

**CAPITAL REGIONAL DISTRICT
JUAN DE FUCA LAND USE COMMITTEE
Minutes of Meeting held March 20, 2012 – Juan de Fuca Electoral Area Office
#2 – 6868 West Coast Road, Sooke, BC**

PRESENT: Director Mike Hicks (Chair)
Ted Dixon
Kara Middleton
Heather Phillips
Harold Shipton
Art Wynans

REGRETS: John Wells

CRD Staff: June Klassen, Local Area Planning Manager; Wendy Miller, Recording Secretary
PUBLIC: Approximately 16

The Chair called the meeting to order at 7:00 pm.

1. Approval of Agenda

MOVED by Harold Shipton, **SECONDED** by Art Wynans that the agenda be approved. **CARRIED**

2. Approval of the Supplementary Agenda

MOVED by Ted Dixon, **SECONDED** by Harold Shipton that the supplementary agenda be approved. **CARRIED**

3. Adoption of LUC Minutes of February 21, 2012

MOVED by Art Wynans, **SECONDED** by Kara Middleton that the minutes of February 21, 2012 be adopted as presented. **CARRIED**

4. Chair's Remarks

The Chair welcomed everyone to the meeting.

5. Planner's Report

No report.

6. Development Permit with Variance Applications

At this time, the Chair welcomed Ted Dixon, the new representative for Malahat.

a) DP-31-10 – Lot B, Section 42, Highland District, Plan 13453 (Orr - 7436 Mark Lane)

June Klassen spoke to the staff report advising that the applicant is requesting a development permit with variances to legalize existing structures, to permit repairs to an existing boathouse and retaining wall, and to permit the construction of a new deck within a steep slopes and foreshore, wetlands and riparian development permit areas and within the side, front and rear yard setback requirements.

The Chair opened the floor to the applicant, Graham Orr. Graham Orr advised that he has owned the subject property for eighteen years and is trying to adhere to all required processes.

A Committee member forwarded comment advising that a site visit was made to the subject property. The member noted that there is no increase to the existing building envelope and that there are no neighbours with objections.

A Committee member noted issue with lot coverage stating greater comfort with the application if the deck at the waterfront was not constructed. Should the waterfront deck be constructed, lot coverage may exceed bylaw requirements.

Another Committee member stated that the shed appears to encroach onto Mark Lane.

Graham Orr confirmed that the shed is partially located in the road allowance. As included in the staff report, the Ministry of Transportation & Infrastructure has issued a permit (No. 2010-06530) to authorize the existing shed constructed within the right-of-way. The applicant advised that the shed houses the property's well.

Graham Orr advised that the waterfront deck referenced by the member is located on a legal foreshore lease. The waterfront deck is approximately 24x18ft, measuring less than a previous deck.

June Klassen drew attention to the three supplementary submissions received in support of the application from Willis Point residents Joe Landon, Jeannie Thompson and Robert and Susan Ryan.

MOVED by Harold Shipton, **SECONDED** by Art Wynans that the Juan de Fuca Land Use Committee support the staff recommendation and report and recommend to the CRD Board:

- 1) That the development permit with variance (DP-31-10) for Lot B, Section 42, Highland District, Plan 13453 to legalize the existing dwelling, shed, boathouse, deck and retaining wall by relaxing:
 - i. the side yard setback for the dwelling from 1.5m to 0.7m;
 - ii. the rear yard setback for the existing deck and retaining wall from 6m to 0m;
 - iii. the side yard setback for the boathouse from 1.5m to 0.7m;
 - iv. the rear yard setback for the boathouse from 1.5m to 0m;
 - v. the front yard setback for the shed from 6m to 0m

as shown in Appendix No. 3, be approved; and

- 2) That the development permit with variance (DP-31-10) for Lot B, Section 42, Highland District, Plan 13453 to repair a boathouse and retaining wall and to construct a new deck by relaxing:
 - i. the side yard setback for the new deck from 1.5m to 0.6m;
 - ii. the rear yard setback for the proposed deck from 6m to 3m

as shown in Appendices No. 3 & 4, be approved subject to the following conditions:

- i. that the proposed construction comply with the Steep Slope and Foreshore Development Permit Guidelines outlined in the Official Community Plan for Willis Point, Bylaw No. 3027;
- ii. that the proposed development comply with the recommendations outlined in the reports prepared by C.N. Ryzuk & Associates Ltd. dated September 21, 2010 and David Lawrie dated January 24, 2011 and February 10, 2012, as shown in Appendices No. 4, 5 & 6; and
- iii. that final reports be submitted by the Qualified Professionals confirming the conditions of this development permit with variance have been met prior to finalization of the building permit.

CARRIED

- b) DP-32-11 – Lot 6, Section 44, Sooke District, Plan 1958 (Pollock – 7726 Davidson Road)

The Chair noted that the application was initially presented at the February meeting. At the February meeting it was decided to take no action until a site visit was performed.

June Klassen briefly spoke to the February staff report advising that the applicant is requesting a steep slope and riparian development permit with variance for the purpose of legalizing an

addition and the construction of new decks. June Klassen drew attention to the three supplementary submissions received from Otter Point residents. Two submissions in support of the application were received from Ethel Preece and Dianna Heal. The third submission was received from the applicant.

The Chair advised that he visited the site, noting that the adjacent property view has not been impacted by the new construction. It was further noted that the roof overhang is within the subject property. In response to comments received regarding the existing legal non-confirming dwelling and approval of the variance, Planning staff was approached regarding a covenant to require the building to be re-sited in accordance to the most current regulations should the structure be extensively damaged or destroyed.

A Committee member stated that two site visits were made to the subject property. Rather than approving the application at this time, it was suggested that the Committee address the issues associated with this legal non-confirming property and adjacent legal non-confirming properties, including current zoning (Rural Residential RR-3 Zone), inclusion of the properties in the settlement containment area, exclusion of the properties from the Otter Point fire protection district, sewerage and determination of water licenses. The member stated no support for the variance stating that the property owners should have made themselves aware of property constraints, proceeding with due process.

Two Committee members stated the current issue before the Committee is whether or not to approve the development permit with variance.

A Committee member stated that the suggested covenant is no different than what is set out by the *Local Government Act* for non-confirming structures and that approval of the variance after completion of construction sets a bad precedence.

Upon Committee member enquiry, June Klassen advised that the current Development Procedures Bylaw No. 3110 does not outline penalty fees. If a stop work notice is issued, Building Inspection applies an additional charge equal to 100% of the required permit fee. Further to comments made regarding legalizing the structure, June Klassen read aloud potential wording that would necessitate registration of a covenant requiring the building to be re-sited if extensively damaged or destroyed.

In response to the Chair, Lynn Pollock stated no objection to the covenant.

John Halusiak, Otter Point, stated that there was opportunity for the applicant to build within the set back and that comment from a lawyer was sought to ensure no future encroachment.

A Committee member stated that the proposed covenant is no different than rezoning. Rather than approving the variance, it was suggested the building remain legal non-confirming with notice on title until such time that the Otter Point OCP is reviewed.

Committee discussion ensued regarding legal non-confirming properties and types of construction permitted on such properties. The Chair advised that applications for repair and alteration to legal non-confirming structures are normally presented to the Board of Variance. As the current application falls within a development permit area, the application cannot be considered by the Board of Variance; therefore, the application is before the Land Use Committee. The Committee can only address legal structures.

June Klassen spoke to future permit requirements and processes, should the structure be legalized. June Klassen confirmed that covenants are registered on title and run with the land.

MOVED by Director Hicks, **SECONDED** by Art Wynans that the Juan de Fuca Land Use Committee support the report and staff recommendation as amended and recommend to the CRD Board:

1. That the steep slopes and riparian development permit (DP-32-11) for Lot 6, Section 44, Sooke District, Plan 1958 for the proposed construction of a 16.5m² addition to the dwelling, a 47m² attached deck and a 41m² detached deck as shown in Appendices 2 and 3 and the request for:

- a. relaxation of the side yard setback from 6m to 0.42m for the purpose of constructing an attached deck and addition to the dwelling with a 0.42m overhang to the property line

be approved, subject to the following conditions:

- i. that the Qualified Environmental Professional's report prepared by Swell Environmental Consulting Ltd. dated November 26, 2011, as shown in Appendix 4 be submitted to Ministry of Environment for final approval prior to construction;
 - ii. that the proposed development comply with the recommendations outlined in the Qualified Environmental Professional's report prepared by Swell Environmental Consulting Ltd. dated November 26, 2011, as shown in Appendix 4, including site monitoring, restoration and submission of a final report;
 - iii. that a bond in the value of 150% of the monitoring and restoration work, as determined by a qualified professional, be secured prior to construction and held for three years and until a final report is submitted from the QEP confirming the monitoring and restoration works are complete.
2. That a covenant be registered prior to issuance of the development permit with variance stating that should the structure be damaged or destroyed to the extent of 75% or more of its value above its foundation, that the building will be re-sited.

A Committee member spoke to the recommendations outlined in the draft report submitted by Swell Environmental Consulting Ltd. including "flexing" of the SPEA around the encroachment and addition and restoration measures including a native planting scheme. Rather than bringing in potted plants, the member forwarded support for weeding to allow the existing native vegetation to return. It was suggested that planting of native plants be delayed for a period of time.

In response to the member's remarks, the Chair asked staff to relay comment on behalf of the Committee to the Qualified Environmental Professional requesting that consideration be given to not implementing the planting scheme for three years.

The Chair called the question and it was five in favour, Heather Phillips opposed.

CARRIED

7. Subdivision Application – Proposed Park Dedication

- a) S-03-11 – Easterly ½ of the NW ¼ of Section 36, Township 13, Renfrew District, except that part shown coloured red on Plan 346-R, and except those parts in Plans 22475, 24267, 24755, 29515, 41154, 50819 and VIP59967, PID: 000-468-291; and the remainder parcel of the NE ¼ of Section 36, Township 13, Renfrew District, PID: 009-565-752 (Three Point Properties/RTown Holdings ULC – Parkinson Road)

June Klassen spoke to the staff report advising that the applicant is proposing to subdivide lands into 6 lots – 4 new lots and 2 remainder lots. As four lots are under 2ha in size, Section 941 of the *Local Government Act*, which pertains to the provision of public park land, applies.

June Klassen explained that the Memorandum of Understanding (MOU) between RTown Holdings ULC and the Capital Regional District outlines the requirement for water and sewer services and the provision of a Park Plan. The MOU required that the applicant register a

covenant on the title of the property in favour of the CRD prior to adoption of service area establishment bylaws for the provision of community water and sewer services. The registered covenant (FB320966), however, specifically excludes that part of the application appurtenant to the four new lots.

It was advised that the Juan de Fuca Electoral Area Parks and Recreation Advisory Commission passed a motion recommending that the 5% park land dedication be deferred to the remainder parcels as the Park Plan to be prepared by the applicant has not been completed. The Park Plan is to incorporate all riparian areas, connective trail elements, public area permits, recreation areas, hazardous areas, and access to significant features and the ocean.

The Chair opened the floor to the application agent, Ben Mycroft. Ben Mycroft advised the initial development plan was for a forty-two lot subdivision, incorporating the requirement for a Park Plan. The development is committed to completing a Park Plan. However, due to current economic conditions, four new lots are proposed at this time.

Committee members forwarded concern regarding the requirement to complete the Park Plan within one year.

Upon Committee member enquiry, June Klassen advised that if deferral is not supported, 5% park land dedication or cash-in-lieu would apply.

Loretta Rose Deutscher, Port Renfrew resident, adjacent property owner and member of the Juan de Fuca Electoral Area Parks and Recreation Advisory Commission, questioned if consideration will be given to a 3m buffer between existing properties and the development area as reflected in the original development proposal.

June Klassen stated that buffers can be considered as part of the Park Plan.

MOVED by Heather Phillips, **SECONDED** by Art Wynans that the Juan de Fuca Land Use Committee support the staff report and recommendation as amended and recommend to the CRD Board:

1. That the 5% park land dedication or cash-in-lieu be deferred to the remainder parcel of the easterly $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 36, Township 13, Renfrew District, except that part shown coloured red on Plan 346-R, and except those parts in Plans 22475, 24267, 24755, 29515, 41154, 50819 and VIP59967, PID: 000-468-291; and the remainder parcel of the NE $\frac{1}{4}$ of Section 36, Township 13, Renfrew District, PID: 009-565-752, subject to the following conditions:
 - a. the applicant complete and submit a Riparian Area Report for the remainder parcel of the easterly $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 36, Township 13, Renfrew District, except that part shown coloured red on Plan 346-R, and except those parts in Plans 22475, 24267, 24755, 29515, 41154, 50819 and VIP59967, PID: 000-468-291; and the remainder parcel of the NE $\frac{1}{4}$ of Section 36, Township 13, Renfrew District, PID: 009-565-752;
 - b. the applicant working with the Juan de Fuca Electoral Area Parks and Recreation Advisory Commission, develop a Park Plan for the remainder parcel of the easterly $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 36, Township 13, Renfrew District, except that part shown coloured red on Plan 346-R, and except those parts in Plans 22475, 24267, 24755, 29515, 41154, 50819 and VIP59967, PID: 000-468-291; and the remainder parcel of the NE $\frac{1}{4}$ of Section 36, Township 13, Renfrew District, PID: 009-565-752; and Parcel A (DD143461) of Section 97, Renfrew District except part in Plan 15462 and VIP77871 PID: 009-592-423; and westerly $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 36, Township 13, Renfrew District except part in Plans 5109, 24267 and 24755, within one year or upon the submission of a subsequent subdivision application on any of the lands; and

- c. that the park land dedication deferral, the requirement for the completion of the Riparian Assessment, and the agreement to complete the Park Plan prior to further subdivision be secured by covenant as part of the subdivision approval process.

CARRIED

8. New Business

9. Adjournment

MOVED by Kara Middleton, **SECONDED** by Ted Dixon that the meeting adjourn.

The meeting adjourned at 8:12 pm.

Chair