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August 29, 2011

Mayor Colin Haime and Council
District of Lantzville
PO Box 100, 7192
Lantzville, BC, V0R 2H0

By Priority Post
And by email: council@lantzville.ca

Dear Mayor and Members of Council:

Re: Dirk Becker and Nicole Shaw, 7560 Fernmar Road, Lantzville

I have been retained by Dirk Becker and Nicole Shaw to represent them in their dialogue with the District of Lantzville regarding their home and garden on Fernmar Road.

I am writing to ask that you call off the threat of legal action against my clients.

First and foremost, setting aside the legalities for a moment, if there is an actual problem here it is a complaint by a neighbour about manure smell on a particular occasion. Complaints about manure smell have to be taken seriously, and my clients do. Solutions to manure smell complaints include things like advance notice, handling procedures, alternatives and so on. A big expensive court battle about the interpretation of bylaws will not solve anyone's manure smell complaint. Nor will a court battle – *regardless of the outcome* – prevent future use of manure on residentially zoned properties and the possibility of manure smell complaints. My plea is for the District to focus on the real problems and practical solutions.

Second, my clients have complaints of excessive noise and invasion of privacy regarding the behaviour of the neighbour who has complained about them. This letter to Mayor and Council is not the place to air the details. My point is that what is happening 'on the ground' is a dispute between two neighbours. For whatever reason, the District has gotten itself into a situation of using the powers of local government on behalf of one neighbour against the other. With respect, I don't think that is appropriate.

Third, I've toured my clients' property and, frankly, I don't see what the fuss is about. They have a very presentable house and a beautifully landscaped garden. The property is maintained immaculately. It's a large, two and half acre lot, like other lots on the street. The neighbourhood has a lovely rural-residential ambience, with the large lot sizes and plenty of mature trees and greenery. Behind my clients' property is a landscaped golf course. On the complaining neighbour's property there is a mansion-style house at the end of a long, wide driveway flanked by graded-flat lawns. A wire fence divides the two properties. Clearly, my clients and this neighbour have applied different aesthetics in the development of their respective residential properties. However, both styles are legitimate residential uses in this neighbourhood. In my submission, Council should not use Council's zoning enforcement authority, and taxpayers' money, where there really is no zoning problem.

Fourth, turning to the legalities, I have reviewed the paperwork and I do not see any indication that the District has provided my clients with particulars of the alleged violation of the District of Lantzville Zoning Bylaw, No. 60, 2005. Exactly what, when and where are my clients alleged to have done something in violation of the Bylaw?

Furthermore, the Bylaw as written purports to prohibit *any* use of residentially-zoned property outside of a dwelling house on the property. I would certainly argue to a court that that is an impermissibly over-broad and vague provision on which to interfere with my clients' legitimate use of their property.

The weakness of the District's legal position is exacerbated by the contents of the July 19, 2011 letter from the District to Mr. Becker in which the District purports to "hold in abeyance further legal action of current Zoning Bylaw infractions at this time subject to the registered property owner of 7560 Fernmar Road immediately ceasing the following activities..." What follows is a list including activities that the District has absolutely no legal authority to require Mr. Becker to do or not to do. The letter amounts to a threat to exercise municipal zoning enforcement authority for an improper purpose.

In short, my view is that the District simply has no valid legal basis to threaten court action against my clients regarding this matter. Council should be aware that any such court action would be vigorously resisted. For both Lantzville's taxpayers and my clients, a court battle would be expensive, unnecessary and unhelpful.

In conclusion, I would ask you to withdraw the District's threat of legal action against my clients. If there are specific problems then let us carefully identify them and work out concrete solutions.

Yours truly,

William J. Andrews



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cc. Twyla Graff, Chief Administrative Officer, District of Lantzville (by email)
Staples McDannold Stewart, Attn: Robert Macquisten (by email)