

**IN THE MATTER OF:
THE REAL ESTATE DEVELOPMENT MARKETING ACT
S.B.C. 2004 Chapter 41**

-AND-

528872 B.C. LTD.

ORDER UNDER SECTION 32(1)

UPON reading the report of staff and the supporting documentation, I make the following findings and Order:

1. Little Qualicum River Village (the "Development") is a development being built by 528872 B.C. Ltd. of 1625 Meadow Wood Way, Qualicum Beach, B.C. 528872 B.C. Ltd. ("the Developer") is a British Columbia corporation originally incorporated on October 10, 1996. 528872 B.C. Ltd. has one Director, Timothy Bruce Peligren ("Peligren") of [REDACTED] B.C.
2. Peligren was a licensed real estate representative with Royal LePage Parksville-Qualicum Realty, license #096241, and is currently licensed with Caldwell Bankers, Vancouver Island Realty, 124 Craig Street, Parksville, B.C.
3. The Development as described in the disclosure statement is located on 575 acres of land approximately 20 kilometres west of Qualicum Beach, in the Regional District of Nanaimo, British Columbia. The Development contains 286 building strata lots in Strata Plan VIS 4673, which was registered in 1998 at the Land Title Office. The strata lots are unusual in that each strata building is only about 26 square metres in size and suitable for storage purposes only. However, each strata lot also includes a private yard area of up to several hectares.
4. The Statutory Building Scheme and Amended Strata By-Laws attached to the Consolidated Disclosure Statement, (the "CDS") dated December 14, 2001 which was

private yard areas may be used for residential purposes. Some private yard areas may be used for commercial, recreational, or agricultural purposes. Additionally for some of the private yard areas, at least one of the occupants must be at least 50 years old.

5. Each purchaser is responsible for the construction of any building on his or her private yard area in accordance with the Statutory Building Scheme and Amended By-Laws.
6. The Developer filed a Disclosure Statement with the Superintendent of Real Estate (the "Superintendent") on January 29, 1999, a first amendment on October 19, 1999, a second amendment on March 28, 2000, a third amendment on August 3, 2001, and a fourth amendment on December 28, 2001.
7. The CDS indicates that at least until 2002, the Development was in an un-zoned area of the Regional District of Nanaimo. The CDS explains that there are no Regional District By-Laws to govern zoning, subdivision, developing, or building. The CDS also explains that permits and building inspections were not required.
8. The CDS also makes certain other disclosures including:

(a) 4.4 – Construction of the Development

(1) Construction of the strata plan buildings and certain services proposed for the development have not been completed as initially scheduled on or before December 31, 2000. The Developer expects to complete construction of the roofs and exterior walls of each of the strata plan buildings on or before December 31, 2002. The Developer has also determined that certain services proposed for all or some of the strata lots in the development, including development roadways and adjacent storm drainage facilities, potable water distribution facilities, communal septic field ground disposal facilities, and electrical and telephone service lines, should be completed on or before December 31, 2002.

(b) 5.5 – Strata Plan Buildings

...

(2) Each building consists of a single storey on a concrete foundation, and having a surface area of 26 metres square (280 square feet).

(3) Each strata plan building is constructed of 2-by-4 wood frame walls with 2-by-10 wood frame rafters. The roof of each strata plan building will be sheathed with 5/8 thick sheathing and finished with a single "torch-on" membrane. The exterior walls of each strata plan building will be sheathed with metal cladding.

(4) As at the date hereof, the Developer has completed construction of the concrete foundations, woodframe walls, and the openings for door installation for all 286 Strata Plan Buildings.

(5) The Developer expects to complete cladding of the exterior walls and completion of the roof of all Strata Plan Buildings on or before December 31, 2002, at the expense of the Developer.

...

(10) Each of the 286 Strata Lots in the Development has a part thereof designated as private yard area as illustrated on the Strata Plan."

(11) An owner of a Strata Lot in this Development will be permitted to construct improvements on his Private Yard Area in accordance with the requirements set forth herein (see Section 6.2).

(c) 9.2 – General Description of Utilities and Services

(1) The Developer intends to install electrical and telephone services for certain Strata Lots as stated herein (see Section 9.3).

(d) 9.3 – Electrical and Telephone Services

(1) The Developer intends to install electrical and telephone services to an electrical room to be constructed adjacent to building lots for Strata Lots 1 to 231, 237, 238 and 244 to 286.

(2) An Owner of any of these Strata Lot Buildings may at the owner's expense install a sub-panel meter and any required wiring from the electrical room to his strata lot building, with any such electrical work to be completed in full compliance with the *Electrical Safety Act* of British Columbia.

...

(5) It is the intention of the Developer to install electrical and telephone service lines (underground where possible) during the completion of road construction, which will provide electrical and telephone services to the Private Yard Areas of Strata Lots 1 to 231, 244 to 286.

(6) The Owner of any such Strata Lot will be responsible for making application to BC Hydro to establish electrical service to the Private Yard Area of his Strata Lot, and to BC Tel to establish telephone service to the Private Yard Area of his Strata Lot.

...

(11) Installation of the electrical service and telephone service proposed for the Development will be completed by the Developer on or before December 31, 2002, at the expense of the Developer.

9.6 – Roads and Storm Drains

...

(6) All roadway surfaces will be finished with ¾ inch crush road mulch and pavement, save and except for the part of the roadway system in front of Strata Lots 43 to 89, 169 to 186, 261 to 284, 244 and 245, which will be finished in ¾ inch crush.

(7) The areas of common property around the strata lot building will be finished with ¾ inch crush road mulch.

...

(9) Installation of all vehicular roadways and storm drain ditches proposed for the Development will be completed by the Developer on or before December 31, 2002, at the expense of the Developer.

9. Additionally, the CDS addresses environmental concerns in Section 5.8 as follows:

...

(2) The Developer has and will continue to maintain a “no disturb” buffer zone between the present natural boundary of Little Qualicum River and any Development construction.

(3) Paragraph 6 of the building scheme provides that there shall be no removal of any vegetation within 15.0 metres (49.2 feet) of the natural boundary of the Little Qualicum River without first having received the express written consent and permission of the Strata Council, and from any applicable government body or authority having jurisdiction over the Strata Lots (see Exhibit 2.1).

...

(5) The Developer has agreed to grant a Section 219 *Land Title Act* covenant in favour of the RDN and the Crown Provincial, which covenant will restrict the use of forty-seven (47) of the Strata Lots which are either adjacent to or near the Little Qualicum River, being Strata Lots 22, 23, 171 to 186, 237, 239, 240, 242, 243, 244, 245, and 263 to 284 (see Section 6.2).

(6) This Covenant concerns building set back requirements, minimum flood plain elevations for the siting of living accommodation and certain restrictions on the use of one or more of these forty-seven (47) Strata Lots.

(7) This Covenant also restricts certain uses of one or more of these Strata Lots. Any restrictions on the permitted use of these Strata Lots provided for in this Covenant have priority over the permitted use as provided for in Strata Corporation By-Law 131 (see Section 6.2).

10. On October 30, 2006, a complaint was received by staff from owners of strata lots at the Development (“the Complainants”).
11. The Complainants identify a number of issues of non-compliance by the Developer with the CDS as follows:
 - (a) “The majority of the Strata Lot Buildings to the registration and titling of the Strata Plan have neither been finished nor exist.” In support of this statement photographs 1, 2, 7, 9, 11, 13, and 14 were provided by the complainants.
 - (b) “The Developer’s advertising and disclosure are deliberately misleading. The Developer’s advertising states that ‘a storage unit with each of the 286 lots’. By

separating the 'storage unit' in the statement from the term 'lots' you infer that the storage units are not part of your lot. We contend this is a clear and deliberate attempt to mislead and misrepresent the nature of what is being tendered to the public for sale. Every owner of a strata unit is entitled to a properly presented state of title to their property, one that will not be challenged on resale."

- (c) "Utility issues - as outlined in the list of representations, the telephone lines continue to rest on the ground or hang in trees." In support of this statement, photographs were provided.
 - (d) "The roads either do not exist or are nothing more than ATV trails." In support of this statement, a photograph was provided.
 - (e) "Water systems are either substandard or non-existent."
 - (f) "Covenant issues - In the last council meeting the issue of the breach of the riverfront covenant was raised and the developer, who sits on council, stated he did not think it was registered. Subsequently, the developer confirmed he had found out "a year ago" that the covenant had not been registered due to, as he stated, 'the fault of the RDN', and therefore began to build homes on the covenanted properties. This is contrary to the requirements of REDMA Section 16, which states, 'must immediately'. In support of this statement, photographs were provided."
12. On receipt of the complaint, a meeting was held between Investigator Colin Parcher ("Parcher") of the Superintendent's staff and a number of the complainants who reiterated their position. As well, statements were provided by several of the complainants including outlining issues they had had with the Developer, specifically failing to properly disclose the relationship between the strata lot and their private use of property.
13. The statement of Complainant 1, a retired strata lawyer describes the initial attempt by Peligren to have Complainant 1 pay separately for the storage unit which was his strata lot by telling him it was leased out for 20 years and that it would cost \$3,500 to get out of the lease. In doing this Peligren failed to disclose that it was apparently leased by his company. It is at this time that Complainant 1 advised Peligren of being a retired strata

lawyer and what he expected. Complainant 1 subsequently received all proper documents pertaining to both his strata property and private yard area.

14. Along with his statement, Complainant 1 also provided a copy of his increase in deposit cheque, contract of purchase and sale, promotional material he had received, and the minutes of the December 2, 2000 annual General Meeting.
15. In her statement, Complainant 2 addresses the fact that by the summer of 2006 her strata storage unit was not built, however, it is now being constructed but with revised construction that changes the size of the unit.
16. Complainant 3's statement outlines how he was told by Peligren that the lot he purchased came with a storage unit, however, if he did not require it he (Peligren) would lease it back for 20 years and would reduce the price by \$3,500.00. At no time was he informed that the title to the private use property ran through the storage shed which formed a part of the strata. Additionally, it was months later when Peligren brought him the Disclosure Statement and had him sign it with the date back dated.
17. The Complainant 4 statement describes how the issue of the storage shed being the strata lot was only mentioned in passing and not clear at the time of the purchase. Some months later they approached Peligren and inquired as to which storage shed was theirs. At that time Peligren advised that they did not have one as the original owners want it so they received a credit of \$3,750.00, however the Complainant 4 could buy it back for that amount. As they had a double garage, they declined then later they have learned that they should have a storage shed as it is their link to the strata.
18. A statement was also received from Complainant 5, who was not at the original meeting with Parcher, who advise that they did get a storage unit that they had completed to lock up stage. However, they have now learned that they are in the storage unit that forms strata lot 45 while their private yard is a part of strata lot 225.
19. Parcher then attended to the Development on January 4, 2007 and viewed a number of areas. This included the area where the strata lots were to be constructed. Photographs were taken by Parcher showing the road way to the strata lots, the built strata buildings, lots where nothing has been built or the partial construction has fallen down, areas of repair construction, and new construction as described in the Complainant 2 statement.

20. As well, two photographs were taken where the owner of strata lot 24 has built a building that prohibits the completion of four strata storage sheds. Apparently, to facilitate access to lot 24, the foundation of at least one strata storage shed has been removed.
21. During a drive around the Development by Parcher on January 4, 2007, a number of photographs were taken of the telephone lines that were laying on the ground, taped to trees, affixed to trees, and/or hydro poles. Along the lower area of the Development, next to Little Qualicum River the roads do not appear to be constructed in accordance with the CDS which was also the case of other roads viewed. Other roads may meet the requirements of the CDS but are narrow and used for one way traffic. From the photographs, construction appears to be commencing along the edge of the river where there is supposed to be a 15 metre covenant. One of these foundations had a drainage trench from the creosoted foundation to the river area. The entrance to the Development has a guard house with a security gate, however; this was unmanned and access is gained through a punch code.
22. This development is still being marketed through a website as of January 18, 2007 as each unit having a storage shed. Additionally, the development was advertised as recently as December 29, 2006 in the local paper by Peligren.
23. Part 2, Division 4, of the *Real Estate Development Marketing Act* (the "Act") sets out the disclosure statement filing requirements of a developer, which includes:
 - 14 (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 under paragraph (a), and*
 - (ii) *any records required by the superintendent under subsection (3).*
 - (2) *A disclosure statement must*
 - (a) *be in the form and include the content required by the superintendent,*
 - (b) *without misrepresentation, plainly disclose all material facts,*
 - (c) *set out the substance of a purchaser's rights to rescission as provided under section 21 [rights of rescission], and*
 - (d) *be signed as required by the regulations...*

16 (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.

(2) A developer must file a new disclosure statement under subsection (1) (a) (i) if the failure to comply or misrepresentation referred to in that subsection

(a) is respecting a matter set out in paragraph (b) or (c) of the definition of "material fact" in section 1 [definitions],

(b) is respecting a matter set out in paragraph (d) of the definition of "material fact" in section 1, and the regulation prescribing the matter specifies that a new disclosure statement must be filed if subsection (1) of this section applies, or

(c) is of such a substantial nature that the superintendent gives notice to the developer that a new disclosure statement must be filed.

(3) A developer must file an amendment to the disclosure statement under subsection (1) (a) (ii) in any case to which subsection (2) does not apply.

(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.

24. Part 3, Division 2, Section 30 (1) (a) of the Act allows for the Superintendent to issue an order for a developer to cease or refrain from marketing one or more development units after a hearing where it has been determined that the developer is or has been non-compliant.

25. Part 3, Division 2, Section 32 allows for the Superintendent to issue the order referred to in Section 30 (1) (a) without a hearing under certain circumstances.
26. Based on the information provided by the complainants who allege inadequate or incomplete strata plan buildings, inadequate or incomplete utilities, some unpaved roads and construction within the area that will be prohibited by the proposed river covenant, and the information gathered by the Superintendent's staff, I am of the opinion that the CDS is seriously deficient. Specifically, the following parts of the CDS are deficient:
- Page one and section 2.1 (Identity and real estate brokerage - Coldwell Bankers is the real estate brokerage and not Royal LePage);
 - Page two and sections 5.8 and 6.3 (River covenant not yet registered);
 - Page two and sections 6.2 and 6.3 (There needs to be reference to the further amendments to the strata by-laws);
 - Page three (There needs to be an update to sales and annual general meetings);
 - Page three and sections 4.2, 6.1 and 6.3 (There needs to be an update to disclose any zoning bylaws);
 - Page three and sections 4.3 and 5.5 (There needs to be a update to disclose any required building permit or building inspection);
 - Page three and sections 4.4, 5.5, 7.7 and 9.2 to 9.6 (There needs to be an update to disclose construction completion for strata buildings, road paving, telephone electrical lines, septic fields and sanitary toilet, and possible water system);
 - Section 6.2 (There needs to be an update to disclose the permitted uses and age restrictions for private yard areas);
 - Section 8.1 (There needs to be a update to disclose information on strata lots owned and operated by the developer);
 - Section 8.6 (There needs to be a update with respect to any encumbrances);

- Section 11.1 and exhibit 7.1 (There needs to be an update to disclose strata insurance); and
 - Section 13.4 and exhibit 8.1 (There needs to be an update to disclose the strata fees and budget).
27. The marketing of this development continues as of January 18, 2007. There are fundamental failures to disclose material facts and new purchasers would be prejudiced in their decision making ability. Therefore new purchasers may not understand and may not be getting what they are paying for.
28. The Complainants allege that they have been subject to harassment and aggressive behaviour directed at them which have led some of them to file complaints with the local RCMP.
29. A hearing would require approximately 10 witnesses and at least five days of hearing time. Scheduling and availability would likely put a hearing date at least four months from now.
30. Given the ongoing unlawful marketing and alleged criminal conduct of the developer, I believe that an urgent Cease Marketing Order is in the public interest.
31. I find that the Developer is non-compliant with sections 14 and 16 of the Act, that the length of time that would be required to complete an investigation or hold a hearing, or both, would be detrimental to the public interest since the ongoing contravention would continue and the existing owners and prospective purchasers would not be properly informed of the disclosure failures pending the hearing of this matter, and that it is in the public interest to make the order to obtain compliance as soon as possible and stop the unlawful marketing of the Development until compliance is achieved. The disclosure requirements of the Act are in place to require that truthful information is provided to the public about the property marketed, so that the Public will not be misled or misinformed.
32. **I therefore make the following Order under section 32(1) of the Act:**
- (a) 528872 B.C. Ltd must cease marketing the Development.**
33. The Superintendent may hold a hearing with respect to this matter.

34. 528872 B.C. Ltd may require, within 14 days after receiving a copy of this order, a hearing before the Superintendent in accordance with section 32(4) of the *Act*.
35. 528872 B.C. Ltd may appeal this order to the Financial Services Tribunal in accordance with section 37(1) of the *Act*.

Dated this 19th, day of January, 2007
at Surrey, British Columbia



W. Alan Clark
Superintendent of Real Estate