

**DISTRICT OF WELLS REGULAR COUNCIL MEETING
TUESDAY, October 12, 2021 at 1pm
ONLINE (VIA ZOOM) – COVID-19**

AGENDA

ATTENDANCE: Mayor Gabe Fourchalk, Councillors Mandy Kilsby, Jordan Rohatynski, and Chris Cooley, Ksenya Dorwart

STAFF: Chief Administrative Officer, Donna Forseille; Fire Chief, Carrie Chard; and District Clerk, Lala Cripps

PUBLIC GALLERY: 13

1.0 CALL TO ORDER at 1:03 pm

- 1.1 Agenda for the Regular Council meeting of Tuesday October 12, 2021

21-164 **MOVED** Jordan Rohatynski, seconded Mandy Kilsby THAT Council Approves the agenda for the Regular Council meeting of Tuesday October 12, 2021, as circulated.

1.2 CLOSED MEETING- COUNCIL TO CONVENE INTO CLOSED MEETING

Pursuant to Sections 90 (1) (a), (c), (d), (e), (g), (i), (j) and (k) of the Community Charter, the following portion of this meeting is closed to the public to discuss matters related to:

- (a) personal information about an identifiable individual who holds or is being considered for a position as an officer, employee or agent of the municipality or another position appointed by the municipality;*
- (c) Labour relations or other employee matters;*
- (d) The security of the property of the municipality;*
- (e) The acquisition, disposition or expropriation of land or improvements;*
- (g) litigation or potential litigation affecting the municipality;*
- (i) the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose;*
- (j) information that is prohibited, or information that if it were presented in a document would be prohibited, from disclosure under section 21 of the Freedom of Information and Protection of Privacy Act; and*
- (k) Negotiations and related discussions respecting the proposed provision of a municipal service that are at their preliminary stages and that, in the view of the council, could reasonably be expected to harm the interests of the municipality if they were held in public.*

21-165 **MOVED** Jordan Rohatynski, seconded Mandy Kilsby THAT Council at 1:05 PM convenes into an In-Camera Council meeting of Tuesday October 12, 2021.

1.3 RECALL TO ORDER AND REPORT

21-166 **MOVED** Jordan Rohatynski, seconded Mandy Kilsby THAT Council at 3:59 PM recalls to order the Regular Council meeting of Tuesday October 12, 2021 and reports out two (2) Legal Opinions (CAO read conclusions of Legal Advice).

-----**Council Recessed at 4:00pm and will reconvene at 7:00PM**-----

2.0 **MINUTES**

- 2.1 Minutes for the Regular Council meeting of September 28, 2021
CAO Donna Forseille stated Council resolved in-camera to report out two legal opinions which the District received last week. The letters are attached to the minutes. The first being Mayor Furchalk's perceived conflict of interest when it pertains to any dealings with Osisko/Barkerville Gold Mines (BGM) the lawyer stated the Mayor Furchalk would be in conflict of interest, and the lawyer recommends he recuse himself of any dealing with such. The second one is regarding the District of Wells select committees (governance) quoting the letter which concluded : "Given the influence of Council committees on Council decision-making, it is good practice to have different members of the public appointed to different committees as opposed to having the same members of the public appointed to all committees. In our view, appointing the same members of the public to all committees could lead to a public perception that those members of the public have an inappropriate influence on Council's decision-making. Essentially, it could lead to a public perception that Council decisions are being made by members of the public who were not elected to make those decisions. In our view, such a perception is problematic and could lead to a legal challenge to Council decision-making. In this regard, we recommend that Council seek to diversify its appointments of members of the public to its committees".

21-167 **MOVED** Jordan Rohatynski, seconded Mandy Kilsby THAT Council approves the minutes for the Regular Council meeting of Tuesday September 28, 2021, as circulated.

Carried Unanimously

3.0 PRESENTATIONS AND DELEGATIONS

- 3.1 Presentation by Urban Systems regarding an update of the re-writing of the District of Wells Official Community Plan Bylaw
Please see attached slides of presentation given by Hillary Morgan and Andy Cuthbert.

21-168 **MOVED** Ksenya Dorwart, seconded Jordan Rohatynski That Council: Receives the presentation from Hillary Morgan of Dynamic Community Planning, and Andy Cuthbert of Urban Systems regarding an update of the District of Wells Official Community Plan Bylaw re-writing.

Carried Unanimously

- 3.2 Wells Community Facility Building Update
*Councillor Rohatynski requested an update on the Ice Rink project since the donation of the lumber from West Fraser Mill.
Donna Forseille stated she has not received an update yet, since the meeting between general contractor and West Fraser to see what materials were needed and what West Fraser was willing to donate. She stated the Architect was out to do first site inspection and staff have commenced preparing the site for the new build.*

21-169 **MOVED** Jordan Rohatynski, seconded Mandy Kilsby THAT Council receives the draft minutes of the September 21st, 2021, committee meeting from the Wells Community Facility Building Committee.

Carried Unanimously

4.0 CORRESPONDENCE

- 4.1 Letter to Mayor and Council from Judy Campbell
Councillor Rohatynski gave a point of praise to Osisko/BGM for the noise reduction over the past couple of weeks.

21-170 **MOVED** Jordan Rohatynski, seconded Ksenya Dorwart THAT Council Receives the letter from Judy Campbell regarding noise complaints.

Carried Unanimously

5.0 UNFINISHED BUSINESS

- 5.1 Staff Report- Proposed Wells Community Benefit Agreement (CBA) Committee update
Mayor Fourchalk recuses himself from meeting giving the floor to Acting Mayor Ksenya Dorwart.
Donna Forseille reported that she hasn't received a letter from Ginger Gibson with record of their conversation but once the letter is received, she will present at the council meeting.
Councillor Kilsby questioned if the other two groups that were consulted had the same advice as the Firelight Group.
Donna Forseille remarked that all three consulting firms had very similar advice and that two of the groups did say that they would consider putting together a proposal for us but feels it will not happen and that we should be cautious continuing forward with moving forward calling anything an "agreement" at this time.
Councillor Kilsby questioned if the advice from the Municipal Affairs was similar. Donna Forseille stated that yes, the Municipal Affairs agreed and they would like to see Council move forward with the MOU with Osisko/BGM.
Councillor Rohatynski stated he feels the town's best interest is to enter into the MOU offered by Osisko/BGM and not try to fight the Federal Government. He suggested that no in-camera meeting should be needed as the MOU is already public knowledge.

21-171 **MOVED** Jordan Rohatynski, seconded Mandy Kilsby THAT Council receives the staff report from the Chief Administrative Officer regarding an update on the proposed Community Benefit Agreement (CBA) Committee and staff's recent meeting with The Firelight Group

Carried Unanimously

21-172 **MOVED** Mandy Kilsby, seconded Jordan Rohatynski THAT Council resolves the following:

Directs staff to contact Osisko Development/Barkerville Gold Mines to invite them as a delegate to the next Regular Council meeting October 26, 2021, regarding the current Memorandum of Understanding (MOU) offered to the municipality as outlined in the letter to Mayor and Council from Osisko Development's Vice President, dated July 7, 2021.

Carried Unanimously

5.2 Staff Report-Wells-Barkerville Community Forest Articles of Incorporation updates

Councillor Rohatynski stated he had the answers from the last council meeting that he had posed and was pleased to announce there was no relationship between the forest board members and owners of the property being purchased and reason for the secrecy was a desire to not have a bidding war on the property. He stated with the lower sale price they felt they could utilize the land and if not could potentially be a quick resale in six months. He stated the Board feels this land could be used for further extension for housing development or potentially a high school location, why they felt it was not meant to go to council was due to a internet failure and that Councillor Dorwart was unaware of the situation until after the \$75,000 had been invested. He stated he agrees the Articles of Incorporation need to be updated but he feels the Forest Board is an essential asset to this community and they have done an incredible amount of good work. He would like to see a more direct transparency and to work with Council who have been the elected officials. He apologized to Donna (CAO) and the Forest Board over misread information and lack of time to completely read all the information provided to him due to back-to-back meetings.

Donna Forseille stated that council may want to bring any suggested changes forward to the current board who have been working hard for the community forest, changing the articles of incorporation is a process and will cost money and it should be done correctly.

Mayor Fourchalk agreed with Donna.

21-173 **MOVED** Jordan Rohatynski, seconded Ksenya Dorwart THAT Council Receives the staff report from the Chief Administrative Officer regarding an update regarding the Wells Barkerville Community Forest Corporation Articles of Incorporation and Governance Policy updating.

Carried Unanimously

6.0 NEW BUSINESS

6.1 District of Wells Garbage Collection and Disposal Contract for 2021-2024

Councillor Rohatynski stated he was very happy to see Busted Knuckle had only requested a 3% raise, they do a wonderful job.

21-174 **MOVED** Ksenya Dorwart, seconded Chris Cooley THAT Council receives the staff report from the Chief Administrative Officer regarding the renewal and/or awardment of the District of Wells Garbage Collection and Disposal Contract (2021-2024);

Carried Unanimously

21-175 **MOVED** Jordan Rohatynski, seconded Ksenya Dorwart THAT Council Awards the District of Wells Garbage Collection and Disposal Contract for the three (3) year term (2021-2024) to Busted Knuckle Trash.

Carried Unanimously

7.0 INFORMATION AND ANNOUNCEMENTS

7.1 Council

Councillor Dorwart thanked everyone for attending and Hillary Morgan and Andy Cuthbert on the work done for the OCP and the presentation.

Councillor Dorwart resigned from her position of Councillor. (see attached resignation letter)

Mayor Furchalk thanked Councillor Dorwart for her service.

Councillor Kilsby thanked Councillor Dorwart and wished her the best in her future. She also thanked staff, consultants, and community members who offered help and input on the proposed OCP and the proposed agreement with BGM, stating that we do appreciate the feedback from everyone willing to offer it. Please be kind and don't make assumptions about information floating around, if you have questions, please contact councillors and staff for clarification. She hoped everyone had a good thanksgiving despite the restrictions on gatherings in the current health order. She hopes you are all heeding the advice of the expert health officials and please get vaccinated and stay safe.

Councillor Cooley thanked Councillor Dorwart for her hard work the last 3 years.

Councillor Rohatynski reminded everyone to please get register to view the OCP presentation. He said Councillor Dorwart will be very missed and that she has been a voice for the community and wished her all the best in future endeavors.

Mayor Furchalk thanked all community members, elected officials, staff volunteers and first responders for all the hard being done to keep everyone safe during the COVID pandemic. He thanked everyone for coming.

7.2 Staff

Cam Beck of the Wells-Barkerville Community forest Board stated the most essential thing to mention is that timber harvesting will take place in the next couple of weeks. Approximately 5000 m³ will be taken off of the East side of Hard Scrabble Mountain and be trucked throu the 2200 Rd past 8 Mile Lake Rd to Bowron Lake Rd and then through Wells to Quesnel. He

stated this logging will be small patches of hectares to deter attaching wolves and protect the Cariboo herds. He will have a full written presentation for the next council meeting.

Councillor Rohatynski questioned if there was any word from the Master of Forestry Students and Professors now that they are completing their excursion from UBC.

Cam Beck stated he received several emails thanking the people of Wells for hosting them last and would like to come back next year.

District Clerk, Lala Cripps thanked everyone for coming out, Hillary and Andy for the OCP presentation and wished Councillor Dorwart all the best.

Carrie Chard had no comments.

CAO, Donna Forseille thanked everyone for coming out, and thanked Hillary and Andy for the presentation and being willing and able to travel to Wells for the OCP in person presentation. She wished Councillor Dorwart all the best in Quesnel.

7.3 Public Gallery

Julia Mackey thanked everyone for coming this evening, hope you all had a wonderful thanksgiving. She stated she is very sad to see Councillor Dorwart leave and wished her all the best. She hopes that the toxicity that Councillor Dorwart spoke of will be addressed. She extended congratulations on Councillor Dorwart engagement and her future. The Sunset theatre will be playing 6 Guitars, tickets are going fast please reserve playing Saturday at 8 pm and Sunday at 2 pm, Walker will be running the café this week, a few things to be announced later for the Sunset and the website will be updated very soon. She thanked everyone for their work.

Dorothea Funk echoed Julia to wishing Councillor Dorwart all the best in her future. She had a couple of questions related to the MOU: Will the MOU be legally binding? What did Councillor Rohatynski mean buy generous offers from Osisko, could we get some clarification on those offers?

Councillor Rohatynski replied that Osisko has committed to fixing infrastructure and the \$500,000 in the grant matching for the Community Facility Building as well as the Wells Community Foundation for the not-for-profit organizations, which was set up, but the deadline has unfortunately passed.

Dorothea Funk asked if there going to be a way of involving the community so that all the community needs have been address.

Councillor Rohatynski replied if Council has done their due diligence as elected officials the voice of the community will be heard.

Dorothea Funk spoke to Judy Campbell's letter about noise, it is her understanding Osisko/BGM has been ticket for noise under the Bylaw, what were

the fines issued, and what steps are Osisko/BGM taking to address the complaints they claim they are taking seriously?

Donna Forseille stated she has not received further correspondence from Osisko/BGM regarding how they are addressing the noise concerns.

Dorothea Funk thanked Donna for the information and inquired if the Fire department do WET inspections on chimneys/woodstoves.

Carrie Chard stated only certified wood stove inspector is Bruce at Pinnacle Stove.

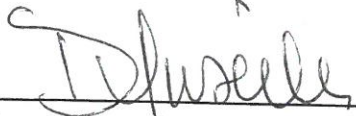
Jenn Lewis questioned what she needs to do or give to staff for the noise as it has not changed for the past couple of weeks, she stated she is frustrated with the lack of communication.

Donna Forseille stated she will reach out to BGM again regarding the noise concerns.


8.0 ADJORNMENT

8.1 Adjournment of the Regular Council meeting of Tuesday October 12, 2021.

21-176 **MOVED** Jordan Rohatynski, seconded Ksenya Dorwart THAT Council at 8:15 PM adjourns the Regular Council meeting of Tuesday October 12, 2021.



Donna Forseille, CAO



Gabe Fourchalk, Mayor

VIA EMAIL: admin1@wells.ca

October 7, 2021

Donna Forseille
Corporate Officer/Acting Chief Administrative Officer
District of Wells
PO Box 219
Wells, BC V0K 2R0

Dear Ms. Forseille:

**Re: Conflict of Interest Issues – Mayor Fourchalk
Our File No. 00260-0020**

Introduction

The District has sought our advice as to whether Mayor Fourchalk has a disqualifying conflict of interest and is, as a result, precluded from participating in all or part of the discussions and decision-making by the District in relation to community contributions from Barkerville Gold Mines (“Barkerville”).

In providing the advice contained in this letter, we remind you that we are the District’s solicitors, and that our advice is for the sole use and benefit of the District. We are not providing advice to Mayor Fourchalk, or any other individual member of Council. Generally speaking, Council members who have a concern with respect to their personal conflicts of interest should be advised to obtain their own legal advice. In the context of the specific advice sought by the District, we reiterate that our advice is not intended as legal advice to Mayor Fourchalk. Mayor Fourchalk may wish to obtain his own independent legal advice.

Finally, as the advice contained in this letter is for the sole use and benefit of the District, the solicitor-client privilege attached to our advice belongs to the District. As such, individual members of Council may not disclose our advice to any third party, including their legal advisors, without first obtaining the express consent of Council. It must be recognized that, where Council expressly consents to the disclosure to a third party of our advice, solicitor-client privilege over the advice will be waived and, if the District receives a request under the *Freedom of Information and Protection of Privacy Act* for this letter, the District will not be able to claim solicitor-client privilege as a basis to refuse to release the letter.

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Basic Principles Relating to Conflict of Interest

Pursuant to Section 100 of the *Community Charter*, Council members who have a conflict of interest are not permitted to participate in the discussion of a matter or vote on a question in respect of a matter at council and committee meetings as follows:

- 100 (1) This section applies to council members in relation to
- (a) council meetings,
 - (b) council committee meetings, and
 - (c) meetings of any other body referred to in section 93 [*application of open meeting rules to other bodies*].
- (2) If a council member attending a meeting considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the member has
- (a) a direct or indirect pecuniary interest in the matter, or
 - (b) another interest in the matter that constitutes a conflict of interest,
- the member must declare this and state in general terms the reason why the member considers this to be the case.
- (3) After making a declaration under subsection (2), the council member must not do anything referred to in section 101 (2) [*restrictions on participation*].

If a financial conflict is identified, the courts treat such a conflict strictly in most cases. If a Council member does have a direct or indirect pecuniary interest in a matter, the member is prohibited from participating in Council and committee meetings as follows:

- 101 (1) This section applies if a council member has a direct or indirect pecuniary interest in a matter, whether or not the member has made a declaration under section 100.
- (2) The council member must not
- (a) remain or attend at any part of a meeting referred to in section 100 (1) during which the matter is under consideration,
 - (b) participate in any discussion of the matter at such a meeting,
 - (c) vote on a question in respect of the matter at such a meeting, or

(d) attempt in any way, whether before, during or after such a meeting, to influence the voting on any question in respect of the matter.

(3) A person who contravenes this section is disqualified from holding an office described in, and for the period established by, section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

As well, a Council member is required not to attempt to influence a decision, recommendation or other action of Council as follows:

- 102 (1) A council member must not use his or her office to attempt to influence in any way a decision, recommendation or other action to be made or taken
- (a) at a meeting referred to in section 100 (1) [*disclosure of conflict*],
 - (b) by an officer or an employee of the municipality, or
 - (c) by a delegate under section 154 [*delegation of council authority*],
- if the member has a direct or indirect pecuniary interest in the matter to which the decision, recommendation or other action relates.
- (2) A person who contravenes this section is disqualified from holding an office described in, and for the period established by, section 110 (2), unless the contravention was done inadvertently or because of an error in judgment made in good faith.

If a Council member contravenes his or her obligations under sections 101 or 102, the member may be disqualified from holding office unless the contravention was done inadvertently or because of an error of judgment made in good faith.

Section 104 of the *Community Charter* sets out various exceptions to conflict of interest including where the "pecuniary interest is in common with electors of the municipality generally" (section 104(1)(a)) and where the "pecuniary interest is so remote or insignificant that it cannot reasonably be regarded as likely to influence the member in relation to the matter" (section 104(1)(d)). Where the pecuniary interest is so remote, the Council member is not considered in a conflict of interest and section 100 of the *Community Charter* does not apply to that particular pecuniary interest.

A conflict of interest arises when a Council member's personal interests appear to conflict with the member's obligation to act in the best interests of the District's community. The Supreme Court of Canada commented on the circumstances where a Council member will be disqualified from voting in *Old St. Boniface Residents Association v. Winnipeg*, [1991] 2 W.W.R. 145, as follows:

It is not part of the job description that municipal councillors be personally interested in matters that come before them beyond the interest that they have in common with other citizens in the municipality. Where such an interest is found, both at common law and by statute, a member of council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. This is commonly referred to as a conflict of interest. [Underlining Added]

Conflict of interest is concerned with appearances. The determination of a conflict of interest does not involve a subjective evaluation of the Council member's actual state of mind. Rather, the existence of a conflict of interest is determined by evaluating whether a reasonable person with knowledge of all the facts would likely believe that a person in the Council member's circumstances may be influenced by his/her personal interests when participating in a public matter.

There is no definition of conflict of interest in the *Community Charter*, nor have the courts attempted to establish a broad definition that can be applied in all cases. Rather, the courts evaluate the particular circumstances of each case and determine whether a reasonable person would be likely to conclude that the Council member's personal interests could have an influence on the member's conduct.

Turning now to what constitutes a pecuniary conflict of interest, the courts have found an indirect pecuniary conflict of interest where a matter before the council related to the employer of an elected official. In *Guimond v. Sornberger*, the Court found an indirect pecuniary interest on the part of three council members who were employed by the largest employer in the community. The employer had expressed opposition to a proposed shopping centre due to traffic concerns. The three council members voted against the rezoning application that would have allowed the shopping centre. On the basis that the potential that the council members' employment relationship could be maintained and improved by their decision, the Court held that a presumption of bias, on the facts in that case, was mandatory, and noted that it did not matter whether a council member in such a situation voted against their self-interest:

It sustains the right of an elector to the even-handed, independent consideration of his elected representatives on questions before Council, unaffected by any influence that could potentially flow from a direct or indirect pecuniary interest. The only inquiry that is permitted is whether such interest exists, whatever its

extent or degree. Once that is determined to exist in any degree, there can be no further inquiry: a presumption of bias is mandatory. It is irrelevant to inquire whether the councillor cast his vote for the question or against it. He may have voted favourably to his pecuniary interest or he may have “leaned over backward” and voted against it. The latter course may be acceptable morally, but it does not achieve the disinterested consideration of the question on its merits, which the elector is entitled to expect, and to receive, from his representatives, and which the statute commands. The neutrality of the councillors is not to be disturbed one way or the other by the potentials of pecuniary interest.

The decision in *Guimond* has been tempered by subsequent court decisions on the basis that not all employment relationships will result in a finding of a disqualifying personal interest. Those court decisions demonstrate that the analysis is largely fact dependent. For example, in *Whiteley v. Schnurr*, the Court considered an application for disqualification of a council member who was an employee of the University of Guelph, which had applied for an amendment to the City of Guelph’s official community plan. The Court held that the council member’s status as an employee was of such a nature that his vote on the plan amendment could not be reasonably regarded as being influenced by his status as an employee. Essentially, the Court distinguished *Guimond* on its significantly differing facts.

The courts have also found an indirect pecuniary conflict of interest where a rezoning application before the council related to the former client of an elected official. In *Godfrey v. Bird*, the Court found an indirect pecuniary conflict of interest on the part of a council member who voted on a rezoning application in respect of property owned by an individual on whose behalf the council member had acted as a real estate agent. After an extensive review of the case law relating to conflict of interest, the Court held, at para. 103, that the cases demonstrate a “trend towards a broader interpretation of the words “direct or indirect pecuniary interest” as electors and Legislatures insist upon higher standards of objectivity from elected representatives in order to promote disinterested consideration of the questions that councillors are called upon to decide.” The Court found that the nature of the past realtor-client relationship between the council member and the applicant for rezoning was sufficient to give rise to an apprehension that the council member might be motivated in voting on the rezoning application by his personal interest in maintaining a positive relationship with his former client over the public interest. In this case, the Court was satisfied that, on the basis of the past relationship between the council member and the applicant for rezoning, the possibility of a future relationship was more than mere speculation.

Our Court of Appeal, in the case of *Schlenker v. Torgrimson*, dealt with the issue of whether there was a pecuniary conflict of interest even where the elected officials would derive no personal financial benefit. The Court made the following comments regarding the interpretation of what constitutes a direct or indirect pecuniary interest (at paras. 33 and 34):

By limiting the interest to personal financial gain, the chambers judge's interpretation missed an indirect interest, pecuniary in nature, in the fulfillment of the respondents' fiduciary duty as directors. The result of applying that narrow interpretation to the facts was to defeat the purpose and object of the conflict of interest legislation.

The object of the legislation is to prevent elected officials from having divided loyalties in deciding how to spend the public's money. One's own financial advantage can be a powerful motive for putting the public interest second but the same could also be said for the advancement of the cause of the non-profit entity, especially by committed believers in the cause, like the respondents, who as directors were under a legal obligation to put the entity first.

In the context of the foregoing, the Court, in *Allen v. Froese*, recently confirmed that the question of a conflict of interest must be decided on its own facts, in light of the available evidence. The Court held:

[52] Each case must be decided on its own facts, bearing in mind and giving effect to the objects of the *Community Charter*. In *Fairbrass SC*, Mr. Justice Rogers said at para. 42: "I agree that conflict of interest legislation needs to be interpreted in a way that will give effect to its purpose and intent. That purpose and intent is to preserve the integrity of the political system in this Province, and to ensure that elected officials operate in the public's interest rather than in their own."

[53] As noted at the outset, the petitioners submit that evidence of the pecuniary interest is drawn from the temporal connection between the campaign contributions and the various projects before Council for approval. They acknowledge that they have no evidence to prove that the contributions, which they assert are sizeable for municipal elections, in fact influenced the votes cast by each respondent. Instead, the petitioners ask me to find that a reasonably well-informed person would likely conclude an offending pecuniary interest existed for each respondent based solely on a historical and comparative temporal analysis of the votes they cast, the dates each contribution was made and by which individual working for an impugned developer, and the minutes of Council meetings indicating which project was up for consideration and approval. The petitioners acknowledge that there is no bad faith on the part of the respondents. They submit a search for bad faith is not required. Instead, they argue that it is the receipt of campaign contributions while the developers' projects were before

Township staff for review, or proceeding to Council for a vote, or shortly before or after a project was voted on, that creates the offending conflict sufficient to breach the *Community Charter*.

[54] In advancing their case, the petitioners place great emphasis on the remarks of Burnyeat J. in *Godfrey* at para. 103 regarding the trend towards a broader interpretation of pecuniary interest.

[55] In my opinion, the petitioners' reliance on those remarks to prove a pecuniary interest on the facts of the case at bar is misplaced. The trend of the authorities is not to find a pecuniary interest based on speculation. The petitioners overlook the following dicta of Rogers J. in *Fairbrass SC*, which immediately follows his reference to para. 103 of the reasons in *Godfrey*:

[43] That said, I do not understand that anything said in *Godfrey* operates to vitiate the necessity for evidence in these kinds of cases. More generally, I do not understand any of the cases upon which the petitioners rely to say that a direct or indirect pecuniary interest may be inferred out of thin air and in the absence of any evidence showing a link between the pecuniary interests of the official and the matter under discussion by his council. And there lies the flaw in the petitioners' case: they say the court should infer that the mayor has a pecuniary interest in his sons' development of their land, and that the inference may be based upon the familial relationship simpliciter. In essence, the petitioners argue that the court must assume that because he is their father, this mayor must be taken to desire financial advancement for his sons, and further that because of that father and son relationship, improvement of the sons' affairs will necessarily equate to an improvement of the mayor's estate.

[44] In my view, the law has not yet come so far as to permit such inferences to be drawn, at least not without there being some evidence to support them. None of the authorities upon which the petitioners rely go that far – they all contain at least some evidence showing a link between the pecuniary interests of the official and the pecuniary interests of the party whose affairs were affected by the matter under discussion. So in *Moll*, for example, the councillor actually deposited the police's rent cheques to his own account; his interest in the lease was clear. So, too, in *Wynja* the Board members' own remuneration scheme was tightly linked to the contract on which they voted: they were essentially negotiating their salaries with themselves. But in the present case there is absolutely no evidence at all to link the mayor's sons' pecuniary interests to his own. [Emphasis added]

...

[58] The petitioners submit that the decision of Macaulay J. is overly narrow and against the tide of the case authorities if it requires proof of an actual agreement or quid pro quo to vote in a certain manner as the only basis to establish a pecuniary interest.

...

[60] The petitioners point to other cases where it was not necessary for the applicants to prove an agreement or other form of quid pro quo. I provide some examples below of cases where a pecuniary interest was found. ...:

...

· *Guimond v. Sornberger* (1980), 115 D.L.R. (3d) 321, 25 A.R. 18 (C.A.) – The impugned councillors were also employees of a company whose interests were affected by the matter under discussion by the municipality. The commercial viability of the employer was found to be in the pecuniary interest of those who depend on the employer for their incomes. An indirect pecuniary relationship was established.

...

[61] In *Fairbrass SC*, Rogers J. said that the case authorities do not establish that the pecuniary interest “may be inferred out of thin air and in the absence of any evidence showing a link between the pecuniary interests of the official and the matter under discussion by his council.” A suspicion, even a reasonable one, he said, is insufficient to support a finding of a pecuniary interest: para. 43.

Application of the Law to Mayor Fourchalk’s Circumstances

We understand the relevant facts related to a consideration of whether Mayor Fourchalk has a disqualifying conflict of interest in relation to community contributions from Barkerville or other Council discussions regarding Barkerville’s operations to be as follows:

1. Mayor Fourchalk has been employed by Barkerville since 2020 as a general labourer, and does not have any supervisory role with Barkerville;
2. Of the District’s approximately 217 residents, between 26 and 38 of them are employed by Barkerville;
3. Historically, up to 75 of the District’s residents have been employed by Barkerville;

4. Recently, housing in the District previously used seasonally by non-residents has been purchased as permanent residences for Barkerville's employees, either by Barkerville or its employees themselves;
5. It is expected that, in the near future, additional housing in the District will be bought or constructed for the benefit of Barkerville's employees; and,
6. Barkerville has written to the District seeking to formalize its "partnership" with the District through a "definitive agreement", including provisions regarding a community infrastructure fund from Barkerville, a joint committee for communications between Barkerville and the District, and support from the District to Barkerville.

On the issue of whether Mayor Fourchalk has a personal interest in the discussions and decision-making by the District in relation to community contributions from Barkerville, the applicable caselaw is clear that he does. As an employee of Barkerville, Mayor Fourchalk has a personal interest, similar to all other employees of Barkerville, to see Barkerville be successful. In addition, as an employee of Barkerville, who is also a decision-maker on matters that may affect Barkerville's success, Mayor Fourchalk has a further personal interest, which he does not share with the other employees of Barkerville, in making decision on those matters in a manner that is favourable to Barkerville based on his duty of loyalty as an employee of Barkerville and based on the inference that he may consciously or unconsciously prefer to be looked upon favourably by his employer, or to avoid incurring his employer's displeasure.

As Mayor Fourchalk's personal interest in the discussions and decision-making by the District in relation to community contributions from Barkerville relates to his employment, there is little question that it is a pecuniary interest.

Having concluded that Mayor Fourchalk has a personal pecuniary interest in the discussions and decision-making by the District in relation to community contributions from Barkerville, the question then becomes whether any of the exceptions in section 104 of the *Community Charter* apply to Mayor Fourchalk's circumstances. We address each of Mayor Fourchalk's personal interests, as identified above, separately below.

With respect to Mayor Fourchalk's personal pecuniary interest as an employee of Barkerville in seeing Barkerville generally be successful, we are of the view that Mayor Fourchalk shares that interest with a sufficient number of the District's residents that the conflict of interest provisions of the *Community Charter* (sections 100 to 103) do not apply to that interest by virtue of section 104(1)(a) of the *Community Charter*. We find support for our conclusion in this regard in the *Guimond* and *Godfrey* cases cited above, and the recent decision of our Supreme Court in *Redmond v. Wiebe*.

With respect to Mayor Fourchalk's personal pecuniary interest as an employee of Barkerville and a decision-maker on matters that may affect Barkerville's success, we are compelled by the decision in *Guimond* to the view that Mayor Fourchalk cannot rely on the community of interest exception in section 104(1)(a) of the *Community Charter*. In *Guimond*, the Court expressly concluded that such an interest is "different in kind" from the interest of other employees in the general success of their employer. While we believe that there are arguments that *Guimond* is wrongly decided in this regard, as any employee who is an elected official will have the same conflict, we do not recommend that this case be ignored.

In light of our foregoing view, in order for the conflict of interest provisions of the *Community Charter* (sections 100 to 103) to not apply to Mayor Fourchalk's circumstances, one of the other exceptions in section 104 must be found to apply.

We have considered the application of the exception in section 104(1)(d) of the *Community Charter* to Mayor Fourchalk's circumstances (i.e., whether the pecuniary interest is "so remote or insignificant that it cannot reasonably be regarded as likely to influence him in relation to the matter"). For this exception to apply, it is necessary to consider whether a reasonable person having knowledge of the relevant facts would be of the view that Mayor Fourchalk may (not will) be swayed in his decision-making by the possibility of gaining favour from Barkerville in his employment from a positive decision or avoiding displeasure from Barkerville in his employment from a negative decision.

In our view, there are aspects of Mayor Fourchalk's circumstances which support the application of the "remote or insignificant" exception to the conflict of interest provisions of the *Community Charter*. For example, both Mayor Fourchalk's relatively short period of employment with Barkerville and his entry level position with Barkerville as a general labourer both suggest that the likelihood of advantage or disadvantage to Mayor Fourchalk from a District decision on community contributions from Barkerville is unlikely. That being said, Barkerville's desire to formalize its "partnership" with the District through a "definitive agreement", including provisions regarding a community infrastructure fund from Barkerville, a joint committee for communications between Barkerville and the District, and support from the District to Barkerville, all indicate that Barkerville sees it as of sufficient advantage to itself to provide the community contributions. In this regard, Barkerville seems to be seeking a "quid pro quo" from the District in exchange for its contributions.

On balance, given that Barkerville sees the discussions and decision-making by the District in relation to community contributions from Barkerville as being a negotiation, we are of the view that the courts would conclude that the "remote or insignificant" exception to the conflict of interest provisions of the *Community Charter* would not apply to Mayor Fourchalk's circumstances.

Conclusion


In conclusion, we are of the view that Mayor Fourchalk has a disqualifying conflict of interest and is, as a result, precluded from participating in all or part of the discussions and decision-making by the District in relation to community contributions from Barkerville. In our view, Mayor Fourchalk should declare a conflict of interest and recuse himself from the matter.

Of course, if Mayor Fourchalk were to cease working for Barkerville, there would be no conflict of interest and he would not be prohibited from participating in the matter.

We trust the foregoing is satisfactory to you. Should you have any questions regarding the foregoing, please do not hesitate to contact the writer.

Yours truly,

YOUNG ANDERSON



Sukhbir Manhas
manhas@younganderson.ca

SM/sm

VIA EMAIL: admin1@wells.ca

October 12, 2021

Donna Forseille
Corporate Officer/Acting Chief Administrative Officer
District of Wells
PO Box 219
Wells, BC V0K 2R0

Dear Ms. Forseille:

Re: Governance Issues
Our File No. 00260-0020

Introduction

We write further to your request for our advice in relation to the following governance issues:

1. The duties of Council members in representing the public interest; and,
2. The function of Council committees.

The Duties of Council Members

As you know, the duties of the members of Council are set out in section 115 of the *Community Charter*, which provides as follows:

115 Every council member has the following responsibilities:

- (a) to consider the well-being and interests of the municipality and its community;
- (b) to contribute to the development and evaluation of the policies and programs of the municipality respecting its services and other activities;
- (c) to participate in council meetings, committee meetings and meetings of other bodies to which the member is appointed;

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1616 - 808 Nelson Street, Box 12147 Nelson Square, Vancouver, BC V6Z 2H2 | tel: 604.689.7400 | fax: 604.689.3444 | toll free: 1.800.665.3540
201 - 1456 St. Paul Street, Kelowna, BC V1Y 2E6 | tel: 250.712.1130 | fax: 250.712.1180

(d) to carry out other duties assigned by the council;

(e) to carry out other duties assigned under this or any other Act.

In short, the members of Council are elected by the residents of the District to represent the resident's interests.

Generally speaking, in carrying out their duties as members of Council, Council members have a significant latitude in determining how best to represent the public interest. The courts have said that, where the public believes that a Council member's actions do not represent the will of the public, the remedy is at the ballot box during the next election. The courts will only intervene where the Council member's actions are such that the *Community Charter* or some other statute expressly authorizes their intervention. For example, the courts will intervene where a Council member has participated in discussions and voting on a matter in respect of which the Council member has a conflict of interest. Please refer to the detailed letter we provided to you last week on the applicable rules regarding conflict of interest.

We understand that Council has concerns that one or more of its members are being "coached" by a small group of residents in relation to matters being considered by Council, where the residents' group is preparing draft motions for the Council members to bring, with the expectation that the Council members bringing the motions will actively support them. We further understand that Council is concerned that these Council members are not representing the interests of all of the District's residents, but are representing the interests of only this small group of residents.

While we understand the concerns of Council regarding the conduct of some of its members, having reviewed the caselaw, we do not believe that those concerns give rise to any legal issues. The courts have repeatedly concluded that, other than where elected officials have a statutory duty to consider a matter (e.g., the duty to hold a public hearing regarding a rezoning bylaw), elected officials are entitled to not only have very strong views on a matter, but also to have made up their minds on that issue. Even where an elected official has a statutory duty to consider a matter, they are simply required to have an open mind when hearing from the public and be amenable to persuasion; they are not required to dispel their personally held views on the matter.

Elected officials are not disqualified from dealing with matters solely because they have strongly held views or biases on those matters. Indeed, many elected officials are elected on the basis of their biases, which are shared by the members of the public who elected them. For example, an elected official who is vocally pro development during an election, and is subsequently elected, is not thereafter prevented from discussing and voting on matters from a pro development stance on the basis of their demonstrated "bias".

In our view, the courts would describe the concerns of Council regarding the conduct of some of its members as matters of politics, which are to be resolved at the ballot box. If the public does not believe that these Council members are fairly representing the public interest, and are only representing the interests of a small group of residents, the public's remedy is to not elect those Council members at the next election.

The Function of Council Committees

Under the *Community Charter*, council committees are a mechanism whereby the elected officials may obtain the input of members of the public in relation to matters under consideration by the council.

Generally speaking, council committees are established where the elected officials are required to address a matter in respect of which they could benefit from the knowledge and experience of members of the public or where the elected officials wish to have a direct mechanism for gauging the public interest in respect of the matter.

As you know, Council committees are not decision-making bodies in relation to the matter in respect of which the committees were established. Rather, Council committees make recommendations to the Council on the matter. The Council then makes the decision, either accepting the recommendation of the committee, partially accepting the recommendation, or wholly rejecting the recommendation.

We understand that, at this time, the same members of the public are appointed to all of Council's committees.

Given the influence of Council committees on Council decision-making, it is good practice to have different members of the public appointed to different committees as opposed to having the same members of the public appointed to all committees. In our view, appointing the same members of the public to all committees could lead to a public perception that those members of the public have an inappropriate influence on Council's decision-making. Essentially, it could lead to a public perception that Council decisions are being made by members of the public who were not elected to make those decisions. In our view, such a perception is problematic and could lead to a legal challenge to Council decision-making. In this regard, we recommend that Council seek to diversify its appointments of members of the public to its committees.

Conclusion

In conclusion, it is our view that:

1. Council's concerns that one or more of its members are being "coached" by a small group of residents in relation to matters being considered by Council is a political matter, not a legal matter; and,

2. Appointing the same members of the public to all Council committees is problematic as it could lead to a public perception that those members of the public have an inappropriate influence on Council's decision-making.

We trust the foregoing is satisfactory to you. Should you have any questions regarding the foregoing, please do not hesitate to contact the writer.

Yours truly,

YOUNG ANDERSON



Sukhbir Manhas

manhas@younganderson.ca

SM/sm

Accountability is essential to the function of the District and the community of Wells. Without it, it is difficult to get people to assume ownership of their actions because they believe they will not face any consequences. It is vital for those with decision-making power to experience consequences for their performance, words, or behaviour as it will create an ongoing culture of being answerable for those actions and decisions. There seems to be a lack of accountability, both as individuals and as a council body. In many cases, the District Of Wells has not been taking responsibility for its choices or lack of action on matters that are critical to the success and, ultimately, the future of this community.

In the past three years, I have experienced one of the most toxic work environments I have ever participated in. It is one wherein dysfunction and drama reign. A difference in opinion is disfavoured, often singled out for perceived lack of performance. Conforming and complacency are preferred and rewarded.

With that said, I hereby resign as a Councillor for the District of Wells, effective at the adjournment of this meeting.

I hope that in pushing the District Of Wells into a By-Election a new council can form, and one that is accountable, reliable, involved and caring. I implore members of the community to run in this next election and make a difference and much-needed changes, even if it is only for the next ten months or so.

I told my constituents at the beginning of my term that I would listen, learn and lead. I hope I was able to live up to that.

I wish my colleagues all the best in their future endeavours and the next election - if they wish to put their names forward.

Thank you,

Ksenya Dorwart

Hillary Morgan, RPP MCIP
Andrew Baigent, RPP MCIP

October 12th, 2021

DISTRICT OF WELLS



WELLS OFFICIAL COMMUNITY PLAN

— The Path to 2040 —



dy·nam·ic
COMMUNITY PLANNING

URBAN
SYSTEMS

MEET THE TEAM



Hillary Morgan
Community Planner
Dynamic Community Planning
Prince George, B.C.



Andrew Baigent
Community Planning Lead
Urban Systems
Vancouver, B.C.



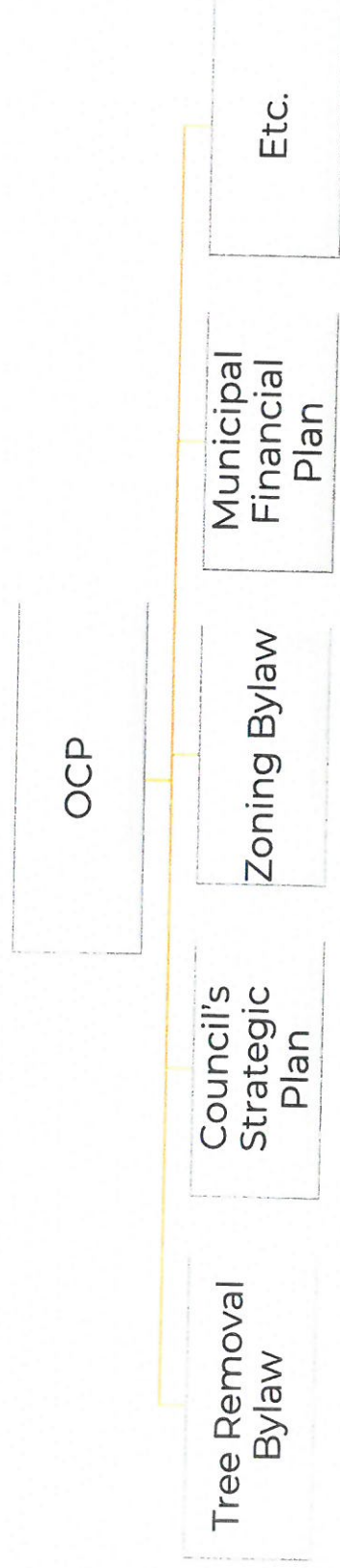
Andy Cuthbert
Community Planner
Urban Systems
Vancouver, B.C.

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URBAN
SYSTEMS

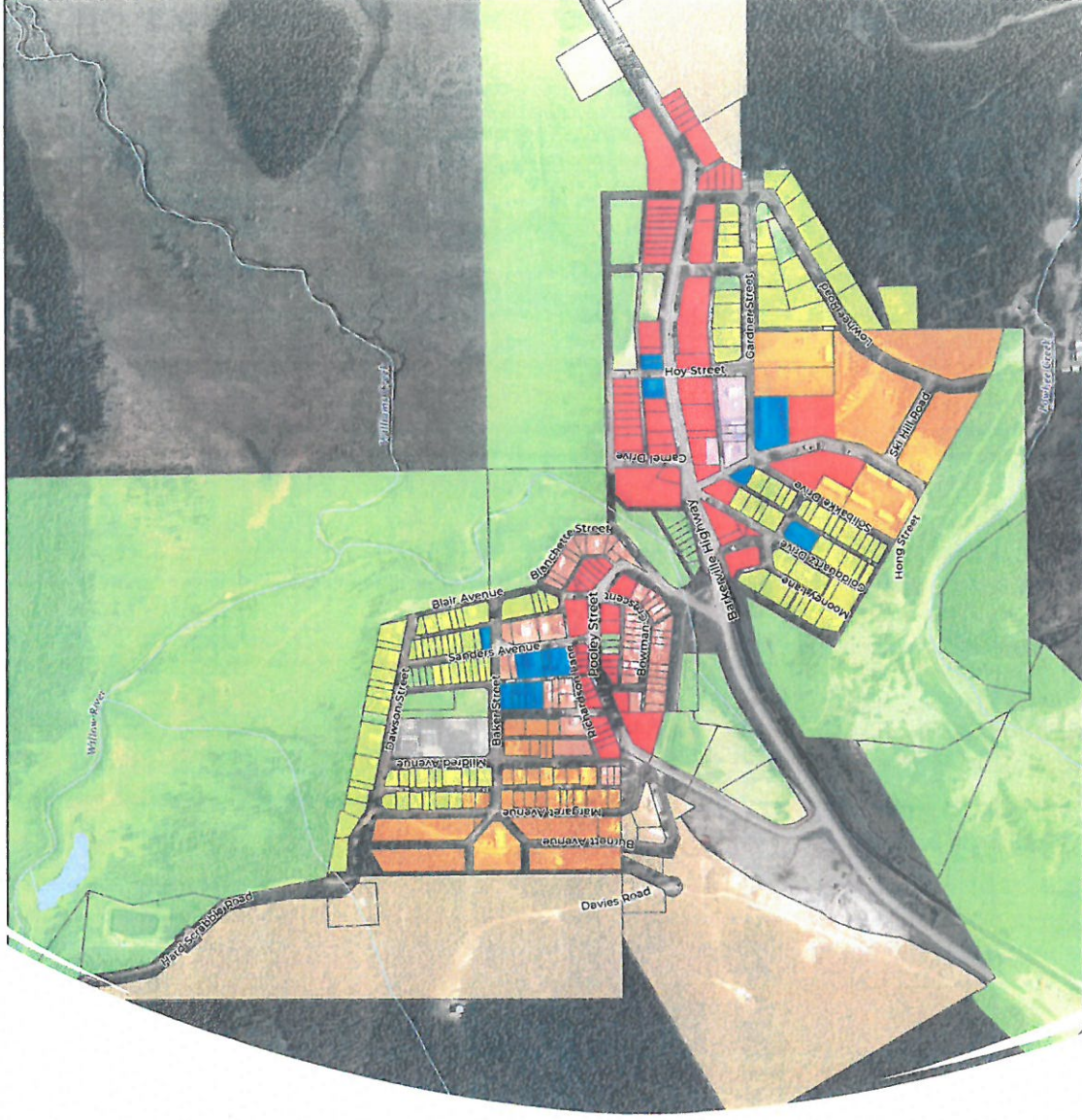
WHAT IS AN OCP?

- The Official Community Plan sets out the **path for a shared vision for the future.**
- The OCP provides **guidance and direction** for all other policies and bylaws.



LAND USE & GROWTH

- **Maps** are used to identify **existing** land uses as well as **future** land uses.
- The OCP identifies where **growth** will and will not occur.
- **Land uses** include categories like:
 - Residential
 - Commercial
 - Parks & Open Space
 - Industrial
 - Community Facilities
 - Environmentally Sensitive Areas
 - Agriculture
 - Natural Resource, etc...



WHAT IS IN AN OCP?



Parks & Trails



Environment



Housing



Social Development



Arts, Culture & Heritage



Economic Development

The content that goes into an
OCP is legislated by the *Local
Government Act*

***All local governments in BC
are required to adopt an
OCP***

Section 473 – Content of an OCP

- OCP **must include** statements and map designations respecting the following:
 - Approximate location, amount, type and density of residential development required to meet anticipated housing needs over a period of at least 5 years
 - Approximate location, amount and type of present and proposed commercial, industrial, institutional, agricultural, recreation and public utility land uses
 - Approximate location and area of sand and gravel deposits that are suitable for future sand and gravel extraction (n/a within boundaries)

Section 473 – Content of an OCP

- OCP must include statements and map designations respecting the following:
 - Restrictions on the use of land that is subject to hazardous conditions or that is environmentally sensitive to development
 - Approximate location and phasing of any major road, sewer and water systems
 - Approximate location and type of present and proposed public facilities, including schools, parks and waste treatment and disposal sites



Section 473 – Content of an OCP



An OCP must include housing policies of the local government respecting affordable housing, rental housing and special needs housing



An OCP must include targets for the reduction of greenhouse gas emissions in the area covered by the plan, and policies and actions of the local government with respect to achieving those targets

Section 473 – Content of an OCP

- An OCP may include policies of the local government relating to:
 - Social needs, social well-being and social development
 - Regional context statement
 - Respecting the maintenance and enhancement of farming on land in a farming area, or in an area designated for agricultural uses in the plan
 - Preservation, protection, restoration and enhancement of the natural environment, its ecosystems and biological diversity

Section 478 – Effect of an OCP

- An OCP does not commit or authorize a municipality, regional district or improvement district to proceed with any project that is specified in the plan
- **All bylaws enacted or works undertaken by a local government after the adoption of an OCP must be consistent with the OCP**

COUNCIL PROCESS TO ENDORSE AN OCP

Section 477 of the *Local Government Act* outlines the requirements for Council to endorse an OCP:

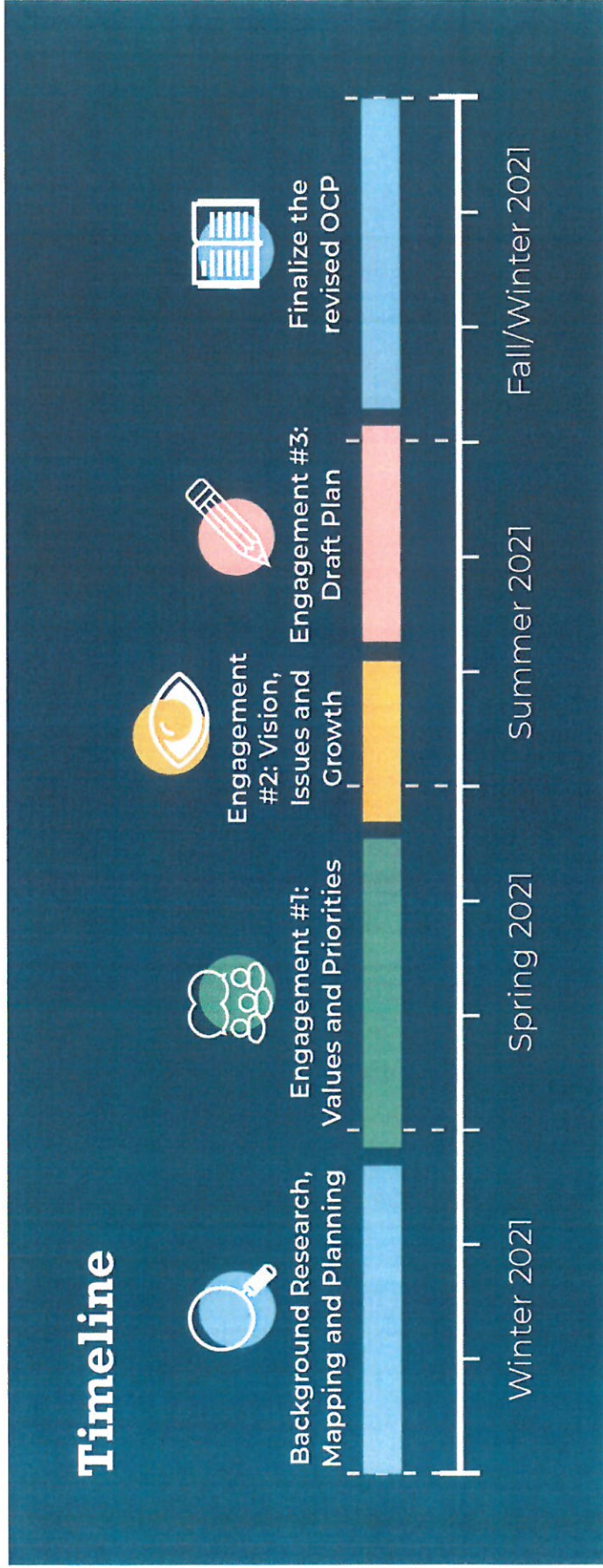
1. 1st & 2nd Reading, giving consideration to the District's Financial Plan and any waste management plan under Part 3 of the *Environmental Management Act*
2. Public Hearing and 3rd Reading
3. 4th Reading

*Note 3rd/4th Reading may be combined into one meeting if Council wishes to do so.

Section 475 – Consultation Requirements

- Must provide one or more opportunities for consultation with persons, organizations and authorities it considers affected
- Local government must consider:
 - Whether consultation opportunities should be early and ongoing
 - Whether consultation is required with a variety of groups
- Consultation in this section is in addition to the public hearing requirement
- If the OCP might affect agricultural land, the local government must consult with the Agricultural Land Commission

PROCESS TO DATE



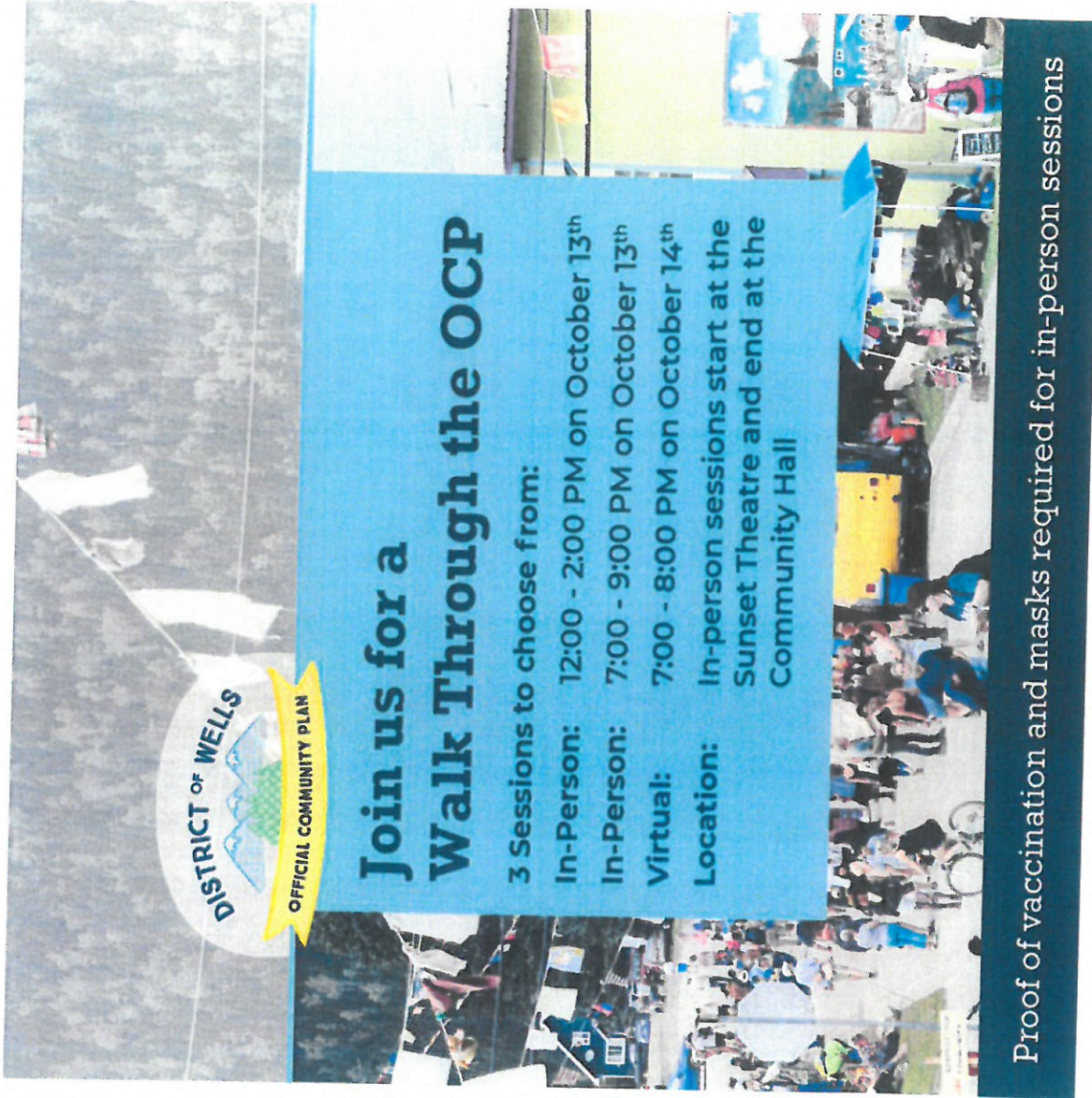
- 1) What We Heard Report
- 2) Past, Present and Future Report

NEXT STEPS

Share the draft OPC with the community, stakeholders and government agencies for input.

1. **October 13th**: Two in-person sessions
2. **October 14th**: One virtual session

*Deadline for providing feedback is Oct 31, 2021 (18 days)



Join us for a Walk Through the OCP

3 Sessions to choose from:

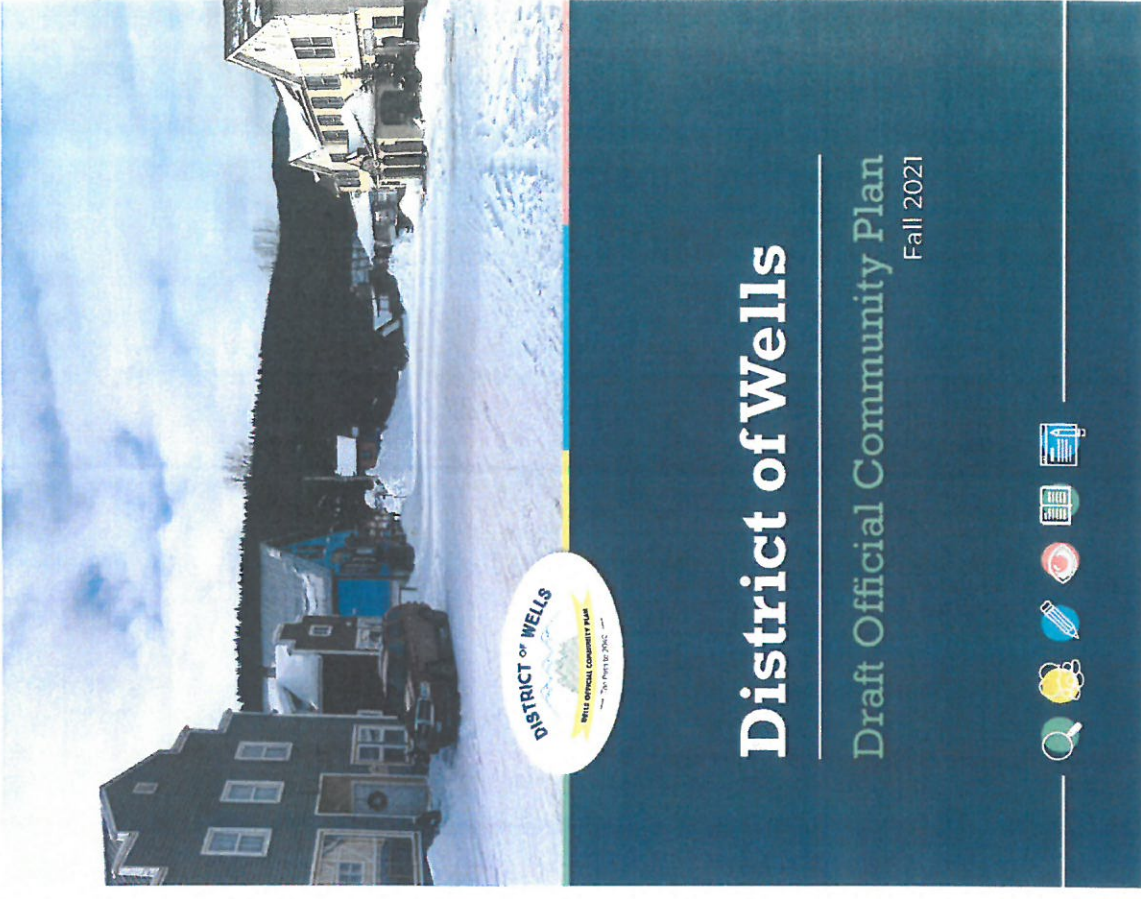
In-Person:	12:00 - 2:00 PM on October 13 th
In-Person:	7:00 - 9:00 PM on October 13 th
Virtual:	7:00 - 8:00 PM on October 14 th

Location: In-person sessions start at the Sunset Theatre and end at the Community Hall

Proof of vaccination and masks required for in-person sessions

DRAFT OCP CONTENTS

- Chapters 1 to 3: Introduction, Context and Planning Process
- Chapter 4: Land Use Designations
- Chapter 5: Objectives & Policies
- Chapter 6: Development Permit Area and Temporary Use Permit Guidance
- Chapter 7: Implementation



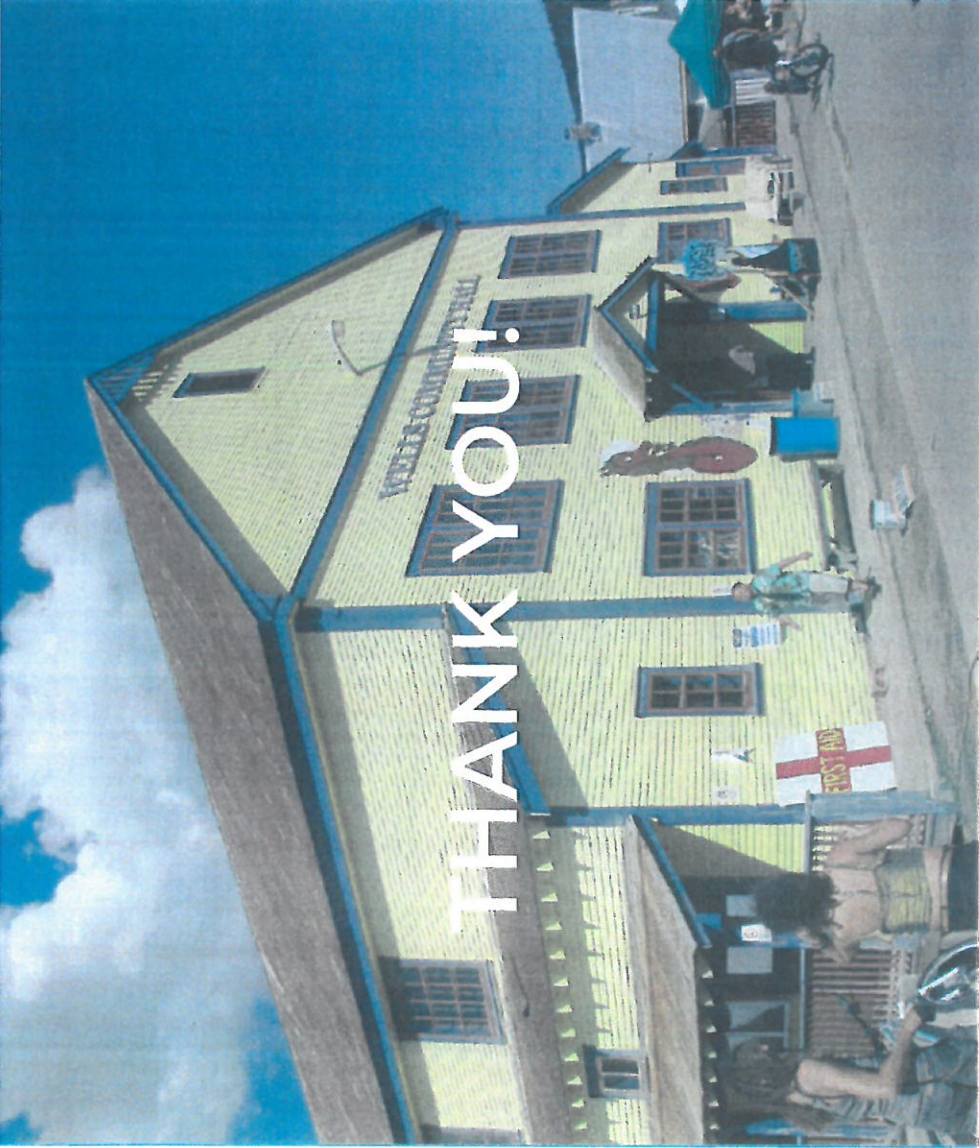
DRAFT OCP CONTENTS

Land Use Designations

- Low Density Residential
- Medium Density Residential
- Commercial
- Residential-Commercial (Mixed use)
- Community Facility (Institutional)
- Light Industrial
- Heavy Industrial
- Urban Parks and Trails
- Rural Resource & Outdoor Recreation
- Commercial Recreation

Objectives & Policy

- Community Infrastructure
- Social Development
- Environment
- Economy
- Housing
- Hazards
- Transportation
- Climate Change
- Reconciliation with First Nations
- Parks, Outdoor Recreation and Active Living
- Growth Management
- Sand and Gravel Deposits



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DISTRICT OF WELLS



WELLS OFFICIAL COMMUNITY PLAN

— The Path to 2040 —

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