

IN THE MATTER OF THE REAL ESTATE DEVELOPMENT MARKETING ACT

- AND -

**A.P. DEVELOPMENT GROUP INC., AND
REINER HOTTMAN**

**ORDER UNDER SECTIONS 30(1) (a) and 32(1)
REAL ESTATE DEVELOPMENT MARKETING ACT**

Upon reviewing the materials contained in the Investigation Brief submitted by staff, I am of the opinion that:

1. A.P. Development Group Inc. ("A.P. Development") was registered as a company in the Province of British Columbia on December 20, 1989. The registered and records office is 492 Rockland Drive, Coldstream, British Columbia, and the president and sole director is Reiner Hottman ("Hottman").
2. On July 7, 1992, A.P. Development filed a disclosure statement (the "Disclosure Statement") for an offering of the first phase (i.e., 33 bare land strata lots) of a residential development known as Alpen Paradies, located at 2592 Balmoral Road, Blind Bay, British Columbia. Legal address Strata lots 1 to 66 inclusive, S17, Tp 22, R10, W6M, KDYD, Strata Plan KAS1201 (the "Development").
3. The Disclosure Statement indicates that Permit No. PE 8683 (the "Permit") under the Waste Management Act had been obtained for a sewage system.
4. On November 4, 1997, the Superintendent of Real Estate (the "Superintendent") received a complaint from an owner of a strata lot located in the Development, [REDACTED], alleging that A.P. Development was marketing the second phase of the Development (i.e., ultimately 33 more bare land strata lots) even though the sewage system requirements under the Permit had not been met for that phase.
5. On March 26, 1998, counsel for A.P. Development sent a letter to the office of the Superintendent explaining that the second phase was not being marketed and that the Disclosure Statement would be amended to include that phase.
6. On April 15, 1998, the office of the Superintendent sent a letter to A.P. Development stating that there was evidence that the second phase of the

Development was being marketed, even though the Disclosure Statement had not been amended. The letter also explained that A.P. Development appeared to have misled the office of the Superintendent and thereby breached the Real Estate Act [now repealed].

7. A letter dated May 26, 1998, from the Ministry of Environment to A.P. Development states that the Permit was amended to require \$150,000 as security for a proposed sewage treatment plant.
8. An Amendment to the Disclosure Statement dated June 12, 1998, was submitted to revise the disclosure with respect to the sewage system and to include the second phase of the development.
9. On August 18, 1998, the office of the Superintendent advised A.P. Development that section 73(1)(d) of the Real Estate Act (now section 12 of the Real Estate Development Marketing Act ("the Act")) required disclosure of adequate arrangements to pay for the cost of utilities.
10. A.P. Development submitted replacement pages for the June 12, 1998, Amendment, and that Amendment was accepted for filing as of October 5, 1998.
11. A letter to A.P. Development dated May 10, 1999, from the Ministry of Environment states that a Pollution Abatement Order was issued in respect of an overflow of sewage at the Development.
12. On June 1, 1999, the office of the Superintendent requested A.P. Development to cease marketing until after the Disclosure Statement had been amended to include any sewage system problems and the steps that would be taken to correct those problems.
13. An Amendment to the Disclosure Statement dated June 9, 1999, was filed to revise the disclosure with respect to the sewage system.
14. On June 27, 2002, counsel for strata corporation KAS1201 (the "Strata Corporation") informed the office of the Superintendent that the \$150,000 security for the proposed sewage treatment plan required by the Ministry of Environment "was cancelled due to inadvertence on the part of the Ministry". In light of this information, the strata corporation requested that marketing cease until after the security had been replaced.
15. On July 5, 2002, the office of the Superintendent sent a letter to A.P. Development requesting that it cease marketing the Development until provisions were made to install a sewage treatment plant as required by the Waste Management Act. The records of the Land Title Office revealed that more than 33 lots had been transferred to purchasers but that the amended Permit required

the installation of a sewage treatment plant when more than 33 lots were to be serviced.

16. The staff of the Superintendent were of the opinion that if continued marketing of the Development occurred, owners would find themselves in the position of owning property with no sewage facilities and no security posted for those facilities.
17. On July 8, 2002, A.P. Development confirmed it had complied with the cease marketing request. However, A.P. Development wrote that the interpretation of the amended Permit was in error because that Permit only required a sewage treatment plant prior to the connection of more than 33 lots, rather than prior to more than 33 lots being available for connection or sold. A.P. Development also wrote that it was in compliance with the amended Permit, and that it was aware of the need to amend the Disclosure Statement to disclose the "changed circumstances".
18. In letters to the Ministry of Environment dated August 21 and October 14, 2002, A.P. Development enquired about meeting the requirements of the amended Permit.
19. On June 19, 2003, the Strata Corporation sent a letter to the office of the Superintendent expressing its concern that it could be liable for the cost of the sewage treatment plant if A.P. Development should default on its obligations.
20. On July 11, 2003, A.P. Development confirmed that it was still in compliance with the cease marketing request, and that it intended to amend the Disclosure Statement once the waste management situation was resolved.
21. On June 30, 2004, A.P. Development filed a Statement of Claim against the Province of British Columbia for loss of sales as a result of the cease marketing request.
22. There has been no further action taken in this pending litigation.
23. On July 26, 2006, e-mail correspondence between Hottman and a potential purchaser indicates A.P. Development has been negotiating a sale for a unit in the Development, which would be in violation of the cease marketing agreement.
24. On September 6, 2006, the Ministry of Environment advised A.P. Development that its recent sewage treatment proposal contained deficiencies and outlined the amendments required for approval.
25. On September 25, 2006, the Strata Corporation sent a letter to A.P. Development to advise they were unwilling to sign the Form "F" clearance

certificates until the of the Superintendent confirms that the units can be marketed.

26. On September 26, 2006, counsel for the Strata Corporation informed the office of the Superintendent that A.P. Development recently entered into sales agreements for three strata lots; lots 35, 36, and 44. In conjunction with those agreements, A.P. Development was requesting Form "F" clearance certificates from the Strata Corporation to complete the sales.

27. Section 1 of the Act states in part:

" **'bare land strata plan'** means

(a) a bare land strata plan as defined in the *Strata Property Act*, and

(b) in relation to land located outside British Columbia, a similar plan;"

" **'developer'** means a person, who directly or indirectly, owns, leases or has a right to acquire or dispose of development property."

" **'development property'** means any of the following: ...

(b) 5 or more bare land strata lots in a bare land strata plan

(f) two or more shared interests in land in the same parcel or parcels of land."

" **'development unit'** means any of the following in a development property: ...

(b) a bare land strata lot"

"disclosure statement" means a statement that discloses material facts about a development property, prepared in accordance with section 14(2) [filing disclosure statements], and includes any amendment made to a disclosure statement."

" **'market'** means

(a) to sell or lease,

(b) to offer to sell or lease, and

(c) to engage in any transaction or other activity that will or is likely to lead to a sale or lease."

28. Section 3 of the Act states in part:

- “(1) A developer who markets or intends to market a development unit must,
 - (c) file and provide a disclosure statement in accordance with Division 4 [Disclosure Statements].

29. Section 11 of the Act states in part:

- “(1) A developer must not market a development unit unless the developer has made adequate arrangements to ensure that a purchaser of the development unit will have assurance of title or of the other interest for which the purchaser has contracted.”

30. Section 14 of the Act states in part:

- “(1) A developer must not market a development unit unless the developer has,
 - (a) prepared a disclosure statement respecting the development property in which the development unit is located, and
 - (b) filed with the superintendent,
 - (i) the disclosure statement described in paragraph (a).”

31. Section 16 of the Act states in part:

- “(1) If a developer becomes aware that a disclosure statement does not comply with the Act or regulations, or contains a misrepresentation, the developer must immediately
 - (a) file with the superintendent, as applicable under subsection (2) or (3),
 - (i) a new disclosure statement, or
 - (ii) an amendment to the disclosure statement that clearly identifies and corrects the failure to comply or the misrepresentation, and
 - (b) within a reasonable time after filing a new disclosure statement or an amendment under paragraph (a), provide a copy of the disclosure statement or amendment to each purchaser

- (i) who is entitled, at any time, under section 15 *[providing disclosure statements to purchasers]* to receive the disclosure statement, and
 - (ii) who has not yet received title, or the other interest for which the purchaser has contracted, to the development unit in the development property that is the subject of the disclosure statement.
- (4) A developer who is required to file a new disclosure statement or an amendment under subsection (1) must not market a development unit in the development property that is the subject of the new disclosure statement or amendment
- (a) until the developer has complied with subsection (1) (a), or
 - (b) unless permitted by the superintendent.”

AND WHEREAS I find that A.P. Development Group Inc. and Reiner Hottman are marketing units in the Development in violation of a cease marketing agreement with the office of the Superintendent;

AND WHEREAS I find that A.P. Development Group Inc. and Reiner Hottman were required to file an amendment to the filed Disclosure Statement prior to the continued marketing of the Development to disclose outstanding issues with respect to the waste management system used in the Development;

AND WHEREAS I find that A.P. Development Group Inc. and Reiner Hottman have not filed the required amendment to the Disclosure Statement;

I THEREFORE consider that A.P. Development Group Inc. and Reiner Hottman are not in compliance with the Act.

I AM FURTHER of the opinion that the length of time that would be required to complete an investigation and hold a hearing would be detrimental to the public interest. It is evident that marketing of the Development is currently underway. Purchasers of development units in the Development are not being provided with required disclosure. Purchasers may find themselves in the position of owning property that does not have sewage treatment facilities attached and for which they may become financially liable. I am of the opinion that the public is at risk if the marketing of development units in the Development is not ceased immediately.

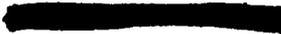
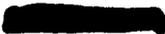
I THEREFORE CONSIDER IT to be in the public interest to make an Order under Sections 30(1)(a) and 32(1) of the Act and order that A.P. Development Group Inc. and Reiner Hottman immediately cease or refrain from marketing any development units in the Development.

TAKE NOTICE that A.P. Development Group Inc. and Reiner Hottman may appeal this Order to the Financial Services Tribunal pursuant to Section 37(1) of the Act, or require a hearing before the Superintendent pursuant to Section 32(4) of the Act.

Dated at the
City of Surrey,
Province of British Columbia
this 4th day of October, 2006.


Alan Clark
Superintendent of
Real Estate
Province of British Columbia

TO: A.P. Development Group Inc.
492 Rockland Drive
Coldstream, British Columbia
V1B 2X5

Reiner Hottman

 British Columbia


Real Estate Council of British Columbia
#900 - 760 West Pender Street
Vancouver, British Columbia
V6C 2T8