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July 2015 Landowners Update

Special Edition

From the Board

The Board is disappointed that the Developer at his June 3rd meeting has unnecessarily given rise to community anger and unrest regarding the expired Water Infrastructure Agreement between UBID and 34083 Yukon Inc. (KIP). We are taking that meeting seriously and we intend to fully and comprehensively respond to inaccurate and incomplete statements that were made. UBID has been working with a professional facilitator to have a Special Meeting of Landowners to present information, discuss concerns and reassure landowners. That meeting has been set for **Saturday, September 12th**. More information will be sent out prior to the meeting. In the meantime, information will be provided via this and other mail outs.

First of all, the Board believes that development brings the potential for economic and social revitalization in Union Bay. Increased amenities and a larger tax base will help the community to survive and prosper. The current situation with the Developer is simply a contract issue, and has nothing to do with a lack of Board support for development.

UBID is interested in negotiating an agreement that is in the best interest of the landowners and which also accommodates the development. Negotiations attempt to resolve differences that usually result in satisfactory resolutions for the parties involved.

The Water Infrastructure Agreement (WIA) agreement between UBID and the Developer was signed in April 2011 and the Developer allowed the WIA to expire on December 31, 2014. UBID has received no evidence the Force Majeure Clause that would support an extension is justified.

In 2012, UBID determined it needed to develop a Plan B in the event the Developer defaulted in its obligations and the Developer was well aware of UBID's work on an alternate plan.

UBID was previously required by Island Health to have a water treatment plant up and running by December 31st, 2015 and thus a revised and comprehensive plan was submitted to them on September 15th, 2014. On October 31st, 2014 the UBID water review and plan was approved by Island Health, granting an extension until August 31st, 2018. This and other revised terms and conditions were placed onto our water license.

In 4 years, the Developer has never provided the Board with any concrete plans for water treatment.

On November 6th, 2014, UBID reminded the Developer of the process for moving forward and his obligations under the agreement but on November 10th, 2014 the Developer stated that it was taking an extension until at least April 2015 and had instructed its contractor to proceed immediately. UBID requested the Developer's justification for an extension past December 31st, 2014 and yet after 8 months that justification has never been provided.

UBID sees the expiry of the Water Infrastructure Agreement (WIA) as an opportunity to make some improvements to the expired agreement. In January 2015, the Developer was provided with six things that UBID sees as necessary in a new arrangement. These are:

1. Location of Future Water Filtration / Treatment Facility (WTP)

UBID is working hard to secure a permanent site for a water treatment facility. It makes no sense to put a temporary plant on the lower McLeod Road site and then within 2 years (this is a requirement of Island Health and it is in our water license) to move it.

2. Capacity of Proposed DAF WTP must be aligned with that of Langley Lake.

The maximum capacity of the future complete and fully operational Water Treatment Plant must not exceed UBID's existing water license for community drinking water use from Langley Lake. UBID is not convinced that the current water license can support 500 new homes and wants to revisit the numbers. Both Koers Engineering and McElhanney suggest that UBID's water license can support up to a total of 1050 homes. This does not mean the Master Development Agreement must be opened as the Developer has purported.

3. Funding of all Associated WTP Planning, Design and Construction Costs

UBID has a number of questions and concerns regarding specifically the collection of capital expenditure charges and latecomer fees. Any future agreement with the Developer needs to address costs, payment from the Developer and UBID's role in sharing this responsibility with timelines and more clarity. The terms, conditions and details of each party's proposed financial contributions pertaining to such a cost-sharing arrangement would need to be developed as part of negotiations.

4. Ownership of the Future Water Filtration/Treatment Facility

Full ownership, control and day-to-day operation of the future WTP (temporary or permanent) must be retained by UBID.

5. Design and Engineering of the Future DAF Water Treatment Plant

UBID's consulting engineers, Koers & Associates Engineering Ltd. of Parksville, must be responsible for any and all engineering and related professional consultation or project management work pertaining to the implementation of water treatment and storage.

6. Update on Kensington Island Properties' Development Plans and Status

KIP's existing development plans are now several years old and were designed prior to the extended period of economic uncertainty that began in 2008. Furthermore, based on our knowledge other pertinent environmental, regulatory and related issues continue to remain either fully or partially unresolved. As such, UBID requests that the Developer present to the UBID Board of Trustees the development's currently anticipated timeframes, benchmarks, required commitments, etc.

Although UBID has spoken to the Developer twice about these critical issues, the Developer has yet to agree to negotiate a new agreement. Subsequent to the June 17th Board meeting, a meeting has taken place with the Developer to discuss our differences with the aim of working toward a solution.

It is contract law that when one party wants to open an agreement (such as for an extension) and the other party agrees; all clauses in the agreement are open to review.

Initially the Developer cited the unfinished coal hills remediation plan as a reason for its delays and yet this was contradicted at its June 3rd public meeting. No agreement required the Developer to remediate the coal hills before building a water treatment facility and therefore this remediation work has never prevented the Developer from building a water treatment facility.

It has been stated UBID purposely and unnecessarily raised the Capital Expenditure Charges (CEC) from \$2,500 after the Water Infrastructure Agreement was signed in April 2011. In fact, the CEC rate was raised back in 2009 to \$8,100. Based on a 2009 report from McElhanney to UBID, where the engineering firm recommended CEC's be set at \$8,935, the Board approved a subsequent increase to \$8,900 in 2014.

Alliance between the Developer (KIP) and K'ómoks First Nation (KFN)

In 2010, K'ómoks First Nation negotiated an Impact Benefit Agreement with the owners of the Kensington project. The agreement includes some cash, several parcels of land, access across Kensington lands (to the beaches where they have aquaculture tenures), ownership of office space within the development, marine space and a guarantee of jobs, training and contracts if KFN meets certain conditions.

A clause in that agreement relates to KIP providing K'ómoks First Nation with access to water for 150 units which would be taken from KIP's initial 500 water hook-ups projected in Phase 1 of their development under the expired UBID-KIP Water Infrastructure Agreement. UBID had no knowledge of this arrangement until March 3rd, 2015.

As UBID holds the water license any connection to our water system requires UBID's agreement. The Developer does not have the authority to promise water to anyone.

In May 2013, UBID applied for Crown Land Grant tenure to a piece of property for a permanent water treatment facility. In May 2014, UBID received and accepted a Crown Grant offer from the Ministry of Forests, Lands and Natural Resource Operations.

The Province has a non-transferrable duty to consult with First Nations regarding such land applications. Although the Province must consult and accommodate First Nation concerns wherever possible, if an issue of public interest is being considered aboriginal rights may be over-ridden.

In mid-February 2015, nearly 9 months after UBID signed the Crown Grant Offer and just before the grant was to be finalized by the provincial Cabinet, UBID was informed that KFN had issued an objection on the grounds this parcel forms part of their potential treaty settlement lands. At the developer's June 3rd public meeting, the K'ómoks First Nation's Chief Negotiator told the crowd that as soon as KFN learned from KIP about UBID's application it requested a meeting with UBID. In reality, UBID requested a meeting with them and had to enlist the assistance of MLA Don McRae as K'ómoks First Nation was not returning UBID's calls.

Why would a Developer feel the need to inform the First Nation about a Crown Land Grant Tenure application that would provide for a permanent future water treatment and reservoir site at very little cost to the landowners of Union Bay?

If the Crown Grant is scuttled and UBID has to buy land it will cost landowners hundreds of thousands of dollars.

At its preliminary meeting with KFN, UBID indicated it may consider meeting jointly with KFN and KIP however on March 9th, 2015 UBID advised KFN that it was not going to enter into tri-partite discussions.

On March 30th, 2015 UBID arrived at the K'ómoks First Nation offices for a second meeting to find the Developer present. KFN's notes from that meeting were distributed in the community even though KFN and KIP are fully aware the notes from that second meeting have not been accepted by UBID as an accurate reflection of what transpired at the meeting. UBID's notes from this 20-minute "ambush" meeting follow on the next page.

Summary Notes of Meeting between K'ómoks First Nation and UBID

Monday, March 30th, 2015; 9:30am

K'ómoks First Nation Band Office

Present:

K'ómoks First Nation: Chief Rob Everson & Chief Negotiator Mark Stevenson

UBID: Chair Carol Molstad and Administrator Kevin Douville

Kensington Island Properties: Brian McMahon

- UBID was not aware that KIP would be present at this meeting.
- KFN initiated the discussion by outlining an interest in reaching a mutual agreement between the three parties.
- UBID is not prepared to meet in tri-partite discussions regarding the Crown Grant land and KIP development; It will meet individually with KFN to build a relationship and if appropriate to discuss the Crown grant land; and it will meet individually with KIP to develop an agreement.
- The Impact Agreement between KFN and KIP is not any business of UBID; however UBID does hold the water license and any connection to water requires UBID's agreement.
- After some clarification regarding UBID's water plan, the water license; UBID's intent to build on a permanent location; and the lack of progress of discussions between KIP and UBID; KFN stated:
 - If the temporary site is not built according to the expired KIP/UBID Water Infrastructure Agreement; there will be no lease on the Crown land/potential treaty settlement land.

Why is it of any interest to KFN as to where Union Bay's water treatment facility is ultimately located?

- If there is a lease arrangement between KFN and UBID, KFN is prepared to be flexible in the terms. UBID's interest is in long stability and affordability.
- No further meeting date was set.

Although KFN says they were not properly consulted that is not UBID's information or experience. UBID did everything it was required to do by the Province regarding consultation. In response to K'ómoks First Nation's letter, which they have now circulated throughout the community, accusing UBID of purposely misleading them regarding our application, the following response was issued on April 2nd, 2015:

Dear Chief Everson,

I am writing you in follow-up to your letter dated March 31, 2015 with respect to the Union Bay Improvement District's (UBID) pending Crown Land grant tenure application.

It is regrettable you feel UBID has not adequately consulted with yourself and the K'ómoks First Nation (KFN) regarding our interest in securing the 3.23 hectare site in question on McLeod Road for the purposes of locating a future water (treatment) filtration facility and water storage reservoir to service the existing and future landowners within UBID's boundaries. As discussed during our recent two meetings with yourself and Chief Negotiator Mark Stevenson, the Province cannot delegate its duty to consult with First Nations on any and all land applications such as this. It remains our understanding the appropriate notification and request for response process was followed by FrontCounter BC staff in this instance. In December 2013, and in support of this application process, UBID did as it was required and posted the necessary public staking notice on site and published similar notifications in both the Comox Valley Echo and Comox valley Record newspapers on two separate occasions. Furthermore, our Administrator Kevin Douville did speak directly with a member of KFN's Treaty Negotiation Team, Mr. Ron Frank, in early February 2014 and provided him at that time with details of our application including our proposed use of the property. I believe we also spoke briefly to our application with several KFN representatives during the Community-To-Community Forum we attended at your invitation on March 14th, 2014.

Regardless, please be assured it was never UBID's intent to not disclose our application to you, nor to disregard or disrespect any expected protocols in the midst of your treaty negotiations with senior levels of government.

We do concur K'ómoks First Nation and UBID share areas of mutual interest pertaining to your potential treaty settlement lands and to this parcel, particularly to the long term sustainability and quality of our potable water resources and infrastructure in Union Bay. Therefore, we will consider and discuss your offer of a further formal meeting, to take place at a time deemed suitable, with our Trustees and then be back in touch with you further.

Respectfully and sincerely,

Carol Molstad
Board Chair

Here's what this Board intends to do. We are not going to enter into smear campaigns or sling mud back at those who feel justified in doing so. We will provide you with the facts. We were elected by you and will continue to work on your behalf to address all issues in UBID's purview that impact our community, including the water agreement. We thank you for your continued support.