

**REPORT TO THE
PLANNING, TRANSPORTATION AND PROTECTIVE SERVICES COMMITTEE
MEETING OF WEDNESDAY, MARCH 28, 2012**

SUBJECT

Referral request by the District of Central Saanich regarding the Capital Regional District's refusal to accept an amendment to the District's Regional Context Statement pertaining to: Central Saanich Official Community Plan (OCP) and Rezoning Amendment: Proposed OCP Amendment Bylaw No. 1736, 2011 – Lot 9, and portions of Lots 11 and 13, Section 13, R1E, SSD, Plan 1296 – 6700 Block West Saanich Road – Peninsula Co-op Supermarket Proposal.

PURPOSE

To report on the meeting between the District of Central Saanich (District), the Capital Regional District (CRD) and the Ministry of Community, Sport and Cultural Development (Ministry) held on March 13, 2012.

BACKGROUND

In August 2011, the CRD Board declined to accept the District's proposal to amend the Regional Context Statement (RCS) to accommodate a retail food store, and notified the municipality accordingly. In September 2011, the matter was referred by the District to the Ministry with a request for the minister to assist in resolving differences on the application using the dispute resolution mechanisms available in the *Local Government Act*. The minister requested that a meeting be convened between all parties to explore the potential for a resolution.

This meeting was held on March 13, 2012 and was attended by Mayor Alastair Bryson, CAO Gary Nason and Planning Director Hope Burns from the District, Chair Geoff Young, CAO Kelly Daniels and General Manager Planning and Protective Services Bob Lapham from CRD and Strategic Advisor Alan Osborne, Regional Growth Strategy (RGS) Manager Brent Mueller, and Senior Planner Heike Schmidt from the Ministry.

During the meeting Ministry staff presented to the parties the legislative framework and process for resolving disputes and explained the roles of the parties, other affected local governments and the Ministry. Discussion ensued regarding the non-binding (mediation) and binding (arbitration) processes for dispute resolution. Attached as Appendix 1 is a flow chart showing the complexity of the dispute resolution process. Next steps were determined, including reporting back to the minister whose decision on process will be informed by the parties.

The parties explored the options of mediation and arbitration and assessed opportunities for reaching compromise. They came to the view that there is limited opportunity to make progress through mediation. The remaining alternative and stated preference of the parties is arbitration. The Ministry reminded the parties that re-consideration of current positions is always available under the legislative framework.

As indicated in Appendix 1, there are three binding arbitration options to select from: peer panel, final proposal arbitration and full arbitration. For each process, any '*affected local government*' can participate in addition to the parties to the dispute. All participants share costs. The Ministry provided a rough estimate of final proposal arbitration costs in the order of \$5,000

to \$15,000. The other options were not estimated as they have not been used to date; however, the Ministry implied that the costs of these options could be substantially more.

The choice of arbitration process is left to the parties to decide, if they can reach agreement. For full arbitration, the parties can also select from a pre-determined list of arbitrators developed by the Ministry in consultation with the Union of British Columbia Municipalities. For final proposal arbitration, all participants in the process have to prepare a joint statement on the disputed issues to be resolved. Agreement on these issues can be explored prior to entering the process. The parties discussed that the statement of the issue could be as follows:

“Should the proposed Regional Context Statement amendment be accepted as consistent with the RGS to allow the grocery store to be built?”

This question and others related to process are outlined in Appendix 2. Staff are of the opinion that the question should be of a technical nature rather than suggesting that the arbitrator should decide a political issue. The Board’s position on these questions will be conveyed to the minister to assist her in her decision on directing the process from this point forward. The District will pose similar questions to its Planning and Development Committee and Council and report to the minister accordingly.

ALTERNATIVES

1. Notify the minister of Community, Sport and Cultural Development that the CRD Board position on the matter of the request for referral is as follows:
 - a. That the Board re-affirms its original position to refuse acceptance of the District of Central Saanich proposed RCS amendments as set out in Report No. PPS/RP 2011-09 (Appendix 3);
 - b. That the Board concurs that the dispute should go directly to a binding dispute resolution process (arbitration);
 - c. That the Board concurs that the dispute be directed to a final proposal arbitration process and that the minister be so advised;
 - d. That the Board is prepared to incur its proportionate share of the costs for a final proposal arbitration process and authorizes that \$5,000 be added to the 2012 Regional Planning division requisition to accommodate this expense;
 - e. That the Board considers the central disputed issue to generally be along the lines of:
Should the proposed RCS amendment be accepted as consistent with the RGS to enable the District to adopt a zoning bylaw amendment permitting a 40,000 sq. ft. grocery store on West Saanich Road at Keating Cross Road.
2. That the Board direct staff on an alternate position to be conveyed to the Minister of Community, Sport and Cultural Development on the matter of the request for referral.

GROWTH STRATEGY IMPLICATIONS

As outlined in Report No. PPS/RP 2011-09 (Appendix 3), the original position on the District’s proposed amendment to the RCS was that it is not consistent with the several parts of the RGS and attempting to accommodate the proposal by amending the RCS would not achieve consistency over time. This remains the position of Regional Planning staff.

In the alternative, Board acceptance of the proposed RCS amendment would need to be conditional on a commitment to re-align the RGS during the RGS review. The RGS mapping

would need to be modified so as to create a spot RUCSPA¹ designation specific to the subject property, with a special policy recognizing this site-specific development or alternatively, the RUCSPA could be extended from either Brentwood Bay or Saanichton to the subject site, at the risk of encouraging additional strip development along either Keating Cross Road or West Saanich Road. Both of these options undermine the fundamental principles of the RGS to keep urban settlement compact and protect the integrity of rural communities.

PROCEDURAL IMPLICATIONS

The Board can, by resolution, re-confirm its earlier position on the District's referral request as per the recommendation in this report.

In the alternative, if the Board wishes to re-consider its original position on the RCS referral, there is no specific direction in the *Local Government Act* or the Board's Procedural Bylaw, however according to Robert's Rules of Order, the Board may follow this procedure:

1. Put a motion forward to rescind the Board motion of August 11, 2011 regarding Report No. PPS/RP 2011-09; a simple majority vote is sufficient provided notice is given of the meeting;
2. If the motion passes, the Board must adopt an alternate motion pertaining to Report No. PPS/RP 2011-09.

If the motion to rescind does not pass by simple majority, the original motion of the Board on the report stays intact.

FINANCIAL IMPLICATIONS

The CRD's share (50 percent) of the Ministry's estimated cost for final proposal arbitration is expected to be within the range of \$2,500 to \$7,500, the upper limit of which exceeds the Regional Planning division's 2012 budget for legal expenses. To that end, additional requisition in the order of \$5,000 is requested to support arbitration proceedings.

CONCLUSION

A tri-party meeting was held on March 13, 2012 concerning the District's referral request to the Ministry regarding the CRD's refusal to accept the RCS amendment to provide for a 40,000 sq. ft. food store to be erected on lands outside the RUCSPA. The parties agreed that arbitration is the preferred choice of dispute resolution options. Several questions need to be addressed by the Board in order to inform the minister's decision on process.

It is staff's recommendation that the Board re-confirm its original position on the RCS referral and direct the minister toward final proposal arbitration. To this end, the Board must also agree to pay its share (50 percent) of the estimated costs (\$5,000 to \$15,000). Additional requisition of \$5,000 is requested to augment the Regional Planning Division budget for legal expenses. Finally, the Board's concurrence with the central question to put to the arbitrator is sought.

¹ Regional Urban Containment and Servicing Policy Area

RECOMMENDATION

That the Planning, Transportation and Protective Services Committee recommend to the CRD Board that the Minister of Community, Sport and Cultural Development be notified of the CRD Board position on the matter of the request for referral as follows:

- a) That the Board re-affirms its original position to refuse acceptance of the District of Central Saanich proposed Regional Context Statement amendments as set out in Report No. PPS/RP 2011-09 (Appendix 3);
- b) That the Board concurs that the dispute should go directly to a binding dispute resolution process (arbitration);
- c) That the Board concurs that the dispute be directed to a final proposal arbitration process and that the minister be so advised;
- d) That the Board is prepared to incur its proportionate share of the costs for a final proposal arbitration process and authorizes that \$5,000 be added to the 2012 Regional Planning Division requisition to accommodate this expense;
- e) That the Board considers the central disputed issue to generally be along the lines of: *Should the proposed Regional Context Statement amendment be accepted as consistent with the Regional Growth Strategy to enable the District of Central Saanich to adopt a zoning bylaw amendment permitting a 40,000 sq. ft. grocery store on West Saanich Road at Keating Cross Road.*

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Appendix 1: Regional Context Statement Dispute Resolution Process Flow Chart
Appendix 2: Process Questions re: Central Saanich – Capital Regional District RCS Dispute
Appendix 3: Report No. PPS/RP 2011-09