subject to various financial charges. In particular, mortgages and assignments of rents are financial charges. They do not affect voting rights.

2. Charges that Affect Land Use and Development

Some of the sample property titles indicate the land is owned or occupied subject to various registered charges that are not financial charges as discussed above. These charges are: building schemes, statutory rights of way, easements, covenants, and profits a prendre. None of these charges affects voting rights.

(a) Building Scheme

Building schemes are commonly used in subdivisions that are originally planned and sold by developers. The developer may chose to sell vacant lots with restrictions on how residential or other construction on the lots will proceed. This is quite common in so-called ‘planned’ communities, where building schemes can restrict the physical appearance of homes by mandating specific types of roofs, fences, or siding, for example. Building schemes are private arrangements between the developer/vendor and the purchasers of burdened lots. The schemes are registered on title to make the restrictions run with the land and to warn subsequent purchasers of the restrictions on development.

(b) Statutory Rights of Way

A right of way is a charge registered against all or a portion of one or more parcels, which allows the charge-holder to access or use the burdened area in a specific way. Municipalities, regional districts, and utility companies are granted statutory powers to hold rights of way under the *Land Title Act*. Unlike easements, there does not need to be any specific relationship between the burdened land and the land of the corporation or person who is entitled to use the right of way. Municipalities commonly obtain statutory rights of way over portions of many adjoining parcels to build and maintain municipal services like water or sewer pipelines.

(c) Easement

An easement is like a right of way, but the parties to the easement agreement must have proprietary interests in adjacent properties. The servient tenement is the property burdened by the easement, and the dominant tenement is the neighbouring property whose owner is entitled to use the easement. The easement must be granted for the sole benefit of the dominant tenement. For example, one property owner may grant his neighbour an easement over his property so the neighbour can build a driveway and access the neighbour’s lot.

(d) Covenant

Municipalities have the statutory authorization under the *Land Title Act* to hold positive or negative covenants in respect of land. A covenant is essentially an enforceable promise to do (positive) or refrain from doing (negative) something. The *Land Title Act* authorizes municipalities to hold covenants with respect to the subdivision or use of land or buildings on the land and the preservation of amenities on the land. Two common uses of covenants by municipalities are to prevent subdivision except in accordance with a specified plan, and to require owners to preserve natural amenities like trees.

(e) Profit a Prendre

A profit a prendre is a right of entry and removal. The holder of a profit a prendre is entitled to enter onto the burdened land and remove from it the subject matter of the profit a prendre agreement. This is usually a right to enter land and remove trees or soil.

Municipal Voting

Section 81(3) of the *Community Charter* provides that local elections and by-elections must be held in accordance with Part 3 of the *Local Government Act*. Sections 9 and 158 of the *Local Government Act* state that voting to incorporate a municipality and “other voting”, such as voting on bylaws for which elector assent is required (eg: a service establishment bylaw) and voting on a referendum, are conducted in accordance with Part 3 as well.

Part 3 of the *Local Government Act* requires that a potential voter fall under one of two categories: the elector resides in the municipality (“resident elector”), or the elector owns property but does not reside in the municipality (“non-resident property elector”). An elector cannot vote once as a resident elector and once as a non-resident property elector in the same jurisdiction: s.51(1)(a). Further, an elector can only register as a non-resident property elector with respect to one parcel of real property in any given jurisdiction (s.51(2)), although individuals who own property in more than one jurisdiction may be eligible to vote in each jurisdiction. A voter can only be a resident elector in one area at a time: s.52(1)(b).

(a) Who cannot vote

Pursuant to ss. 49(1) and (3) of the *Local Government Act*, a corporation cannot vote, regardless of whether the corporation ‘resides’ in the municipality and regardless of whether it owns property in the municipality. An individual cannot vote ‘on behalf of’ a corporation.

Many of the sample title searches you provided to us indicate that a few development corporations are significant landowners in the seven Sunshine Valley areas. We conducted corporate searches and have concluded three of the four corporations appear to be closely connected and family-run. Sunshine Valley Developments Ltd., DJ Estates Ltd., and Van Hope Resorts Ltd. are owned and directed by four members of the Low family. The fourth corporate landowner, Alpine Park Estates Inc., does not have any Lows as directors or officers. Alpine Park Estates has six different directors and officers, who appear to reside in various municipalities in the Lower Mainland.

Corporations often own vacation properties in popular destination municipalities. It is our experience that these corporations commonly have terms in their private shareholder agreements that enable shareholders and directors and officers to use or occupy the properties. There are no public records that indicate whether any shareholder agreements affect the use and occupation of corporate-owned properties in the Sunshine Valley. Such private agreements cannot create voting rights where none otherwise exist under the *Local Government Act*. Unless these corporate shareholders, officers and directors otherwise qualify as resident electors or non-resident property electors, they will not be eligible to vote.

Sections 49(2), 50, and 51 also disqualify the following people from voting: people incarcerated for indictable offences; people involuntarily confined to a psychiatric institution in relation to a *Criminal Code* offence; people disqualified from voting for having committed an election offence under the *Local Government Act*; people under the age of 18; people who are not

Canadian citizens; and people not resident in British Columbia for at least six months immediately prior to voting.

(b) Resident electors: s.50

All natural persons who have resided in the municipality for at least 30 days immediately prior to the election and who meet certain criteria (age, citizenship, length of residency, etc.) are entitled to vote, regardless of whether they own property or not. This means that renters in apartment buildings, strata units, manufactured home parks, and detached dwellings alike may be eligible to vote.

(c) Non-resident property electors: s.51

Not all owners of property in the municipality (who do not reside in the municipality) are entitled to vote. To qualify as a non-resident property elector, an individual must satisfy subsection 51(1)(e.1), which requires that all of the owners of the real property in question must be individuals—that is, if an individual owns the property as a joint tenant or a tenant in common with a corporation, or if the individual holds the property in trust for a corporation or a trust, then that individual is not entitled to vote as a non-resident property elector.

Subsections 51(5) and (6) contain further restrictions that limit to one the number of individuals who may vote as non-resident property electors with respect to a given piece of real property. Subsection 51(5) says that if two or more individuals are the registered owners of the property, either as joint tenants or tenants in common, then only one of those individuals may register as a non-resident property elector with respect to that property. For example, if a husband and wife live in Vancouver and own a vacation cottage in Sunshine Valley as joint tenants or tenants in common, only one of the two owners could register as a non-resident property elector in Sunshine Valley.

Subsection 51(6) requires that if multiple individuals own the property, then the one person seeking to register as the non-resident property elector must have the written consent of the majority of individuals registered on title. For example, if five family members own a vacation cottage in Sunshine Valley as joint tenants or tenants in common, then three of the owners must agree about which one individual will register as a non-resident property elector. This majority consent requirement is not affected by the distribution of undivided fractional interests (a tenants-in-common scheme). For example, if one individual's undivided fractional interest in the cottage is 96/100 and four other individuals own 1/100 each, any three of the five owners can constitute a majority, regardless of what percentage of ownership they hold.

(d) Proving eligibility to vote: ss. 55, 57, 57.1, 58

To prove his or her eligibility as a resident or non-resident property elector, s. 55 requires an applicant to provide the municipality with his or her full name, residential address (and mailing address if different), and either his or her birth date or the last six digits of his or her social insurance number. The applicant must also provide a declaration that he or she meets the

requirements set out in ss. 49 to 51 of the Act (age, citizenship, residency, etc.). The applicant and a witness must both sign the application.

Persons seeking to register as resident electors immediately prior to voting must apply in accordance with s. 57 of the Act and s.3 of the Local Government Elections Regulation. Section 57 requires the election official to verify the applicant's identity and place of residence by examining two prescribed documents (or one document and a solemn declaration) as proof. Section 3 of the Regulation provides a lengthy list of prescribed documents, the most typical of which include drivers licences, automobile insurance papers, BC CareCards, property tax notices, credit cards, and utility bills.

Persons seeking to register as non-resident property electors immediately prior to voting must apply in accordance with s.57.1. This section again requires the election official to verify the applicant's identity by examining two documents from the list in s.3 of the Regulation. In addition, an applicant seeking to register as a non-resident property elector must deliver a "non-resident property elector certificate" issued under s.58. Section 58 requires a local government official to issue a certificate to each applicant who satisfactorily proves his or her entitlement to register in relation to a specific parcel of real property and, if necessary, who provides the official with the written consent of all other registered owners of the real property as required under s.51(6).

We trust the foregoing is satisfactory to you. Please do not hesitate to contact the writer if you have any further questions about this matter.

Sincerely,

LIDSTONE, YOUNG, ANDERSON



Bill Buholzer
buholzer@lya.bc.ca

BB/sdj

Nature of Tenure	Explanation of Interest	Effect of Ownership on Voting
Fee simple	This is the greatest interest a purchaser can acquire in land. Absent other restrictions on title, fee simple ownership gives the owner both the legal interest in the land (the ability to 'deal' with or alienate the land) and the beneficial interest to possess and use the land.	<p>Natural persons: Yes, as either a resident(s) or as a non-resident property owner (one owner per property), so long as all non-resident registered owners are individuals and are not holding their interest in the property in trust for a corporation.</p> <p>Corporations: No</p>
Leasehold	The owner of the fee simple interest can retain his legal interest (called the reversionary interest) and convey the beneficial interest of possession of the land to someone else for a fixed time. This person enjoys the right to occupy and use the land, but is not the legal owner.	<p>Natural Persons: The leaseholder(s) may qualify as a resident(s). The holder of a registered lease for a term of at least 99 years may qualify as a non-resident property owner pursuant to s.51(4)(d), subject to the other restrictions on non-resident property electors.</p> <p>Corporations: No</p>
Strata	Land that is subject to a strata plan is commonly of two parts: first, the properties owned by individual corporations or natural persons (the strata units) and second, the property 'owned' by the strata corporation and held for the benefit of all unit holders (the common property). One example is a strata apartment complex where each apartment suite is one strata unit, and property such as the foyer, the hallways, the elevator shaft, the parking lot, and the yard are all common property.	<p>Natural persons: Yes, as either a resident(s) or as a non-resident property owner (one owner per property), so long as all non-resident registered owners are individuals and are not holding their interest in the property in trust for a corporation.</p> <p>Corporations: No. The strata corporation cannot vote with respect to its ownership of the common property.</p>

<p>Undivided fractional interest (tenants in common, or "TIC")</p>	<p>This is a type of co-ownership of property. Each TIC owns a share or shares of the property. The shares do not need to be equal. Each TIC can then dispose of all or part of his shares in the property during his lifetime with the consent of the other TICs, or can dispose of all or part of his shares by will. Business partners often choose a TIC structure for land ownership. Each TIC's entitlement to use and occupy the property will be established in an agreement between the parties.</p>	<p>Natural persons: Yes, as either a resident(s) or as a non-resident property owner (one owner per property) so long as all non-resident TICs are individuals and are not holding their interest in the property in trust for a corporation. Corporations: No</p>
<p>Joint tenants</p>	<p>Unlike tenants in common, joint tenants each own the whole of the lot equally. Each joint tenant has the same type of interest in the land (eg: all fee simple or all leasehold), and the joint tenant's interest is for the same time duration (eg: if fee simple, this is an indefinite period; if leasehold, all for same fixed period). A joint tenant cannot dispose of his interest in a will—when a joint tenant dies, his interest automatically 'rolls into' that of the other joint tenant(s). Married couples often choose to hold fee simple land as joint tenants.</p>	<p>Natural persons: Yes, as either a resident(s) or as a non-resident property owner (one owner per property) so long as all non-resident owners are individuals and are not holding their interest in the property in trust for a corporation. Corporations: No</p>
<p>Tenants in manufactured home park</p>	<p>Tenants do not own any interest in the land on which their manufactured home rests. Tenants may or may not own their manufactured homes, but this does not give them an interest in land.</p>	<p>Natural persons: Yes, as resident(s) Corporations: No</p>

<p>Option to purchase</p>	<p>This is a private contractual agreement between the current holder of an interest in land (whether it is full fee simple or some lesser, alienable interest) and another party, under the terms of which the other party may become entitled to purchase the interest in the future.</p>	<p>Natural persons: The holder of an option to purchase may reside on the subject property and therefore be able to vote as a resident elector. However, if the holder is not a resident, his or her contractual interest is not sufficient to qualify as a non-resident property elector.</p> <p>Corporations: No</p>
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