

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

MAR 02 2016



IN THE SUPREME COURT OF BRITISH COLUMBIA

S-16201;1

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Vancouver Registry

BETWEEN
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MARCIA TIMBRES

PETITIONER

AND

TOWN OF GIBSONS

RESPONDENT

Re: Winn Road, Gibsons, BC.

PETITION TO THE COURT

ON NOTICE TO:

Town of Gibsons

c/o City Clerk
474 South Fletcher Road
Box 340 Gibsons, BC V0N 1V0

Hyak Marine Services Ltd.

c/o 377 Gower Point Road
Gibsons, BC V0N 1V0

Klaus Fuerniss

Box 570
Gibsons, BC V0N 1V0

Monika Fuerniss

Box 570
Gibsons, BC V0N 1V0

Attorney General of British Columbia *c/*

o Ministry of Justice
Legal Services Branch
1st Floor, 1001 Douglas Street
Victoria, BC V8W 9J7

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2C5
(2)	The ADDRESS FOR SERVICE of the petitioner is: c/o Stewart, Aulinger & Co. 1200 - 805 West Broadway Vancouver, BC V5Z 1K1 Fax number address for service (if any) of the petitioner: 604-874-5551 E-mail address for service (if any) of the petitioner: N/A
(3)	The name and office address of the petitioner's lawyer is: Robert A. Kasting (address in (2) above)

CLAIM OF THE PETITIONER

Part 1: ORDER SOUGHT

1. An order enjoining and restraining the Town of Gibsons from disposing of, transferring or alienating that part of Winn Road, Town of Gibsons which is situated between Gower Point Road and Gibsons Harbour ("that section of Winn Road") without publishing notice of the proposed disposition in

accordance with s. 26 and s. 94 of the *Community Charter*, SBC 2003, c. 26.

2. An order enjoining and restraining the Town of Gibsons from closing that section of Winn Road without exercising that power by by-law as required by s. 40 and s. 41 of the *Community Charter*.
3. A declaration that the Town of Gibsons may neither close nor dispose of that section of Winn Road without following the mandatory steps set out in s. 26, 40, 41, and 94 of the *Community Charter*.
4. Costs

Part 2: FACTUAL BASIS

1. Pursuant to s. 26 of the *Community Charter*, before the council of a municipality disposes of land, it must publish a notice of the proposed disposition in accordance with s. 94 of the *Community Charter*.
2. Pursuant to s. 40 of the *Community Charter*, any municipality wishing to permanently close a highway, must do it by by-law and prior to adopting the by law, the council must give notice of its intention in accordance with s. 94 of the *Community Charter* and provide an opportunity for affected persons to make representation to council about the bylaw.
3. Pursuant to s. 41 of the *Community Charter*, any municipality has additional obligations towards the public if a highway which it intends to dispose of provides public access to the ocean.
4. S. 94 of the *Community Charter* provides the requirements for the public notices mandated by s. 26 and 40 of the *Community Charter*.

5. On June 16, 2015, the council of the Town of Gibsons passed first reading of By-law 1065-33, 2015 for the rezoning of the section of Winn Road between Gower Point Road and Gibsons Harbour, ("that section of Winn Road") giving it the designation of CDA-2 (Comprehensive Development) Zoning.
6. On July 26, 2015, the council of the Town of Gibsons passed the second reading of By-law 1065-33.
7. On October 6, 2015, the council of the Town of Gibsons passed the third reading and adopted By-law 1065-33, rezoning that section of Winn Road.
8. On October 7, 2015, the Mayor and Corporate officer of the Town of Gibsons executed a development agreement whereby the Town of Gibsons would close that section of Winn Road for consolidation with lands owned by Hyak Marine, Klaus Fuerniss and Monika Fuerniss and exchange that section of Winn Road for other lands.
9. No public notice was provided for the disposition of that section of Winn Road as required by s. 26 and 94 of the *Community Charter*.
10. No bylaw of council was passed as a pre-condition to the permanent closure of that section of Winn Road as required by s. 40(1) of the *Community Charter*.
11. No notice of intention to permanently close that section of Winn Road was given in accordance with s. 94 as required by s. 40(3) (a) of the *Community Charter*.

12. No opportunity was given to persons who consider they are affected by the bylaw to make representations to counsel, as required by s. 40 (3) (b) of the *Community Charter*.

Part 3: LEGAL BASIS

1. This petition is brought pursuant to the *Judicial Review Procedures Act*, RSBC. 1996, c.241, s. 2(2).
2. The Petitioner has standing to bring this application: *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 **SEC 45**.
3. Notice is given to Hyak Marine Services Ltd., Klaus Fuerniss, and Monika Fuerniss as required by *Rule 16-1 (3)* although no relief is sought from them.
5. The authority of the Town of Gibsons is conferred by statute, including the *Community Charter*. The Town of Gibsons may dispose of land or close a highway, but only by bylaw or resolution: *Community Charter*, s.122
6. The process for the disposition of land is set out in s. 26 and 94 of the *Community Charter*.
7. The process for closing a highway is set out in s. 40 and 94 of the *Community Charter*.
8. When a highway with public access to the ocean is to be closed, there is an additional obligation on the municipality set out in s.41 of the *Community Charter*.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____ of Part 1 of this petition

with the following variations and additional terms:

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Date:

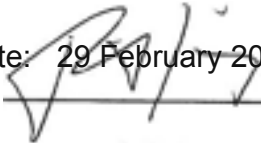
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Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Marcia Timbres made February 29, 2016.

The petitioner estimates that the hearing of the petition will take 2 hours.

Date: 29 February 2016



Signature of Robert A Kasting

petitioner lawyer for petitioner

Marcia Timbres

No.

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Vancouver Registry IN

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