



Email Transmission

November 5, 2004

File No. 111 1302

Mr. Mark Hornell, MCIP
Director – Regional Planning Services
Capital Regional District
PO Box 1000
524 Yates Street
Victoria, BC V8W 2S6

Dear Mr. Hornell:

Re: Regional Housing Affordability Trust Fund

Having reviewed the material you provided me – the business case, the draft service establishing bylaw, and the existing Supplementary Letters Patent (“SLP”) – as well as the current *Local Government Act* (“LGA”), I have revised the draft establishing bylaw, which is enclosed and will answer your specific questions as follows:

1. (A) *Under draft bylaw section 4 (Cost Recovery), are Participating Areas able to raise the funds requisitioned by the CRD for the proposed Housing Trust Fund by any means they see fit, or must they raise the funds through property taxes?*

Section 4, as set out in the draft bylaw, does not indicate any method of cost recovery, as required by section 800.1(1)(d) of the LGA. That section sets out the required content for establishing bylaws. A cost recovery provision that complies with the LGA is set out in section 4 of the enclosed revised draft. All of the possible options for cost recovery are detailed in section 803 of the LGA. We recommend that all of those options be included in an establishing bylaw, unless the Regional Board has a very specific reason for limiting the options.

The options are as follows:

- (a) property value taxes;
- (b) parcel taxes;
- (c) fees and charges;

- (d) revenues raised by other means authorized under the LGA or another Act;
 - (e) revenues receive by way of agreement, enterprise, gift, grant or otherwise.
1. (B) *From the perspective of the legislation, does it matter how a Participating Area raises (its) funding contribution, as long as (it) remits the amount requisitioned by the CRD under the proposed draft bylaw?*

No, it does not matter how a Participating Area raises its funding contribution, as long as it is a method that is permitted under section 803 of the LGA and as long as that method is listed as an option in the establishing bylaw, as required by section 800.1(1)(d) of the LGA.

You will note that section 803(1)(e) is a catch-all provision that allows the option of using revenues received by way of agreement, enterprise, gift, grant or **otherwise**. The catch-all "otherwise", would cover the GST rebate funds. Rental revenue under leases would fall into section 803(1)(d), namely "revenues raised by other means authorized under the LGA". A regional district derives its power to lease or otherwise dispose of its land, improvements, personal property or other property under section 176(1)(d) of the LGA and thus this source of revenue falls under section 803(1)(d) as a form of revenue raised by means authorized under the LGA.

2. (A) *Under the applicable legislation, would the CRD be able to accommodate a request by a Participating Area to access its funding contributed for a current budget year so that the municipality could apply it to an affordable housing project of high priority in that municipality?*

This could be accomplished if that purpose is included within the description of the service. That is one of the required content elements of a service establishing bylaw under section 800.1(1)(a) of the LGA. For services where there is a concrete purpose for the money to be raised from property holders in the Participating Area, such as a water system or a recreation facility, it is quite clear that the money is going to that particular capital purpose. On the other hand, where the money raised from the Participating Area is to be deposited in a fund, the purposes for which the money will be expended from the fund in effect is the description of the Service in the bylaw. The purposes must be stated in a manner that covers all of the possible uses for which the money may be expended and all the possible recipients of the money for that purpose.

An example of this is found in the consolidated SLP under *Division XII – Land Assembly, Housing and Land Banking* of the CRD's Letters Patent. In section 2 the "functions", as they are referred to in the Letters Patent (whereas establishing bylaws refer to "service"), is for the Regional District to undertake land assembly

for the purposes enunciated in section 2. In section 3 the Regional District is empowered to create one or more corporations to undertake the land assembly on behalf of the Regional District. Section 4 goes on to say that the Regional District is empowered to guarantee loans to the corporation that it establishes under section 3 in order to provide interim financing to those corporations.

Therefore, the $\frac{1}{4}$ mill levy on land and improvements within the Regional District, under *Division XII* is directed towards specific purposes:

- (a) land assembly, and
 - (b) specific recipients, namely the housing corporations created by the Regional District and delegated the power to assemble land for the housing purposes set out in the function. Section 800.1 of the LGA, setting out the required content of establishing bylaws, follows the same lines as the SLP.
2. (B) *under the LGA, would the CRD be able to give a municipality out of the housing trust fund, money raised in that municipality, and can this be authorized or accomplished under the service administration bylaw or would it have to be included within the service establishing bylaw?*

This must be included in the purpose of the regional housing trust fund as set out in the service establishing bylaw. The criteria under which the monies would be dispersed should be set out in the service administration bylaw.

3. *If the regional housing trust fund were implemented using the existing SLP, would the CRD have the flexibility to permit Participating Areas to access their annual funding contribution as noted in the preceding question?*

The existing SLP does not provide that flexibility. The funds raised under the SLP can only be used by the Regional District itself or by advancing funds to a corporation that it has created under section 3 of the SLP. No other recipients, such as participating municipalities, are mentioned. In addition, the SLP imposes the following limits:

- (i) \$100,000.00 on the total of all its outstanding guarantees of loans incurred by the housing corporations created by the CRD;
- (ii) a limit on the annual net expenditure of the Regional District under that function of $\frac{1}{4}$ of a mill on the total value of land and improvements within the Regional District, this being a region-wide function.

I am not aware of how much money is raised by the Regional District under the existing SLP function, but if it would not accommodate the additional one

million dollars required for the housing trust fund, then the SLP is insufficient for the purposes of the housing trust fund.

4. *If the Regional Housing Trust Fund were implemented using the existing SLP, could such a fund be administered using a service administration bylaw as proposed in the guidelines included in Appendix Two of the business case?*

As pointed out in the answer to previous questions, the existing SLP will not accomplish or accommodate the proposed goals of the regional housing trust fund.

Firstly, the SLP permits funds to be dispersed only to a housing corporation created by the CRD and not to other bodies. The business case suggests a much broader range of recipients for the funding as well as partnerships with other bodies and organizations. But this is not possible under the SLP. The CRD derives its authority from legislation. Letters Patent are simply another form of legislation by which the Provincial Government confers powers on local governments such as regional districts. Powers conferred under the SLP cannot be expanded by a service administration bylaw adopted by the Board. The service administration bylaw must fit into the framework of the enabling legislation, via the SLP or the LGA, the latter through the mechanism of a service establishing bylaw. In other words, the SLP is insufficient to accomplish the goals of the regional affordable housing trust fund as set out in the business case.

5. *Can a regional housing trust fund established under either a new service bylaw or using the existing SLP, receive requests, gifts and donations?*

Yes, as long as the service establishing bylaw sets this out as one of the options for cost recovery as discussed in the answer to question 1. Section 803(1)(e) clearly states that gifts, grants or other revenues may be set out as options for cost recovery in the service establishing bylaw. In other words, if the service establishing bylaw sets out the option in section 803(1)(d), as does the enclosed revised draft bylaw, no further action need be taken on the part of the CRD to enable it to place requests, gifts, and donations into the housing trust fund, so long as they are clearly identified as being directed to that fund.

The CRD may want to initiate a policy of communicating on a regular basis to the public generally or certain members of the public, such as the legal profession who are preparing wills for their clients, financial institutions that handle estates, and charitable organizations, that trust the fund is a worthy recipient of bequests, gifts and donations.

On page 6 of the business case, another question was raised for a response from our firm:

6. *To what extent and under which terms could the Regional Housing Trust Fund monies be provided to private non-profit corporations?*

As long as the purposes set out in the description of the service (the distribution of monies from the RHTF), are set out in the service establishing bylaw, the extent and terms for providing funding to private non-profit corporations would be established by policy of the Board. The Principles, as well as the Scope and Objectives set out on page 5 of the business case are a reasonable basis upon which to establish the terms and extent. For example, the principles set out a concern for ensuring a fair share across the participating municipalities as well as a requirement for the support of at least three participating municipalities for a funding request. Where a request comes from a private non-profit corporation, the support of the participating municipality in which the project will be located might be a requirement of a CRD policy in this regard. The policy could also focus on other issues, such as serving an identifiable need as well as leveraging funds from other sources.

Another question arises in Appendix Two, Guidelines for the Preparation of a Regional Housing Trust Fund Service Administration Bylaw.

7. *We are asked to review whether a similar administrative bylaw could be adopted should the Board opt to implement a housing trust fund using the existing SLP.*

As already discussed, the existing SLP are insufficient to achieve all of the goals of a regional housing trust fund as set out in the business case. However, we did not discuss another alternative which is to convert the SLP to a service establishing bylaw under section 774.2(3)(a) of the LGA.

Under paragraph (e) of that section, the conversion bylaw can amend the power to the extent that it could if the power were in fact exercised under the authority of an establishing bylaw. In other words, instead of leaving the SLP intact and setting up a separate bylaw to create the regional housing trust fund service, we could combine the SLP and the housing trust fund provisions into one bylaw. However, that would require all of the municipalities and electoral areas to opt into the Regional Housing Trust Fund service, so that the Participating Areas would be the same for both the land assembly/housing corporation and the regional housing trust fund parts of the overall Service. If that is the course of action that the CRD board ultimately adopts, then a service administration bylaw could be adopted under the new service establishing bylaw, solely for the purpose of making a policy for the administration of the service, i.e., the disbursement of the money in the fund for the purposes set out in the establishing bylaw.

8. *We were asked for comments on the business plan and draft service establishing bylaw, but not the service administration bylaw.*

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We were not requested to prepare a service administration bylaw, and that is probably premature until such time as the service establishing bylaw has been adopted or is close to adoption by the Board.

The general substance of the guidelines for the service administration bylaw seem appropriate for the purposes.

Provision for establishing the administrative committee is set out in the establishing bylaw. The reason for this is the requirement under section 795 of the LGA that at least one member of each select and standing committee of the Board should be a director. To resolve the dilemma of not having any directors on the committee, an alternative is to establish a commission under section 176(1)(g) of the Regional District. However, the commission would not have any of the powers set out in the provision, but would instead be an advisory body in a similar manner as an advisory planning commission. If the Board intends to have one of its directors sit on the administrative committee, then it would not be necessary to provide for its establishment without such membership by way of the service establishing bylaw.

If a commission is not desired, then a second alternative is to use the option under section 800.2(1)(e) of the LGA to include a special provision for establishing a committee with no Board Directions on it. This is the approach taken in the enclosed draft bylaw.

If there are any other questions or concerns that arise out of this letter or the draft service establishing bylaw, please let me know.

Yours truly,

STAPLES MCDANNOLD STEWART

Original signed by "Lorena Staples"

Per:

Lorena Staples, Q.C.

LS/am

enclosure