

**From:** Scott Mack

**Sent:** Wednesday, October 30, 2013 11:44 AM

**To:** Dave Devana; Blair Russel

**Cc:** Mark Ruttan; John Mackay

**Subject:** RE: Highway 18 Property - Zoning Issues

Blair,

The purpose of this email is to establish the Municipality's position on the zoning for our Highway 18 property in relation to the proposed use of the site by the prospective purchaser. We are relying at this time on the verbal representations and descriptions of the proposed use provided by the proponent. Any formal approval of use of the subject property will require submission and review of a complete Development Permit application(s), and approvals from either Council (if variances are required) or the Director of Planning and Development (if no variances are required).

At this time the subject property is split-zoned I2 (Industrial Heavy Zone) and C8 (Commercial Rural Recreation Zone).

What has been discussed to date with the proponent is a facility that provides for 'Vehicle Testing'. This use is not explicitly permitted or defined under our Zoning Bylaw, however, this does not mean that the use is not permitted under the zoning as it would be virtually impossible to define every possible use that may exist in any given zone. Rather, it requires an analysis of the permitted uses and definitions contained in our bylaw, compared then to the information submitted in support of a formal application for development, to determine if it could be reasonably interpreted to fit under another existing defined permitted use or uses.

For the purposes of this discussion, the relevant definitions / permitted uses that are contained in our Zoning Bylaw are as follows:

1. *"Race Track" means the use of land for the purposes of holding motor vehicle, motorcycle, horse or go-cart races'.*
2. *"Commercial School" means a building, structure or land used or intended to be used for the purposes of providing educational courses in the form of a business school, a secretarial school, language school, dancing school and similar facilities.*
3. *"Recreational Facility" means the use of buildings, structures or land for gymnasiums, indoor or outdoor racquet courts, curling rinks, skating rinks, swimming pools, aerobic studios, weight rooms, bowling alleys, and the like, and may include accessory restaurants, offices or sporting goods sales.*
4. *"Industrial Use" means a use providing for processing, fabricating, assembling, storing, transporting, distributing, wholesaling, testing, servicing, repairing, wrecking or salvaging goods or materials, and selling heavy industrial equipment and retail sales incidental to the principal use, but excludes sawmills, pulp mills, planning mills and septage transfer facilities.*

Our Zoning Bylaw allows for "Race Track" as a Permitted Use under the C8 zone but it is not a permitted use in the I2 zone. Based on discussions to date with the potential proponent, it is my interpretation that the vehicle testing facility proposed does not meet the strict definition of 'Race Track' as it was clearly stated that there would be no 'racing', which would require that a driver is participating against another driver or drivers either directly or in a timed event or competition. The one exception to this scenario is the possibility that the proponent may facilitate or allow for the Kart Club to utilize a portion of the site for their club event purposes. It has been clearly identified to the proponent previously that any use by the Kart Club (which is considered, by definition, to be racing), must be contained within the northeastern 1/3 of the site which has the C8 zoning and therefore allows for a 'Race Track' as a permitted use.

⑤ cont

I also do not believe that this would be appropriately defined as a 'Commercial School'. 'Commercial School' is not a permitted use in either the C8 or the I2 zones. Based on our definition of 'Commercial School', I believe this implies (specifically due to the use of the term 'Commercial') some form of formal training and certification process as an outcome. An example of this would be Cowichan School of Driving, which provides formal training and education for those pursuing a Provincial Driver's License (Class 1, Class 2, Class 5, etc.) Other examples might be Spratt-Shaw Community College, or a culinary school. Conversely, as it has been described to us this is more of a recreational testing facility which allows vehicle owners/purchasers to better understand the limitations and abilities of their own personal vehicles on a private closed course facility. While there is obviously an educational component, this in and of itself does not mean that it is a Commercial School. To provide another comparison, the Aquatic Centre might provide for swimming lessons or Aqua-Fit Classes, which are educational in nature, yet we would not consider the Aquatic Centre to be a Commercial School, rather it is a very clearly a "Recreational Facility".

This leaves 'Recreational Facility', which is a permitted use in the C8 zone and "Industrial Use", which is a permitted use in the I2 zone. In short, our understanding of this facility is that it is intended to provide a "private recreational and testing facility that allows for the use and personal enjoyment of motor vehicles". On the C8 portion of the property, I believe that classification of this development as a 'Recreational Facility' is the most appropriate and reasonably applicable term. On the I2 portion of the property, if we extract the relevant components of the definition for "Industrial Use" we are left with "Industrial Use means a use providing for the testing, servicing or repairing of goods or materials". I believe this is also an accurate and appropriate description of the proposed use, to test motor vehicles. Of note, this definition would also allow that a facility for the servicing or maintenance of said vehicles could also be provided on the I2 portion of the property.

On that basis, and again, subject to submission of a complete application with substantive information that supports the verbal representations made by the proponent to date, 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), as well as a potential Kart Club facility ("Race Track") on the C8 portion of the site.

Also, of note, we are in the early stages of a Zoning Bylaw review, which we hope to complete by mid-2014. Staff expect to bring forward (within the new Zoning Bylaw) a single consistent zoning for the entire site, which would clearly allow for the use described above in order to remove any future uncertainty.

Please contact me if any further clarification is required.

Regards,  
Scott

---

Scott Mack, M.Arch. MCIP, RPP  
Director of Planning & Development | Approving Officer  
Municipality of North Cowichan  
Tel: (250) 746-3120  
Fax: (250) 746-3154  
Email: [mack@northcowichan.ca](mailto:mack@northcowichan.ca)

---

From: Dave Devana  
Date: October-30-13 8:52 AM  
To: Blair Russel; Scott Mack  
Cc: Mark Ruttan; John Mackay  
Subject: RE: Cowichan site zoning issues

6 Anne Olsen

From: Blair Russel  
Sent: October 30, 2013 12:48 PM  
To: Anne Olsen  
Subject: FW: Highway 18 Property - Zoning Issues

FYI, since you have been involved in this too, including the survey, and should be up to date . .

From: Blair Russel  
Sent: Wednesday, October 30, 2013 12:43 PM  
To: Scott Mack; Dave Devana  
Cc: Mark Ruttan; John Mackay  
Subject: RE: Highway 18 Property - Zoning Issues

Thanks for the thorough review, Scott. It's appreciated.

Since something should be sent back to Mike Greene, lawyer for the Buyer, I could include your full report as an attachment, OR perhaps you would agree the following passages from your email might be more appropriate:

*"The purpose of this email is to establish the Municipality's position on the zoning for our Highway 18 property in relation to the proposed use of the site by the prospective purchaser. We are relying at this time on the verbal representations and descriptions of the proposed use provided by the proponent. Any formal approval of use of the subject property will require submission and review of a complete Development Permit application(s), and approvals from either Council (if variances are required) or the Director of Planning and Development (if no variances are required).*

*At this time the subject property is split-zoned I2 (Industrial Heavy Zone) and C8 (Commercial Rural Recreation Zone) .*

*On that basis, and again, subject to submission of a complete application with substantive information that supports the verbal representations made by the proponent to date, 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), as well as a potential Kart Club facility ('Race Track') on the C8 portion of the site. "*

Then again, perhaps you'd favour a different response. If so, please advise (or indicate whether a meeting might be in order to fashion a different response). Keep in mind Mr. Greene inquired as follows:

*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 it's intended purpose, being that of a driver training operation. The contract, in paragraph 9 ( b ), relates to a condition that the Buyer must be satisfied that it can use the property for it's proposed use. 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. (Emphasis added)*

I am in your hands. Please let me know what response you'd like to have sent back.

Thanks -- Blair.

# Municipality of North Cowichan



7030 Trans Canada Highway, Box 278  
Duncan, BC V9L 3X4

Telephone: (250) 746-3100  
Fax: (250) 746-3139  
www.northcowichan.ca

November 12, 2013

File: 0930-20 CVH

Mr. John D. Srebot, General Counsel  
Auto World Imports  
220 Steeles Avenue West  
Thornhill, ON L4J 1A1

Dear Mr. Srebot:

**Re: Proposed Land Acquisition – Lot A, Section 3, Range 1, Somenos District, Plan EPP35449**

The purpose of this letter is to clarify the Municipality's position regarding the proposed use of lands legally described as Lot A, Section 3, Range 1, Somenos District, Plan EPP35449.

The subject property is currently split-zoned I2 (Industrial Heavy Zone) and C8 (Rural Recreation Zone).

The prospective purchaser has verbally outlined their intended use of the properties as a "Recreational Testing Facility" for motor vehicles. While not specifically listed as permitted use under the *Zoning Bylaw*, No. 2950, 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.

Secondary or accessory facilities, such as space for office and meetings, motor vehicle repair, food service, etc. are acceptable and would be permitted on any portion of the subject property. Any proposed use of the property is subject to issuance of a Development Permit as per the Municipality's *Official Community Plan Bylaw*, No. 3450, and *Zoning Bylaw*, No. 2950.

Any use of the subject property for racing, or as a "Race Track" for either go-karts or other motor vehicles must be contained to that portion of the property that has C8 zoning. Racing and "Race Track" are not permitted uses in the I2 zone.

Please feel to contact us directly if you require any additional clarification or supporting information.

Sincerely

A handwritten signature in black ink that reads "Dave Devana".

Dave Devana  
Chief Administrative Officer

[devana@northcowichan.ca](mailto:devana@northcowichan.ca)