



**REPORT TO JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, SEPTEMBER 16, 2014**

SUBJECT **PROPOSED AMENDMENTS TO THE JUAN DE FUCA LAND USE BYLAW, 1992, BYLAW NO. 2040 (AMENDMENT BYLAW NO. 3973)**

ISSUE

Amendments are proposed to the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 to address a proposed building strata of a detached accessory suite and to address carports and garages attached to detached accessory suites.

BACKGROUND

Section 3.10(6) Effective Subdivision

A parcel in the Rural Residential A (RR-A) zone has been split by the recently created Butler Road connecting the Sooke Business Park to Otter Point Road (Appendix 1). The owner of the parcel would like to get separate title to both portions of the existing lot. However, Section 3.10(6)(b) of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 which permit the creation of lots smaller than the minimum parcel size of the zone if the parcel is split by a highway, does not apply to the RR-A zone. The owners are considering creating separate titles by registering a building strata for the principal dwelling and the detached accessory suite. Staff has proposed an amendment to include the RR-A zone under Section 3.10(6)(b) as a subdivision of this parcel is preferable to the registration of a detached accessory suite as a building strata, which would undermine the intent of the detached accessory suite provision.

Section 4.20 Detached Accessory Suites

The intent of the detached accessory suite provisions is to have a principal dwelling and a detached accessory suite exist on the same parcel and title. To ensure that other property owners do not consider the registration of a detached accessory suite as a building strata, staff has proposed a new regulation which prohibits a building strata.

Floor Area Definition

An applicant applied for a building permit for a detached accessory suite with an attached carport. Staff noted that the building exceeded the accessory floor area pursuant to Section 4.01(2)(c) and that a development variance permit would be required. The applicant's agent advised that the existing Floor Area definition excluded carports, therefore, staff had to delete the carport area from the calculation and the accessory floor area was not exceeded. Staff is proposing amending the definition of floor area to distinguish between the principal residential building and accessory building floor area.

Proposed Bylaw No. 3973 amends Section 3.10(6)(b), Section 4.20 Detached Accessory Suites the definition of floor area (Appendix 2).

ALTERNATIVES

1. Recommend to the Capital Regional District (CRD) Board that proposed Bylaw No. 3973, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 122, 2014" be referred to relevant CRD departments and agencies for comment.
2. Recommend that the CRD Board not refer proposed Bylaw No. 3973.
3. Request more information be provided by staff.

LEGISLATIVE IMPLICATIONS

Pursuant to Section 879 of the *Local Government Act (LGA)*, an amendment to a zoning bylaw requires that the local government provide one or more opportunities for consultation it considers appropriate to the persons, organizations and authorities the local government considers may be affected by the adoption, repeal or amendment of a zoning bylaw.

Pursuant to Section 881 of the *LGA*, a proposed amendment to a zoning bylaw must be referred to the school district. As the amendment bylaw will apply to land within 800 m of a controlled access highway, the bylaw must be referred to the Ministry of Transportation and Infrastructure.

PUBLIC CONSULTATION IMPLICATIONS

The Advisory Planning Commissions were established to make recommendations to the Land Use Committee (LUC) on land use planning matters referred to them relating to Part 26 of the *LGA*, therefore, the proposed bylaw should be referred to the East Sooke, Otter Point and Shirley/Jordan River Advisory Planning Commissions. Alternatively, a public information meeting could be held on these proposed amendments.

Should the amendment to Bylaw No. 2040 proceed, it will be considered pursuant to the bylaw amendment process outlined in the Juan de Fuca Electoral Area Development Procedures Bylaw, Bylaw No. 3110. A public hearing pursuant to Section 890 of the *LGA* would be required subsequent to the amendments passing second reading by the CRD Board. A notice of the proposed bylaw amendment will be advertised in the local paper, and on the CRD website.

REGIONAL GROWTH STRATEGY AND OFFICIAL COMMUNITY PLAN IMPLICATIONS

In the evaluation of a zoning amendment, consideration must be given to the CRD's Regional Growth Strategy (RGS) Bylaw No. 2952 and the Official Community Plan (OCP) for East Sooke, Bylaw No. 3718, the OCP for Otter Point, Bylaw No. 3719, and the OCP for Shirley/Jordan River, Bylaw No. 3717.

The proposed amendments extend to the RR-A zone, an existing exemption to subdivision of existing parcels split by a highway which do not meet the minimum parcel size of the zone, adds a new regulation to prohibit a building strata of a detached accessory suite, and clarifies the definition of floor area. These amendments clarify the Bylaw to conform to the intent of accessory buildings provisions and they are not inconsistent with the RGS or the OCPs.

PLANNING ANALYSIS

Section 3.10(6) Effective Subdivision

As noted above the owners want separate title to the two portions of the RR-A lot separated by Butler Road, however, this zone is not subject to Section 3.10(6)(b) of Bylaw No. 2040. Therefore, they are considering creating separate titles by registering a building strata for the principal dwelling and the detached accessory suite. Letters have been sent to the owner and to the Registrar of Land Titles indicating that the Capital Regional District (CRD) opposes the proposed building strata of a detached accessory suite. However, it is not certain that the CRD could successfully challenge the registration. The owners would prefer to subdivide the property and this could be considered by the provincial Approving Officer if Section 3.10(6)(b) also applied to the RR-A zone. When this new zone was first created in 2007, Section 3.10(6)(b) was not amended to include this new rural residential zone, as was the case with other new rural residential zones that have been established.

Section 3.10(6)(b) states the Approving Officer may approve a subdivision for a parcel that is split by a highway or railway where the parcels do not meet the minimum parcel size of the zone. The bylaw states:

Notwithstanding the minimum lot sizes specified in this Bylaw, where a lot is in the Rural A Zone, Forestry AF Zone, Rural Residential RR-1 Zone, Rural Residential RR-2 Zone, Rural Residential RR-2A Zone, Rural Residential RR-3 Zone, Rural Residential RR4 Zone, Rural Residential RR-5 Zone, Rural Residential RR-6 Zone, Rural Residential Orveas Bay RR-OB Zone, Village Residential R-1 Zone, Village Residential R-2 Zone, or Village Residential R-3 Zone, and is split into separate parts by a highway or railroad, the Approving Officer may approve a subdivision which recognizes these separate parts, providing that in all other respects the subdivision complies with this Bylaw and providing the Approving Officer is satisfied that such a subdivision would not injuriously affect the established amenities of adjoining or adjacent properties or be against the public interest.

Generally, when a new zone is created, Bylaw No. 2040 is examined to see if there are other sections of the bylaw where the new zone should also be referenced. When the RR-A zone was created in 2007, Section 3.10(6)(b) should have been amended as well. At this time, the proposed amendment would only affect one existing lot. More importantly, a subdivision of the parcel is preferable to the registration of a building strata which would undermine the intent of the detached accessory suite provision. Further, the subdivision to create separate titles will not impact the visual character of the community as the existing parcel is perceived to be two lots. Staff is proposing adding the RR-A zone to the list of zones in Section 3.10(6)(b).

Section 4.20 Detached Accessory Suites

As noted above, the intent of the detached accessory suite provisions is to have a principal dwelling and a detached accessory suite exist on the same parcel and title. As defined, a detached accessory suite is clearly accessory to the primary dwelling. A proposed building strata was not envisioned and conflicts with the intent of detached accessory suite provisions. To avoid this situation arising, staff proposes adding a regulation to Section 4.20 Detached Accessory Suites which states:

(p) As a detached accessory suite is accessory to a principal dwelling, a detached accessory suite cannot be registered as a building strata.

This provision does not eliminate the ability for a building strata to have a detached accessory suite, rather it simply prohibits separate title to the suite.

Floor Area Definition

To determine if a proposed residential building conforms to the maximum size of residential buildings in a zone, attached garages, carports and decks are not included in the calculation of floor area as noted in the existing floor area definition which states:

FLOOR AREA means the space on any storey and/or basement of a building from exterior wall to exterior wall; excludes garages, carports and sundecks; includes all habitable areas;

Section 4.01(2)(c) of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 specifies the maximum combined total floor area of all accessory buildings and structures on a lot in relation to lot size. However, the existing definition of floor area does not permit carports and garages attached to detached accessory suites being counted in total accessory floor area. This does not comply with the intent of the combined total floor area provisions for accessory buildings and structures in Bylaw No. 2040.

To clarify the calculation of floor area, staff proposes amending Bylaw No. 2040 by introducing new definitions for floor area as follows:

FLOOR AREA – PRINCIPAL RESIDENTIAL BUILDINGS means the space on any storey and/or basement of a principal residential building from exterior wall to exterior wall; excludes attached garages, carports and uncovered decks; includes all habitable areas;

FLOOR AREA – ACCESSORY BUILDING OR STRUCTURES means the space on any storey and/or basement of an accessory building or structure; includes attached garages and carports, but excludes uncovered decks.

Staff recommends referring proposed Bylaw No. 3973 to the community and agencies for comment.

CONCLUSION

The purpose of this proposed bylaw is to amend Section 3.10(6)(b) to include the RR-A zone, to add a regulation to Section 4.20 to prohibit a building strata of a detached accessory suite and to amend the definition of floor area to account for structures attached to detached accessory suites.

RECOMMENDATION

That the Land Use Committee recommends to the CRD Board that:

Proposed Bylaw No. 3973, “Juan De Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 122, 2014”, as included in Appendix 1, be referred to the community and the following agencies for comment:

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| BC Hydro | Otter Point Fire Department |
| District of Metchosin | Pacheedaht First Nation |
| District of Sooke | RCMP |
| East Sooke Advisory Planning Commission | Scia'new First Nation |
| East Sooke Fire Department | Shirley/Jordan River Advisory Planning Commission |
| Island Health | Shirley Fire Department |
| Ministry of Transportation and Infrastructure | Sooke School District #62 |
| Otter Point Advisory Planning Commission | T'Sou-ke First Nation |

****ORIGINAL SIGNED****

June Klassen, MCIP, RPP
Manager, Local Area Planning

Kevin Lorette, P.Eng., MBA
General Manager,
Planning and Protective Services
Concurrence

Robert Lapham, MCIP, RPP
Chief Administrative Officer
Concurrence

Appendix 1: Lot 1, Section 15, Otter District, Plan VIP87208
Appendix 2: Proposed Bylaw No. 3973

**CAPITAL REGIONAL DISTRICT
BYLAW NO. 3973**

**A BYLAW TO AMEND
BYLAW NO. 2040, "JUAN DE FUCA LAND USE BYLAW, 1992"**

The Regional Board of the Capital Regional District, in open meeting assembled, enacts as follows:

1. Bylaw No. 2040 being the "Juan de Fuca Land Use Bylaw, 1992" is hereby amended:
 - A. SCHEDULE A, PART 1, SECTION 2.0 DEFINITIONS**
 - a) By deleting the definition of "FLOOR AREA" in its entirety and replacing with the following:
 "FLOOR AREA – PRINCIPAL BUILDINGS means the space on any storey and/or basement of a principal building from exterior wall to exterior wall; excludes attached garages, carports and sundecks; includes all habitable areas;
 FLOOR AREA – ACCESSORY BUILDING OR STRUCTURES means the space on any storey and/or basement of an accessory building or structure; excludes decks."
 - B. SCHEDULE A, PART 1, SECTION 3.0 ADMINISTRATION AND ENFORCEMENT**
 - a) Amend Section 3.10(6)(b) by adding the words "Rural Residential A RR-A zone" after the words "Forestry AF zone".
 - b) Amend Section 4.20 by adding a new item after item (o) which states:
 "(p) As a detached accessory suite is accessory to a principal dwelling, a detached accessory suite cannot be registered as a building strata."
2. This bylaw may be cited as Bylaw No. 3973, "Juan De Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 122, 2014".

READ A FIRST TIME	THIS	DAY OF	2014
READ A SECOND TIME	THIS	DAY OF	2014
READ A THIRD TIME	THIS	DAY OF	2014
APPROVED by the Minister of Transportation and Infrastructure			
	THIS	DAY OF	2014
ADOPTED	THIS	DAY OF	2014

CHAIR

CORPORATE OFFICER