



REPORT TO THE ELECTORAL AREA SERVICES COMMITTEE
MEETING OF **WEDNESDAY, SEPTEMBER 19, 2012**

SUBJECT **SALT SPRING ISLAND ELECTORAL AREA ABATEMENT AND CONTROL OF NOISE BYLAW**

PURPOSE

The purpose is to propose amendments to the Salt Spring Island Electoral Area Abatement and Control of Noise Bylaw.

BACKGROUND

The current Noise Bylaw for the Salt Spring Island Electoral Area (Bylaw No. 3384) was adopted in 2006.

There has been discussion at the Electoral Area Service Committee about including decibel readings in this bylaw. In response to the query by Committee members, staff researched bylaws from other jurisdictions in British Columbia, and gathered input from a number of bylaw enforcement agencies regarding the use of decibel readers. A legal opinion was also sought about the use of decibel readings in noise bylaws.

The consensus was that there is some value in having decibel readers for use in densely populated areas. Having a set reading limit can establish an agreed on measure that represents a community standard. Conversely, some noises of a continuous nature may still be a valid annoyance but below the set decibel reading for an offence. Further, the measurements need to be taken from a prescribed location such as a property line and may not account for the different circumstance related to the impact of the disturbance. It has been pointed out that in other bylaw enforcement cases that Individuals who have been charged with an offence may conduct their own "investigation" with an over the counter decibel reader to establish different readings leading to conflicting evidence and dismissal of a Municipal Ticket Information (MTI) based on a reasonable doubt. The courts have made general statements that decibel readings are not necessarily reliable because of difficulties in obtaining an accurate measurement.

ALTERNATIVES

1. Amend the Salt Spring Island Electoral Area Abatement and Control of Noise Bylaw as outlined in Attachment 1.
2. Include a section in the Electoral Area Abatement and Control of Noise Bylaws that has a maximum allowable decibel reading.

ENFORCEMENT IMPLICATIONS

The amendments to the Salt Spring Island Electoral Area Abatement and Control of Noise Bylaw as proposed in Alternative 1 would ban the discharge of firearms at a firearms range outside of prescribed hours. The intent of the amendment would be to ensure the provisions of section 2 are met, by reasonably restricting the discharge of firearms on a firearms range to prescribed parts of the day and on days of rest such as Sundays and Statutory Holidays.

LEGAL IMPLICATIONS

Capital Regional District (CRD) legal advice recommends that if decibel readings were added to the noise bylaw that they complement not replace the existing general prohibitions. In the enforcement of noise complaints researched by our solicitors others prosecutions have decided not to utilize decibel readings and instead chose to go with the evidence collected to support a charge under the general prohibitions of their noise bylaw because of evidentiary problems associated with those provisions.

A MTI could be dismissed with reasonable doubt evidence if the defendant had contradictory readings with his/her own decibel reader. Valid and legitimate continuous noise complaints could also be negated due to low decibel readings if the bylaw was amended to rely solely on measured levels of noise. Ambient noise could also affect the validity of decibel readings.

Corroborative evidence provided by multiple witnesses, personal observations and listening, and noise logs completed by complainants appears to be the most reliable form of evidence in supporting the prosecution of a noise bylaw infraction.

SUMMARY

There are already General Provisions included in the Salt Spring Island Noise Bylaw that can cover a wide range of noise that disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of the neighborhood or of persons at or near the source of such noise or sound.

Legal advice suggests that the Noise Bylaw should not rely on decibel readers and noise standards as the most effective way of establishing a noise regulation. Therefore staff recommends that amendments to the Salt Spring Island Bylaw as outlined in Attachment 1 be brought forward.

RECOMMENDATION

That the Electoral Area Services Committee recommends to the Capital Regional District Board:

- 1 That Bylaw No. 3855, "Noise Suppression Bylaw (Salt Spring Island) No. 1, 2006, Amendment Bylaw No, 1, 2012" be introduced and read a first time and second time; and
- 2 That Bylaw No. 3855, "Noise Suppression Bylaw (Salt Spring Island) No. 1, 2006, Amendment Bylaw No, 1, 2012" be read a third time; and
- 3 That Bylaw No. 3855, "Noise Suppression Bylaw (Salt Spring Island) No. 1, 2006, Amendment Bylaw No, 1, 2012" be adopted.

** ORIGINAL SIGNED **

Don Brown
Chief Bylaw Officer

Robert Lapham, MCIP
General Manager Planning & Protective Services
Concurrence

Kelly Daniels, Chief Administrative Officer
Concurrence



1-500 Lower Ganges Road, Salt Spring, B.C., BC V8K 2N8

Telephone: (250) 537-9144 Facsimile: (250) 537-9116

Toll Free via Enquiry BC in Vancouver 660-2421. Elsewhere in BC 1.800.663.7867

Web www.islandstrust.bc.ca

May 30, 2012

Dear Sir or Madam,

Re: **Land Use Regulations, Rod and Gun Club**

Islands Trust staff and the Salt Spring Island local trustees have received numerous enquiries and submissions concerning the Salt Spring Island Rod and Gun Club located at 221 and 223 Long Harbour Road. In order that all persons may have same information, we have prepared this summary of the Islands Trust regulations relating to use of the shooting range.

This same presentation was given at the Salt Spring Island Local Trust Committee on May 17, 2012 in response to questions submitted to the Salt Spring Island trustees. Members of the public are able to see the presentation at <http://www.youtube.com/saltspringvideo> by then scrolling to the SSI Trust Meeting of May 17, Part 3 of 3. The presentation by Islands Trust Bylaw Enforcement staff is at the two hour mark of this video. Key points are outlined below.

The Rod and Gun Club purchased one of the properties in 1961, the second in 1968, both parcels being created at time of subdivision of the larger original parcel. The first zoning regulations came into effect in 1970 through Capital Regional District Zoning Bylaw Number 66. The larger neighbourhood was zoned Rural, which includes as a permitted use any "Places of Outdoor Recreation including parks and golf courses".

In subsequent years, the zoning has changed from time-to-time, and the current zoning is in Salt Spring Island Local Trust Committee Land Use Bylaw Number 353. In this bylaw, the club property and surrounding land is zoned as Residential (R7). In addition to residential dwellings, this zone includes a large variety of uses such as agriculture, health care facilities, community halls and outdoor active recreation. Staff has looked thoroughly at the land use bylaw definitions and considers that the current bylaw provisions allow the shooting range and the club house as uses permitted in the zone.

It may be that, in future years, the zoning regulations may be further changed to be less permissive to outdoor recreation clubs. In that situation, the club's current activities would be permitted to continue through provisions of the provincial *Local Government Act* that essentially "grandfathers" any uses in place at the time that a land use bylaw is amended, provided that the use is not discontinued for more than six months.

With respect to noise, Islands Trust has no jurisdiction in regulating noise on Salt Spring Island, other than that originating from a home based business.

There have been questions asked about the Capital Regional District (CRD) Noise Bylaw and about the Federal *Firearms Act*. Contact person for the CRD Bylaw Enforcement Office is Don Brown, Manager of Bylaw Enforcement, email at drbrown@crd.bc.ca. The federal government refers questions concerning Regulations for "Shooting Clubs and Shooting Ranges" to the "Chief Firearms Officer" and contact with this federal office indicates that concerns with respect to operations of a Rod and Gun Club should be forwarded to the Officer. The preferred contact is by writing or by fax to:

Chief Firearms Officer
 British Columbia and Yukon
 118-5477, 152nd Street
 Surrey, British Columbia
 V3S 5A5
 Fax: (604) 575-1241

Several neighbours have asked about covenants or other restrictions on properties that may buffer noise. Islands Trust staff has researched several of the property titles in the vicinity of the club. We note that some properties have covenants in place for the purpose of geotechnical design, to prevent flooding, or to retain creekside vegetation. These covenants are held between individual owners and either the Ministry of Environment, the Ministry of Transportation and Infrastructure, and/or the Capital Regional District. For information on an individual covenant, enquiries may be made to the relevant agency, although it is not general practice to manage a covenant for a reason other than originally stated in the covenant.

Other neighbours have asked about regulations that do restrict noise. We note that there are eight properties in a subdivision close to the Rod and Gun Club that have a Statutory Building Scheme registered on their property titles. This Building Scheme expressly states that no noise may be created, and no firearms discharged on those eight properties. A Statutory Building Scheme is a form of contract between the eight properties, and it does not affect other nearby properties such as the Rod and Gun Club. As a private contract, its enforcement does not involve any government agencies.

Islands Trust staff understands that many members of the Rod and Gun Club are residents of Salt Spring Island and are interested in restoring good relations within the neighbourhood. The club has made some modifications to its operations this spring and has appointed a contact person for members of the community to dialogue with. we expect that
 positive dialogue will continue in the future.

Since the club is operating in conformity to the SSILTC's zoning regulations, there is no further action to be taken by Islands Trust Bylaw Enforcement Officers. Islands Trust Bylaw Enforcement staff will continue to monitor any new complaints they receive.

If there are additional questions, please contact the undersigned by phone at 250-405-5175 or by email at mdrew@islandstrust.bc.ca.

Yours sincerely,
 Miles Drew
 Bylaw Enforcement Manager

cc: Capital Regional District, att'n: Don Brown
 Royal Canadian Mounted Police, att'n: Chief Firearms Officer
 Rod & Gun Club att'n: John Foley
 Salt Spring Local Planning Services, att'n: Leah Hartley
 Salt Spring Island Local Trust Committee