

Controversial development getting green light in comedy of errors?

SAM WILLIAMS

What we know about the mega yacht marina is only as good as what professional journalists are telling us. Oh, oh.

Right now there's a wonderful example for people to view of what I've heard referred to as "Victoria's lazy media." Community Marine Concepts, the proponent behind the "mega yacht" marina in the Songhees, has posted on its website (www.victoriainternationalmarina.ca/news) a short video clip of the local Shaw TV program "Opinion Panel" hosted by broadcast journalist Alan Perry. Appearing on Perry's panel in this segment are former TV journalist Howard Markson, CFX's Ryan Price, along with Shannon Renault, the manager of policy development and communications for the Greater Victoria Chamber of Commerce.

Controversial development proposals like the proposed mega-yacht storage facility in front of the Royal Quays condominium rightly need to win the hearts and minds of the local population before they will be approved by various levels of government whose go-ahead is required. In the case of the marina proposal, that includes agencies at all three levels of government. Don't think for a minute that your opinion doesn't matter to politicians and bureaucrats. It does. But if your opinion on controversial projects has been formed by reading the daily newspaper or watching local TV, then what you know is only as good as the quality of information and insight provided by the writers and commentators to whom you are listening.

In the video clip the marina proponents have posted on their web site, Perry introduces the segment by asking "Should plans for a Songhees marina for luxury yachts be stopped? And can they be?" After mentioning that a 7,000-name petition of people opposed to the proposed marina has been "presented," Perry goes on to say, "The thing that a lot of people seem to not realize, Howard, is that there is a Supreme Court of Canada ruling, dating back a couple of decades that says you can have a marina there. The question is, How big?"

Howard Markson responds: "And the thing is Alan, I live on the Songhees—I have to say that up front—and I've watched how these people have gathered signatures. They have bright yellow T-shirts that say 'Save the harbour, save the walkway' and I think, quite honestly, they're freaking people out. And what? They're going to close the walkway and it's just going to be for the rich? I don't think so...and of course you're absolutely right, there's a Supreme Court of Canada writ in Bob Evans' back pocket."

Most people seeing that video clip would probably think, "Wow, the Supreme Court of Canada. It sounds like that marina is a done deal. What's all the fuss about, anyway?"

That's probably what the marina proponent, Bob Evans, is hoping for by posting Perry's work to his website. Win a few hearts and minds. After all, Markson and Perry (according to his online bio, Perry "has won 34 news awards—more than any other radio reporter in BC") are veteran journalists, well known to many Victorians.

But Markson and Perry are going beyond expressing an opinion in this video clip; they are stating something that is factually wrong (more on this later) and the beneficiary of their lack of due diligence is the proponent of a controversial project. To be fair, it must be pointed out that Perry and Markson aren't the only local media people providing



Veteran journalists Alan Perry and Howard Markson appear on "Opinion Panel," a video originally aired on Shaw TV. The video clip has been posted on Victoria International Marina's website.

solace and comfort on a daily basis (except Mondays) to well-moneyed, politically-connected developers of various sorts.

But here's the thing: the lazy approach to covering complex issues like the marina proposal has serious ramifications for professional journalists who are coasting—and the media outlets who employ them. People are ignoring them in droves. Their place is being taken by citizen journalists who are motivated to search for the facts and know how to harvest information from the database of the Supreme of BC, the Land Titles Office or municipal council meetings and file a Freedom Of Information request.

Much of the information below was gathered by such "citizen journalists." What they found is that the marina proponent may have something in his back pocket all right, but it isn't a mandate from the Supreme Court of Canada to build a marina.

LET'S START WITH WHAT BOB EVANS REALLY HAS. We have to go back to the early '90s when the Songhees Peninsula was being transformed from a heavily polluted industrial area into a residential development. Bob Evans was a principal in a number of companies involved in that development, including Pacific National Investments, Pacific National Developments and other companies.

In the spring of 1990, one of Robert Evans' companies, Pacific National Developments, was nearing completion on the \$18 million Royal Quays condominium project but Evans was running into serious cost overruns. The project was rumoured to be in financial difficulty. On March 27, 1990 Pacific National Developments leased 48 parking stalls in the unfinished Royal Quays building for 200 years to Robert Glenn Evans. More about these later. By July of that year the *Times Colonist* was reporting that Evans' Royal Quays project was under threat of foreclosure. By August the Supreme Court of BC had appointed a receiver. Two water lots (Lot 3 and Lot 4) in front of the Royal Quays project that had been transferred to Evans' Pacific National Investments in 1988 were not included in the receivership. Nor was the 200-year lease on the 48 parking stalls that had been transferred to Evans.

...AND OF COURSE YOU'RE ABSOLUTELY RIGHT, there's a Supreme Court of Canada writ in Bob Evans' back pocket."

—Howard Markson

In May 1993, Evans' company, Pacific National Investments, applied to the City of Victoria for a permit to build two three-storey condominiums on pilings on water Lots 3 and 4, smack dab in the water view of Royal Quays. Three weeks later the *Times Colonist* reported that Songhees residents had collected more than 5,000 names on a petition opposing the proposed condos on pilings. There is no record of what kind of T-shirts the signature gatherers might have been wearing, but there's an easily-accessed record that shows that in August 1993 Victoria city council responded to Evans' condo-on-pilings proposal by rezoning his two water lots to allow only one-storey marine commercial use.

In September 1993, Robert Evans and two companies in which he was a principal filed for bankruptcy. A month later, Evans' surviving company, Pacific National Investments, sued the City of Victoria in BC Supreme Court over the rezoning, alleging "a breach of contract by the City, unjust enrichment, and that the bylaws constituted a 'taking.'" This might also be about the time broadcast journalists Markson and Perry drifted off to Sleepy Island.

In 1996 the BC Supreme Court agreed with Evans that the City of Victoria had breached an implied contract by down-zoning the water lots. It did not rule on the "unjust enrichment" claim. The City appealed the breach of contract decision, which was overturned in 1998 by the BC Court of Appeal. Evans' subsequent appeal to the Supreme Court of Canada was dismissed.

The "unjust enrichment" aspect of the suit, for which a decision had not been made in the first trial, worked its way through the courts until a judgment against the City of Victoria was made in the Supreme Court of BC in 2003, awarding Pacific National Investments \$1.08 million in compensation. This was for the portion of improvements Pacific National Investments had made to the seawall, walkway and park that the judge decided were made by the developer in anticipation of his being able to build the two three-story condos on pilings.

The City of Victoria appealed the decision and the BC Court of Appeals overturned the Supreme Court of BC ruling. Pacific National Investments appealed to the Supreme Court of Canada, which in November 2004 upheld

the 2003 Supreme Court of BC decision awarding Pacific National \$1.08 million.

Of the roughly 25,000 words in all the written decisions rendered by various judges over the 11-year legal battle between Evans and the City, the word "marina" occurs exactly once.

In fact, the matter of whether Evans was entitled to build a marina was never at issue in this long legal process.

Evans' quest for a *marina* in front of Royal Quays started much more recently. On October 6, 2005, Bob Evans' company 0736657 BC Ltd applied to the provincial Integrated Land Management Bureau (ILMB) for a lease of an unoccupied surveyed water lot, Lot 1, lying close to water lots Lot 3 and Lot 4. Lot 1 was possibly a booming ground from the days when there was a shingle mill in Lime Bay. Together, these three water lots would constitute an area large enough for a marina; Lot 3 and Lot 4, which Evans first acquired in 1988, were separated from each other and would not suffice on their own for a marina.

Evans' application for Lot 1 was apparently incomplete, lacking, for one thing, consent from the upland owners. On October 13, 2005, a few days after the application was made to ILMB, a fax was received by ILMB in support of Evans' application for Lot 1. The fax was from Bob Evans' company, Pacific National Investments, and it said, in part, "We understand that 0736657 BC Ltd has applied for a lease of Lot 1, Plan 44757, being land covered by water adjacent to the properties owned by Pacific National Investments. We further understand that *we are the only private land owners of any waterfront upland parcels adjacent to the area sought to be leased...*" [emphasis added] The fax goes on to say, "The purpose of this letter is to confirm that Pacific National Investments Ltd. as upland owner grants its consent and approval for the lease of Lot 1, Plan 44757." The fax is hand-signed by Malcolm Lyle and Joe Hlavay, Bob Evans' partners in Pacific National Investments.

But Pacific National Investments are, in fact, *not* the owner of the adjacent upland.

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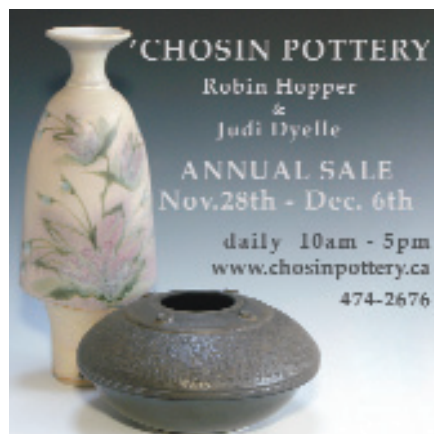
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Baffled? Many are. One Evans' company is telling ILMB that they own the only private adjacent upland—which has for years been occupied by a linear park and Westsong Walkway—in support of another Evans' company that is applying for Lot 1. Is there some reasonable explanation for this *apparently* false claim? Is the filled shoreline abutting water lots 3 and 4 “private land.”

In an internal ILMB email dated October 18, 2005, Duncan Williams informs Dave Byng on the status of Evans' application for the large water lot needed for the marina, Lot 1: “Bob Evans needs to secure upland owner consent for the entire length of his project, before we can process the application. *He has consent over a portion of his project right now.*” [emphasis added] Williams goes on to write, “The Land in question has a very complex title and we have spent 6 hours of our time researching this and have hit a brick wall without doing a physical search in Land Titles. The Client has stepped up and hired Pat Ringwood to do this.”

The following day, ILMB's D.W. Berry wrote a letter to Evans stating: “A preliminary review of the application indicates that the application is incomplete in [a] number of areas and is being returned along with your application fee.” Berry goes on to reiterate the “complex” upland ownership and associated riparian rights.

The ILMB email and letter were obtained by our citizen journalists through a Freedom of Information request.

So, by October 19, 2005 the working material for Evans' dream of a marina in front of Royal Quays seems to consist of 2 small water lots, the remaining 185 years on the 200-year lease of 48 parking stalls in the Royal Quay condominium, and a curious claim to be the sole owner of private upland adjacent to water lots 3 and 4.

When an application is made to ILMB and they accept the application for processing, they refer details of the application to any agency they think may have an interest. Evans' application was not accepted for processing, so no referral was forwarded.

So it was by some strange coincidence that in November 2005 the City of Victoria was considering rezoning a portion of Lot 1 zoned M3-Heavy Industrial to a park. The City's Manager of Development Services, Alison Meyer, made an inquiry to ILMB about rezoning Lot 1 to Victoria Harbour Park zone. The response from ILMB was critical to the unfolding of this story. In an email to Meyer from ILMB, Walter Van Bruggen writes: “Please contact and discuss this matter with Bob Evans who already has an interest in the Crown Land parcel Lot 1... The City should obtain written support from Mr Evans indicating his support for converting to Park that portion of Lot 1 located in Lime Bay. Upon receiving Mr Evans' support, ILMB will provide support to rezoning to Victoria Harbour Park zone or accept an application from the City for purchase or Free Crown Grant for the parcel in Lime Bay.”

In May 2009, Marianne Hopp, an articulated student with the University of Victoria's Environmental Law Centre, wrote to ILMB's Walter Van Bruggen about the content of that email. She presented him questions about Evans' “interest” in Lot 1. ILMB responded through Dave Lutes in an email in which he stated that “In 2005 Mr Evans was the fee simple owner of the adjacent Water Lots 3 and 4 and was developing the upland property adjacent to Lot 1.”

Lutes mentions nothing tangible—such as filled land—as being part of Evans' “interest.” In answer to a question by Hopp as to why



Community Marine Concepts' depiction of the three water lots in front of Royal Quays. The larger outlying area is meant to represent Lot 1. (This image is from the early 1990s)

ILMB required the City to seek Evans' support for their rezoning, Lutes makes a vague reference to Evans' history “As both the owner and developer of Phase 1 of the Songhees Master Agreement...”

The fact is that Evans' “developing” in the Songhees came to an end with various receiverships back in the early '90s. That Van Bruggen, who was based in Nanaimo, was misinformed of this is perplexing, particularly as this misinformation apparently resulted in the City's wish to rezone the area of Lot 1 to park zone being vetoed. In September of this year, lawyer Irene Faulkner wrote to federal Minister of the Environment, Jim Prentice, on behalf of the South Island Sea Kayaking Association expressing many concerns about the approval process for the proposed marina. Of the exchange between ILMB's Van Bruggen and the City's Meyer, Faulkner writes, “This email exchange between the province and city gives the perception that the province may unduly and improperly favour the developer's proposed marina.”

But another interpretation of the email exchange is that Van Bruggen simply made an error—Evans was not “developing the upland property adjacent to Lot 1” in 2005, and subsequent attempts to rationalize that error have muddied clear waters.

ILMB documents obtained by our citizen journalists through a Freedom of Information request show that since Evans' first application was returned, ILMB has indeed been trying to rationalize what they had previously characterized as the “very complex title” of the upland adjacent to Lot 1. The complexity largely arises from the fact that much of the foreshore had been filled during construction of Royal Quays, and the riparian rights associated with the filled land seem to be shifting in ILMB's collective mind month by month.

In November 2008 Community Marine Concepts Ltd, aka 0736657 BC Ltd, made a second application for Lot 1. As of October 23, 2009 the application was still with ILMB. Whether ILMB approves the application is ultimately the responsibility of Pat Bell, minister of forests and range. Recent revelations of the close political connections between Bob Evans and provincial and federal politicians have many opponents of the project fearful that Bell will make the call based on political favour rather than what's ultimately in the best interests of the community. Howard Markson and Alan Perry believe Evans has a Supreme Court of Canada writ in his back pocket that ensures his marina project will happen. But in the final analysis, all Evans really needs is a couple of local politicians tucked in back there.

Sam Williams is a Victoria writer.