

Part 2: Approved as a Permitted Use

Selling the Property as a split-zoned parcel ensured the sale would proceed more quickly than if a rezoning had been required. However, the zoning still caused delays in closing the sale due to a conditional subject in GAIN's purchase offer.

Buyer's Conditions

The offer to purchase the Property for \$1 million, formally accepted on April 4, 2013, included the following subject: "**the Buyer must be satisfied that it can use the property for it's [sic] proposed use**" (emphasis added).¹² The key to completing the sale was assuring the buyer's legal representatives that their intended use was allowed under the parcel's split zoning.

On October 19, 2013, counsel for the buyer emailed Blair Russel, Assistant Municipal Solicitor for NC:

"We just need to confirm that the zoning that we need for this property is in place for **the entire property**...[my] understanding currently is that it is there for a portion of the property and just need to verify that it is in place for all of the property".¹³
(emphasis added)

Mr. Russel forwarded the email to Dave Devana, who replied "I thought the zoning issued [sic]...had been satisfied months ago" and directed the lawyer to Scott Mack.¹⁴

Ten days later, another counsel for the buyer left a voicemail for Mr. Russel, which was followed up with an email, again asking for clarification around the zoning:

¹¹ Letter from Dorothy Alexander to Isabel Rimmer. November 10, 2016

¹² Email from Michael S. Greene to Blair Russel, cc: John Srebot. October 29, 2013

¹³ Email from John Srebot to Blair Russel. October 19, 2013

¹⁴ Email from Dave Devana to John Srebot, cc: Michael Greene, Mark Ruttan, John Mackay, and Scott Mack. October 20, 2013

“The site falls under **two different zoning requirements** and we are seeking assurances that our client will be able to utilize the site for its intended purpose, being that of a driver training operation”.¹⁵ (emphasis added)

Mr. Russel wrote to staff and explained that the issue of zoning was still unclear:

“It seems zoning is still an ‘issue’ and the client requires further assurance about the ‘zoning’ situation regarding the property”.¹⁶

Mr. Russel also let staff know that, whatever they had told the buyer’s lawyers up to this point, it had not satisfied their concerns:

“As I understand it, we’ve already explained that since the [sic] part of the property was zoned “**commercial recreational**” and the remainder “**industrial**”, this was sufficient for their purposes. Evidently, that is not the case, and they seek further assurances.”¹⁷ (emphasis was in the original)

Finally, Mr. Russel reminded staff that if they could not satisfy the lawyers, the deal might fall through (by this time it had already been extended several times):

“It appears unless North Cowichan gives further assurances of some kind, this may be an issue against moving forward.”¹⁸

In response to these exchanges, Scott Mack wrote a long email to staff and Mr. Russel wherein he explained that the proposed facility was understood to be a “private recreational and testing facility that allows for the use and personal enjoyment of motor vehicles”.¹⁹ Mr. Mack concluded: “it would be my expectation that we would issue a Development Permit (or permits if necessary) under the uses “Industrial Use” (I2) and “Recreational Facility” (C8)”.²⁰

However, Mr. Mack did not explain how two different permitted uses from two different zones would allow for either use anywhere on the property. And the buyer’s lawyers had been very specific on that point. Thus, Mr. Russel wrote the following to staff:²¹

¹⁵ Email from Michael S. Greene to Blair Russel, cc: John Srebot. October 29, 2013

¹⁶ Email from Blair Russel to Scott Mack, cc: Dave Devana, Mark Ruttan, John Mackay. October 29, 2013

¹⁷ Email from Blair Russel to Scott Mack, cc: Dave Devana, Mark Ruttan, John Mackay. October 29, 2013

¹⁸ Email from Blair Russel to Scott Mack, cc: Dave Devana, Mark Ruttan, John Mackay. October 29, 2013

¹⁹ Email from Scott Mack to Dave Devana and Blair Russel, cc: Mark Ruttan and John Mackay. October 30, 2013

²⁰ Email from Scott Mack to Dave Devana and Blair Russel, cc: Mark Ruttan and John Mackay. October 30, 2013

²¹ Email from Blair Russel to Scott Mack and Dave Devana, cc: Mark Ruttan and John Mackay. October 30, 2013

"I could include [Scott Mack's] full report...OR perhaps you would agree the following [excerpt] might be more appropriate...Then again, perhaps you'd favour a different response...Keep in mind [the lawyer for the buyer] inquired as follows:

[Mr. Russel then goes on to quote the lawyer for the buyer]:

"As I indicated in my voicemail, the site falls under two different zoning requirements and we are seeking assurances that our client will be able to utilize the site for its [sic] intended purpose, *being that of a driver training operation*"...*Kindly advise what your client can and will do in order to provide our client with the certainty it requires in order for the sale to proceed*". (italics were added by Mr. Russel)

On November 12, 2013, Mr. Devana wrote to the buyer's lawyer:

"It is the Municipality's position that the proposed 'Recreational Testing Facility' would be considered a permitted use under the definitions of 'Recreational Facility' (C8) and 'Industrial Use' (I2) so this use is permitted **on any portion of the subject property**".²² (emphasis added)

Mr. Devana's letter was sufficient for the buyers, the subjects were fulfilled, and the transfer of property took place on February 19, 2014.

²² Letter from Dave Devana to John Srebot. November 12, 2013

²³ Email from Scott Mack to Dave Devana and Blair Russel, cc: Mark Ruttan and John Mackay. October 30, 2013