

**REPORT TO JUAN DE FUCA LAND USE COMMITTEE
MEETING OF TUESDAY, JANUARY 20, 2015**

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 amend Section 3.10 to include a missing rural residential zone, to amend the secondary suite and detached accessory suite regulations to prohibit a building strata and to clarify the definition of floor area.

BACKGROUND

At their meeting on September 16, 2014 the Juan de Fuca Land Use Committee (LUC) considered an amendment 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 clarify the definition of floor area (Appendix 1). At their meeting on October 8, 2014, the Capital Regional District (CRD) Board approved referring proposed amendment Bylaw No. 3973 to the community, to three First Nations and ten agencies for comment.

Referrals were sent October 9, 2014 and responses have been received from School District #62, Ministry of Transportation and Infrastructure, Island Health and the District of Sooke (Appendix 2). The proposed amendment bylaw was also considered at an Otter Point Advisory Planning Commission (APC) meeting on October 20, 2014, at a Shirley/Jordan River APC meeting on November 5, 2014 and at an East Sooke APC meeting on December 15, 2014 (Appendix 3).

ALTERNATIVES

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

- 1 a) Proposed Bylaw No. 3973, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 122, 2014", as included in Appendix 1, be introduced and read a first time and read a second time; and
- b) That in accordance with the provisions of Section 890 and 891 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or the Alternate Director, be delegated authority to hold a public hearing with respect to Bylaw No. 3973.
- 2) Recommend that the CRD Board not proceed with proposed Bylaw No. 3973.
- 3) Request more information be provided by staff.

LEGISLATIVE IMPLICATIONS

Pursuant to Juan de Fuca Electoral Area Development Procedures Bylaw, Bylaw No. 3110, Section 5.0, an amendment to a zoning bylaw is to be referred to appropriate external agencies, relevant CRD departments and to the community that may be affected by the adoption, repeal or amendment of a zoning bylaw.

Where an amendment or new land use and subdivision 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 APCs were established to make recommendations to the LUC on land use planning matters referred to them relating to Part 26 of the *Local Government Act (LGA)*, therefore, the proposed bylaw was referred to the East Sooke, Otter Point and Shirley/Jordan River Advisory Planning Commissions.

A public hearing pursuant to Section 890 of the *LGA* would be required subsequent to the amendment 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. 3819, and the OCP for Shirley/Jordan River, Bylaw No. 3717.

The proposed amendment extends 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 new regulations to prohibit a building strata of a detached accessory suite and a secondary suite, and clarifies the definition of floor area. These amendments clarify existing bylaw provisions and do not result in land use changes and therefore are not inconsistent with the RGS or the OCPs.

PLANNING ANALYSIS

Detached Accessory Suites

Staff has noted that the Rural Residential A (RR-A) zone was missed from the list of rural residential zones included in Section 3.10(6)(b) of the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040 which permits the creation of lots smaller than the minimum parcel size of the zone if the parcel is split by a highway. Staff has proposed an amendment to include the RR-A zone under Section 3.10(6)(b).

Also staff is proposing an amendment to Section 4.20. 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 of a detached accessory suite was not envisioned and conflicts with the intent of detached accessory suite provisions. Proposed Bylaw No. 3973 includes a new 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.

Through the referral process it was suggested that this regulation also be applied to secondary suites. Therefore proposed Bylaw No. 3973 includes a new regulation to Section 4.19 Secondary Suites item (1) which states:

- (h) As a secondary suite is accessory to a principal dwelling, a secondary suite cannot be registered as a building strata.*

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 pursuant to the current definition of floor area. In addition, 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 detached carports and garages or 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, proposed Bylaw No. 3973 provides 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 detached garages and carports, and garages and carports attached to detached accessory suites but excludes uncovered decks.

As noted above, proposed Bylaw No. 3973 was referred to agencies and the community for comment. No objections were noted from the referral agencies and all three APCs support the proposed bylaw.

Proposed Bylaw No. 3973 has been considered by the LUC, referral agencies and at three APC meetings. There are no objections from the community or the referral agencies to the proposed bylaw. Therefore, staff recommends that Bylaw No. 3973 be read a first and second time and proceed to public hearing.

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 Sections 4.19 and 4.20 to prohibit a building strata of a secondary suite or a detached accessory suite and to clarify the definition of floor area. Staff recommends proceeding with the approval of the proposed bylaw.

RECOMMENDATION

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

- 1 a) Proposed Bylaw No. 3973, "Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 122, 2014", as included in Appendix 1, be introduced and read a first time and read a second time; and
- b) That in accordance with the provisions of Section 890 and 891 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or the Alternate Director, be delegated authority to hold a public hearing with respect to Bylaw No. 3973.

****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: Proposed Bylaw No. 3973
Appendix 2: Referral Responses
Appendix 3: Advisory Planning Commission Meeting Minutes

**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 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 detached garages and carports, and garages and carports attached to detached accessory suites but excludes uncovered 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 4.19 by adding a new item after item (1) (g) which states:

"(h) As a secondary suite is accessory to a principal dwelling, a secondary suite cannot be registered as a building strata."
 - c) 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	2015
READ A SECOND TIME	THIS	DAY OF	2015
READ A THIRD TIME	THIS	DAY OF	2015
APPROVED by the Minister of Transportation and Infrastructure	THIS	DAY OF	2015
ADOPTED	THIS	DAY OF	2015

CHAIR

CORPORATE OFFICER

Appendix 2: Referral Responses

Wendy Miller

From: Evanoff, Ryan TRAN:EX <Ryan.Evanoff@gov.bc.ca>
Sent: Wednesday, October 15, 2014 1:03 PM
To: Wendy Miller
Subject: RE: Proposed Bylaw No. 3973 - CRD Referral

Wendy,

Please accept this email as an official response to your referral below, Ministry file 2014-05074.

The Ministry has no objections to the Land Use Bylaw amendment as presented and has no additional requirements for approval.

Any certified bylaw forms that require Ministry signoff for this bylaw may be forwarded to this office, care of myself, at your convenience.

If you require any additional documentation please feel free to contact myself directly.

Thank you,

RYAN EVANOFF | SENIOR DISTRICT DEVELOPMENT TECHNICIAN | BC MINISTRY OF TRANSPORTATION AND INFRASTRUCTURE | VANCOUVER ISLAND DISTRICT |
240-4460 CHATTERTON WAY, VICTORIA, BC V8X 5J2

T: 250.952.4495 | F: 250.952.4508

WEBSITE FOR DEVELOPMENT APPROVALS:

www.th.gov.bc.ca/Development_Approvals/home.htm | MINISTRY WEBSITE: <http://tranbc.ca/>

Wendy Miller

From: Pete Godau <pgodau@sd62.bc.ca>
Sent: Friday, October 10, 2014 11:22 AM
To: Wendy Miller
Cc: Jim Cambridge; Harold Cull; Graham Arts; Joanne Kimm
Subject: FW: Proposed Bylaw No. 3973 - CRD Referral
Attachments: PPS-JDF-2014-08-13-BL2040-AMDBL3973-ForReferral-Appendix2.pdf; PPS-JDF-2014-09-16-BL2040-BL3973-LUC-REPORT-ForReferral.pdf; PPS-JDF-2014-10-09-BL3973-Referral-Agency.pdf

At this time the School District has no concerns.

Peter Godau

Director of Facilities | School District # 62

P (250)474-9841 | C (250)361-7330 | pgodau@sd62.bc.ca

Shaping Tomorrow Today

Wendy Miller

From: Beise, Rory <Rory.Beise@viha.ca>
Sent: Monday, October 20, 2014 8:57 AM
To: Wendy Miller
Subject: RE: Proposed Bylaw No. 3973 - CRD Referral
Attachments: CRD Bylaw Referral 3973.pdf

Wendy,

Comments from this office:

"If proposed amendment does result in RRA parcel subdivision, through road split, then VIHA subdivision standards for sewerage and drinking water will have to be met".

Rory Beise
Environmental Health Officer
Vancouver Island Health Authority
Gateway Village
201-771 Vernon Avenue
Victoria, BC V8X 5A7
Phone: (250) 519-3645
Fax: (250) 519-3402
rory.beise@viha.ca

Wendy Miller

From: Tara Johnson <tjohnson@sooke.ca>
Sent: Monday, October 27, 2014 2:38 PM
To: Wendy Miller
Cc: Katherine Lesyshen
Subject: RE: Proposed Bylaw No. 3973 - CRD Referral

Hi Wendy,

Upon review of proposed Bylaw No. 3973 staff have determined that the proposed bylaws do not affect the District's interests.

Thank you for providing the District of Sooke with the opportunity to comment.

Please contact me if there are any further questions.

Regards,

Tara Johnson, MCIP, RPP
Planner II - District of Sooke
2205 Otter Point Road, Sooke BC V9Z 1J2
Email: tjohnson@sooke.ca
(250) 642-1628 Fax: (250) 642-0541

Appendix 3: Advisory Planning Commission Meeting Minutes

Otter Point Advisory Planning Commission – October 20, 2014

June Klassen spoke to the staff report and proposed amendments to the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040, including amendments to:

- Section 3.10(6)(b) to include the Rural Residential A (RR-A) zone as a subdivision is preferable to the registration of a detached accessory suite
- Section 4.19 to prohibit accessory suites from being registered as a building strata as supported by the Land Use Committee at its September meeting
- Section 4.20 to prohibit detached accessory suites from being registered as a building strata
- the definition of Floor Area to distinguish between the principal residential building and accessory building floor area

Section 3.10 (6)(b)

June Klassen provided background information, advising that the owners of a RR-A parcel split by a highway would like to get separate title to both portions of the existing lot. Section 3.10(6)(b) permits the creation of a lot smaller than the minimum parcel size of the zone if the parcel is split by a highway. As the RR-A zone is not identified under Section 3.10 (6)(b), the owners are now considering creating separate titles by registering a building strata for the principal dwelling and the detached accessory suite.

June Klassen responded to a questions directed through the Chair advising that the proposal to register separate title for a principal dwelling and a detached accessory suite potentially undermines the intent of regulations for suites.

Heather Phillips, Otter Point, stated support for adding the RR-A zone to Section 3.10 (Lots Created by Subdivision) noting that exclusion was an oversight.

Randy Clarkston, Otter Point, stated that the RR-A parcel being discussed has two existing dwelling units measuring 90 m². Should the parcel proceed to subdivision, there is potential opportunity for both of the existing dwelling units to be designated detached accessory suites.

June Klassen stated that, should the RR-A parcel proceed to subdivision, it is understood the resulting lots would not be large enough to support a principal building and a detached accessory suite. However, should the lots be large enough to support this scenario, a covenant could be placed on the lots restricting detached suites.

MOVED by Bud Gibbons, **SECONDED** by Al Wickheim that the OP APC supports amending Section 3.10(6)(b) to include the RR-A zone.

CARRIED

Section 4.19 and 4.20

June Klassen stated that the intent of the amendments to Section 4.19 and 4.20 is to restrict the ability of separate title being registered on a dwelling unit accessory to a principal dwelling.

Heather Phillips stated that, at present, there is no regulation to restrict the ability of separate title being registered for a secondary suite through the building strata conversion process. One main change addressed by the new Otter Point OCP is the establishment of alternatives to building stratas.

MOVED by Al Wickheim, **SECONDED** by Bud Gibbons that the OP APC supports amendment to Section 4.19 and Section 4.20 to prohibit suites from being registered as a building strata.

CARRIED

Floor Area

June Klassen clarified that staff has included accessory garages/carports in the calculation of maximum combined total floor area for accessory structures as outlined in Section 4.01(2)(c). An amendment is requested to define Floor Area – Principal Residential Buildings and Floor Area – Accessory Building or Structures as the current definition of Floor Area excludes garages/carports.

Randy Clarkston stated that:

- there was concern for overbuilding when Sooke increased its limits on lot coverage
- limits were increased and overbuilding has not occurred
- the CRD continues to over regulate, limiting the ability to build proper buildings without public approval processes
- at present, it is easier for a property owner to drop an unsightly Sea Can on a lot as a Sea Can requires no building permit and no approval process

June Klassen stated that, should there be support to only have lot coverage regulate the size of residential buildings, the requested definition amendments can be considered an interim measure until such time that Bylaw No. 2040 proceeds to full review.

Heather Phillips questioned:

- if definitions related to Floor Area should also be reviewed as to how the amendments relate to business/commercial use
- if it would be more appropriate to consider amendment to definitions to when Bylaw No. 2040 proceeds to full review
- if interim amendments could negatively impact properties, effectively making some properties legal non-conforming

June Klassen responded to a question directed through the Chair stating no issue with excluding attached garages/carports in the proposed definition of Floor Area – Principal Residential Buildings.

Heather Phillips stated support for revising the definitions related to Floor Area to reflect that Floor Area is measured from the inside of the wall.

MOVED by Sandy Sinclair, **SECONDED** by Anne Miller that the OP APC supports counting accessory garages and carports in the calculation of accessory floor area.

The Chair called the question and it was three in favour, Bud Gibbons and Al Wickheim opposed.

CARRIED

Shirley/Jordan River Advisory Planning Commission – November 5, 2014

June Klassen spoke to the staff report and proposed amendments to the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040.

Section 3.10 (6)(b)

June Klassen provided background information, advising that the owners of a RR-A parcel split by a highway would like to get separate title to both portions of the existing lot. The split in the parcel was created when a road was aligned to support access to a new development. Section 3.10(6)(b) permits the creation of a lot smaller than the minimum parcel size of the zone if the parcel is split by a highway. As the RR-A zone is not identified under Section 3.10 (6)(b), the owners are now considering creating separate titles by registering a building strata for the principal dwelling and the detached accessory suite.

June Klassen stated that the proposal to register separate title for a principal dwelling and a detached accessory suite compromises the intent of regulations for suites.

June Klassen responded to questions directed through the Chair clarifying the difference between building stratas and building strata conversions. APC discussion ensued regarding the challenges and benefits of building stratas.

Section 4.19 and 4.20

June Klassen stated that the intent of the amendments to Section 4.19 and 4.20 is to restrict the ability of separate title being registered on a dwelling unit accessory to a principal dwelling.

Floor Area

June Klassen clarified that staff has included accessory garages/carports in the calculation of maximum combined total floor area for accessory structures as outlined in Section 4.01(2)(c). An amendment is requested to define Floor Area – Principal Residential Buildings and Floor Area – Accessory Building or Structures as the current definition of Floor Area excludes garages/carports.

APC discussion points included:

- proposed definitions clarify the standing practice of including detached accessory garages/carports in the calculation of total floor area for accessory structures
- support for clear definitions

June Klassen stated that the variance application process allows for feedback from neighbours. However, should the community deem a regulation too restrictive, there is ongoing opportunity to review regulations through the public consultation process as was the case with amendments to the definition of height. There will also be opportunity to review regulations related to lot coverage and size of residential buildings when Bylaw No. 2040 proceeds to full review.

MOVED by Sonja De Wit, **SECONDED** by Pascale Knoglinger that the Shirley/Jordan River APC supports amending Section 3.10(6)(b) to include the RR-A zone.

CARRIED

MOVED by Pascale Knoglinger, **SECONDED** by Dominique Bernardet that the Shirley/Jordan River APC supports amendment to Section 4.19 and Section 4.20 to prohibit suites from being registered as a building strata.

CARRIED

MOVED by Sonja De Wit, **SECONDED** by Brenda Mark that the Shirley/Jordan River APC supports the definition of Floor Area – Principal Residential Buildings and Floor Area – Accessory Building or Structures.

CARRIED

East Sooke Advisory Planning Commission – December 15, 2014

June Klassen spoke to the staff report and proposed amendments to the Juan de Fuca Land Use Bylaw, 1992, Bylaw No. 2040.

Section 3.10 (6)(b)

June Klassen advised that the owners of a RR-A parcel split by a highway would like to get separate title to both portions of the existing lot. The split in the parcel was created when a road was aligned to support access to the development at Butler Road. Section 3.10(6)(b) permits the creation of a lot smaller than the minimum parcel size of the zone if the parcel is split by a highway. As the RR-A zone is not identified under Section 3.10 (6)(b), the owners are now considering creating separate titles by registering a building strata for the principal dwelling and the detached accessory suite.

June Klassen stated that the proposal to register separate title for a principal dwelling and a detached accessory suite compromises the intent of regulations for suites.

Section 4.19 and 4.20

June Klassen stated that the intent of the amendments to Section 4.19 and 4.20 is to restrict the ability of separate title being registered on a dwelling unit accessory to a principal dwelling.

Floor Area

June Klassen clarified that staff has included detached garages/carports in the calculation of maximum combined total floor area for accessory structures as outlined in Section 4.01(2)(c). However, the existing definition eliminates the calculation of the floor area for all garages and carports. An amendment is requested to define Floor Area – Principal Residential Buildings and Floor Area – Accessory Building or Structures. It was advised that there will be opportunity to review regulations related to lot coverage and size of residential buildings when Bylaw No. 2040 proceeds to full review. In the interim, the variance application process allows for feedback from neighbours.

An APC member noted that the six supplementary submissions received support the amendments.

June Klassen responded to a question from the APC advising that the Butler Road property owner supports the amendment to permit subdivision.

Zac Doeding, East Sooke

- intent of regulations for suites was not to support creation of separate titles
- supports amendments to prohibit suites from being registered as a building strata
- supports a full build out model (lot coverage) similar to Sooke

Kara Middleton, East Sooke

- there are regular occurrences of uncovered decks with carports below
- there appears to an increase in smaller buildings with decks of various size

June Klassen stated that uncovered decks are not included in the calculation of floor area.

MOVED by Linda Nehra, **SECONDED** by Brian White that the East Sooke APC supports the amendments to Section 3.10(6)(b), Section 4.19 and Section 4.20 and amendment to the definition of Floor Area.

CARRIED