



## AGENDA OF AN EMERGENCY COUNCIL MEETING

### STRATA COUNCIL VIS4673

**Sunday, January 8<sup>th</sup>, 2017 [Start Time 10:00 AM]**

1621 Meadowood Way, Qualicum Beach, Little Qualicum River Village

1. Call to Order
2. Approval of Agenda
3. Approval of the Minutes from the November 21<sup>st</sup>, 2016 Regular Council Meeting
4. New Business: Proof Of Notice of Civil Claim: Noel Stephen & Judith Munkholm
5. Next Meeting Date
6. Adjournment



**MINUTES OF EMERGENCY  
COUNCIL MEETING  
STRATA COUNCIL VIS4673  
January 8th, 2017 [Start Time 10:00 A.M.]  
1621 Meadowood Way, Qualicum Beach**

**Council:** Dana Mellway, Don Laughton, Nadeen Brewer, Brian Gallagher, Korina Richard, Linda Guild, John Mainland, Tim Peligren, Elaine Peligren

**1. Call to Order**

Dana Mellway, President, called the meeting to order at 10:06 a.m.

**2. Approval of Agenda**

**Moved: Dana**  
**Second: Tim**

Move to accept the agenda as presented.

**Carried**

**3. Approval of the Minutes from the November 21<sup>st</sup>, 2016 Regular Council Meeting**

**Moved: Elaine**  
**Second: Dana**

Move to amend the November 21st, 2016 minutes **10. Next Meeting Date** – second paragraph to read: The next Regular Council Meeting is scheduled for Monday, January 23<sup>rd</sup>, 2017 at 6:30 p.m. at 1621 Meadowood Way, Qualicum Beach, B.C.

**Moved: Dana**  
**Second: Tim**

Move to accept the minutes as amended.

**Carried**

**4. Proof of Notice of Civil Claim: Noel Stephen & Judith Munkholm**

Attached is the copy of Notice of Civil Claim [Exhibit A1- A12].

**Moved: Dana**  
**Second: Linda**

Move to appoint John Jordan of MacIsaac & Company as lawyer to represent all owners of (Strata Corporation VIS4673) on behalf of this case.

**In Favor: John, Nadeen, Linda, Dana, Brian, Don.**  
**Abstained: Korina, Elaine, Tim**

**Carried**

Linda Guild will gather information for a chronological report leading up to and around the time of the landslide.

Council has been in contact with the Hub Insurance Adjuster, CHOA and John Jordan to determine the course of action for the Owners of Strata Corporation VIS4673 named in the Notice of Civil Claim.

**5. Next Meeting Date**

The next Regular Council Meeting is scheduled for Monday, January 23<sup>rd</sup>, 2017 at 6:30 p.m. located at 1621 Meadowood Way, Qualicum Beach, B.C

**6. Adjournment**

**Moved: Tim**  
**Second: Linda**

There was no further business and the meeting adjourned at 11:35 a.m.

**Carried**

\_\_\_\_\_  
**Dana Mellway, President**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Nadeen Brewer, Recording Secretary**

\_\_\_\_\_  
**Date**

[EXHIBIT A1-A12] [A1]



Court File No. **VLC-S-S-1611350**

NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**NOEL STEPHEN and JUDITH MUNKHOLM**

**PLAINTIFFS**

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA AS THE MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE, CITY OF NANAIMO, REGIONAL DISTRICT OF NANAIMO, JOHN DOE GOVERNMENT ENTITY 1-3, 0528872 BC LTD., 0761349 BC LTD., TIMOTHY BRUCE PELIGREN, JOHN DOE CORP 1-10, JOHN DOE 1-5, AND THE OWNERS STRATA PLAN VIS4673**

**DEFENDANTS**

**NOTICE OF CIVIL CLAIM**

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

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

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiffs and on any new parties named in the counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.**

**TIME FOR RESPONSE TO CIVIL CLAIM**

A response to civil claim must be filed and served on the Plaintiffs,

- (a) If you reside anywhere in Canada, within 21 days after the date on which a copy of the

- filed notice of civil claim was served on you,
- (b) If you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
  - (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
  - (d) if the time for response to civil claim has been set by order of the court, within that time.

### CLAIM OF THE PLAINTIFFS

#### PART 1: STATEMENT OF FACTS

1. The plaintiffs, Noel Stephen and Judith Munkholm, are individuals and have an address for service c/o Lindsay LLP, 1000 – 564 Beatty Street, Vancouver, British Columbia.
2. The defendant, the Owners, Strata Plan VIS4673 (the "Strata"), is a strata corporation established under the *Strata Property Act*, SBC 1998, c.43 for Strata Plan VIS4673, which refers to a strata property known as Little Qualicum River Village, and comprises 575 acres of land approximately 20 kilometers west of Qualicum Beach in the Regional District of Nanaimo (the "Strata Property"). The Strata Property contains 286 building strata lots. The Strata has a mailing address of 1773 Country Road, Qualicum Beach, British Columbia, V9K 2S3.
3. The defendant, Her Majesty the Queen in Right of the Province of British Columbia as represented by the Ministry of Transportation and Infrastructure ("MOT") has an address for service at Ministry of the Attorney General, Legal Services Branch, 2<sup>nd</sup> Floor, 1001 Douglas Street, Victoria, British Columbia.
4. The defendant, the City of Nanaimo, is a municipal corporation pursuant to the *Local Government Act*, RSBC 1996, c. 323. It has its office at 455 Wallace Street, Nanaimo, British Columbia.

5. The defendant, the Regional District of Nanaimo is a municipal corporation pursuant to the *Local Government Act*, RSBC 1996, c. 323. It has its office at 6300 Hammond Bay Road, Nanaimo, British Columbia.
6. The defendants, John Doe Government Entities 1 to 3 are government entities whose identity is not currently known to the plaintiffs.
7. The defendant, 0528872 BC Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1625 Meadowood Way, Qualicum Beach, British Columbia, V9K 2S3.
8. The defendant, 0761349 BC Ltd. is a company incorporated pursuant to the laws of British Columbia with a registered and records office at 1625 Meadowood Way, Qualicum Beach, British Columbia, V9K 2S3.
9. The defendant, Timothy Bruce Pelgren, is an individual with a mailing and delivery address at 1625 Meadowood Way, Qualicum Beach, British Columbia, V9K 2S3.
10. The defendants, John Doe Corp 1 to 10 and John Doe 1 to 5 are corporations and individuals whose identities are not known to plaintiffs, but were involved in the design, development, construction, and/or inspection of the Strata Property.

*Background Facts of Loss*

11. The plaintiffs were at all material times the registered owners of a house located at lot 261 of the Strata Property (the "House"). The House is adjacent to a hill that ascends to other residential lots on the Strata Property, namely, lots 265 and 266 (the "Hill").
12. At a time not known to the plaintiffs, but before the Strata took ownership of the Strata Property, the MOT, the City of Nanaimo, the Regional District of Nanaimo, or John Doe

Government Entities 1 to 3 (collectively, the "Approving Government Entities") were the owner of, and had authority over the subdivision approvals of, the land that is now the Strata Property.

13. At all material times, 0528872 BC Ltd., 0761349 BC Ltd., Timothy Bruce Peligren, John Doe Corp 1 to 10 and/or John Doe 1 to 5 (collectively, the "Developers") developed lands and constructed the houses on the Strata Property, including the House.
14. The Developers started developing the Strata Property in or about the 1990s.
15. At a time not known to the plaintiffs, but prior to December 10, 2014, the Developers were granted a subdivision application for the Strata Property from one or more of the Approving Government Entities.
16. At a time not known to the plaintiffs, but prior to December 10, 2014, there were landslides on slopes adjacent to the Hill, and many of the trees thereon leaned downslope, all of which indicates the slopes, including the Hill was a landslide hazard.
17. Prior to the subdivision application, one or more of the Approving Government Entities oversaw the construction and maintenance of the logging roads on the land that became the Strata Property.
18. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, the Developers installed several drainage pipes that discharged water at the top of the Hill (the "Drainage Pipes").
19. At a time not known to the plaintiffs, but prior to December 10, 2014, and during the course of the development of the Strata Property, the Developers installed about 3 to 4 meters of soil fill material at the top of the slopes adjacent to the Hill, burying at least one of the Drainage Pipes.
20. In or about 2010, the Developers constructed the House.



21. On or about December 10, 2014, an earth moving event occurred on or about the top of the Hill, which caused a debris flow down the hill that in turn destroyed everything in its path, including the House and the contents therein (the "Landslide").
22. The plaintiff, Noel Stephen, was trapped in the basement under the debris of the House and the Landslide. He was rescued by the Dashwood Fire Department who cut him out using saws and hand tools.
23. From December 10, 2014, to December 12, 2014, engineers retained by the Regional District of Nanaimo investigated the slopes in and around the Hill determined that the area was a landslide hazard and advised that an area encompassing over ten strata lots should be evacuated.

*Liability of the Strata*

24. The Strata knew, or ought to have known, prior to the date of the Landslide, that the Hill was a landslide hazard.
25. The Strata owed a duty of care to the plaintiffs, and breached its duty, the particulars of which negligence include, but are not limited to:
  - (a) failing to conduct regular inspections of the Strata Property so as to detect potential dangers to the House, including but not limited to, the impact of the design and construction of the Strata Property on the stability of the land adjacent to the House and the diversion of natural watercourses;
  - (b) failing to investigate the Hill as a landslide hazard;
  - (c) failing to warn the plaintiffs that the Hill was a landslide hazard;
  - (d) failing to investigate the Hill as a landslide hazard in light of the historical landslides on slopes around the Hill;
  - (e) failing to warn the plaintiffs about the historical landslides on slopes around the Hill;

- (f) having at least one of the Drainage Pipes buried by soil fill material, creating a landslide hazard;
- (g) failing to have any, or in the alternative adequate, drainage and/or diversions of natural watercourses on the Strata Property;
- (h) failing to employ competent employees, contractors and agents involved in the development and maintenance of the strata lots in and around the House and Strata Property;
- (i) such further and other particulars as become known to the plaintiffs.

("Strata's Negligence")

26. The Strata's Negligence was the cause, in whole or in part, of the Landslide, which was the reasonably foreseeable result of the Strata's Negligence.

*Liability of the Developers*

27. The Developers knew, or ought to have known, prior to the date of the Landslide, that the Hill was a landslide hazard.
28. The Developers owed a duty of care to the plaintiffs, and breached its duty, the particulars of which negligence include, but are not limited to:
- (a) failing to take any or any reasonable steps to ensure that the Strata Property was designed, developed, and constructed in a manner that did not pose an unreasonable risk of damage to the House;
  - (b) installing inadequate drainage and/or diversions of natural watercourses in or about the Hill;
  - (c) failing to have the Hill assessed as a landslide hazard despite the historical landslides on the slopes around the Hill;

- (d) failing to have a geotechnical/slope stability assessment and/or geohazard assessment carried out by a qualified geotechnical professional engineer prior to the development of the Strata Property and/or construction of the House;
- (e) burying at least one of the Drainage Pipes with soil fill material, creating a landslide hazard;
- (f) overburdening the top of the Hill with approximately 3 to 4 meters of soil fill material, when the surrounding slopes had only approximately 1 meter of soil fill material;
- (g) failing to conduct regular inspections of the Strata Property so as to detect potential dangers to the House, including but not limited to, the impact of the design and construction of the Strata Property on the stability of the land adjacent to the House and the diversion of natural watercourses;
- (h) failing to employ competent employees, contractors and agents involved in the development of the Strata Property and the construction of the House;
- (i) such further and other particulars as become known to the plaintiffs.

("Developer's Negligence")

29. The Developer's Negligence was the cause, in whole or in part, of the Landslide, which was the reasonably foreseeable result of the Developer's Negligence.

*Liability of the Approving Government Entities*

30. The Approving Government Entities knew, or ought to have known, prior to the date of the subdivision application approval for the Strata Property, that there were historical landslides on this land, and landslide hazards existed thereon.
31. The Approving Government Entities owed a duty of care to the plaintiffs, and breached its duty, the particulars of which negligence include, but are not limited to:
- (a) approving the subdivision application for the Strata Property without considering:

- i. if the land had inadequate draining installations; or
  - ii. if the land is subject, or could reasonably be expected to be subject, to erosion, land slip, or avalanche;
- (b) approving the subdivision application for the Strata Property without requiring a report certified by a professional engineer or geoscientist experienced in geotechnical engineering that the land may be used safely for the use intended;
  - (c) failing to take any or reasonable steps to ensure that the Strata Property was designed and constructed in a way that did not pose an unreasonable risk of damage to the House;
  - (d) failing to conduct regular inspections of the Strata Property so as to detect potential hazards to the House, including but not limited to, the impact of the development on the Strata Property on the stability of the land in and around the House and the diversion of natural watercourses;
  - (e) causing or permitting the Strata Property to be constructed in such a way as to increase the risk of damage to the House due to erosion, land slip, and/or the diversion of natural watercourses;
  - (f) failing to properly consider potential risks to the House due to erosion, landslip, and/or diversion of natural watercourses; and
  - (g) such further and other particulars as become known to the plaintiffs.

("Approving Government Entities' Negligence")

- 32. The Approving Government Entities' Negligence was the cause, in whole or in part, of the Landslide, which was the reasonably foreseeable result of the Approving Government Entities' Negligence.

*Damages*

- 33. The Landslide caused extensive loss and damage to the House and contents of the plaintiffs situated therein.

34. As a result of the Landslide, the plaintiffs suffered loss, damage and expense, particulars of which include but are not limited to:

- a) the cost to investigate the Landslide;
- b) the cost of replacing damaged contents and fixtures;
- c) the cost of replacing to the House;
- d) the loss of use and enjoyment of the House; and
- e) such further loss, damage and expense that may be proven at trial.

**PART 2: RELIEF SOUGHT**

1. The plaintiffs seek from the defendants an award for damages for:

- a) general damages;
- b) special damages;
- c) costs;
- d) interest pursuant to the *Court Order Interest Act*, R.S.B.C., Chapter 79; and
- e) such further and other relief as this Honourable Court deems just.

**PART 3: LEGAL BASIS**

1. The Landslide was caused or contributed to by the negligence, breach of duty of the defendants, their employees, servants and/or agents singly or in combination.
2. The defendants are each jointly and severally liable to the plaintiffs for the plaintiffs' loss, damage and expense,
3. The damage caused by the Landslide amounts to a nuisance to the plaintiffs and to their use and enjoyment of the House.

4. The Plaintiffs plead and rely upon the provisions of the *Negligence Act*, RSBC 1996, c. 333, *Occupiers Liability Act*, RSBC 1996, c. 337, *Land Title Act* RSBC 1996, c 250, *Strata Property Act*, SBC 1998, c. 43, *Court Order Interest Act*, R.S.B.C. 1996.

Plaintiffs' address for service: Lindsay LLP  
Barristers  
1000 - 564 Beatty Street  
Vancouver, B.C. V6B 2L3  
Attention: Bryan McLean

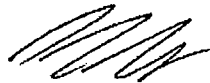
Fax number address for service (if any): 778-945-5198

E-mail address for service (if any): none

Place of Trial: Vancouver

Address of the Registry: Vancouver Law Courts  
800 Smithe Street  
Vancouver, B.C. V6Z 2E1

Dated: December 8, 2016



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Bryan McLean

Lawyer for the plaintiffs

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control

and that could, if available, be used by any party at trial to prove or disprove a material fact, and

- (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.

**APPENDIX**

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

1. The plaintiffs are claiming against the Owners, Tenants, BBQ Manufacturer and BBQ Vendor for damage and expense caused by a fire that started in an apartment occupied by the Tenants.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

- a motor vehicle accident
- personal injury, other than one arising from a motor vehicle accident
- a dispute about real property (real estate)
- a dispute about personal property
- the lending of money
- the provision of goods or services or other general commercial matters
- an employment relationship
- a dispute about a will or other issues concerning the probate of an estate
- construction defects
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above

**Part 4:**

*Negligence Act, R.S.B.C. 1996, C. 333.*

*Court Order Interest Act, R.S.B.C. 1996.*